

COUNCIL OF MINISTERS

(70th Meeting)

7th February 2008PART A

All members were present, with the exception of Senator T.J. Le Main, Minister for Housing, from whom apologies had been received.

Senator F.H. Walker, Chief Minister
 Senator W. Kinnard, Minister for Home Affairs (for a time)
 Senator T.A. Le Sueur, Minister for Treasury and Resources
 Senator P.F. Routier, Minister for Social Security
 Senator M.E. Vibert, Minister for Education, Sport and Culture
 Senator P.F.C. Ozouf, Minister for Economic Development (for a time)
 Senator B.E. Shenton, Minister for Health and Social Services
 Senator F.E. Cohen, Minister for Planning and Environment
 Deputy G.W.J. de Faye, Minister for Transport and Technical Services

In attendance -

W.D. Ogley, Chief Executive, States of Jersey (for a time)
 W.J. Bailhache, Q.C., H.M. Attorney General (for a time)
 J. Morris, Policy and Research Manager (for a time)
 M.N. de la Haye, Greffier of the States (for a time)
 I. Clarkson, Clerk to the Council of Ministers

Note: The Minutes of this meeting comprise Part A and Part B.

Minutes A1. The Council requested that two minor and inconsequential errors be corrected in the minutes of the meeting held on 24th January 2008. It subsequently authorized the Chief Minister to sign the Part A and Part B Minutes of the meeting, subject to completion of the necessary alterations.

Senator P.F.C. Ozouf was not present for this item.

States business. A2. The Council noted the list of public business scheduled for consideration during the remainder of the First Session of 2008.

1240/7/1(1)

The Council noted that both the Minister for Transport and Technical Services and the Minister for Treasury and Resources intended to present comments to the States Assembly in respect of the report and proposition entitled, 'Re-use and recycling facilities: capital and revenue funding' (P.7/2008 refers). It was anticipated that the comments would address logistical and budgetary matters arising from the proposal. **The Council requested that draft comments from both Ministers be circulated to the Council prior to 14th February 2008. In the event that Ministers identified a need to discuss the proposition and draft comments in more detail, the Chief Minister would call an additional meeting of the Council.**

Ministerial Government: A3. The Council, with reference to its Minute No. Minute No. A5 of 26th April 2007, recalled that on 9th November 2007 the Privileges and Procedures

review of the
first 12
months.
465/1(77)

Committee had published its report on the first 12 months of Ministerial Government (R.105/2007 refers).

The Council considered a report, prepared by the Policy and Research Manager, Chief Minister's Department, concerning recommendations made by the Privileges and Procedures Committee (PPC) in R.105/2007.

It was noted that the PPC had made 55 recommendations in its report concerning matters including, but not exclusive to –

- (a) access to information,
- (b) discipline and suspension of Ministers,
- (c) the rôle of Assistant Ministers within the Executive,
- (d) the quality of Ministerial Decisions, and
- (e) the rôle of, and exchange of information with, the Chairmen's Committee, individual Scrutiny Panels and the Public Accounts Committee.

Following publication of the report, the Chairman of PPC had written to the Chief Minister seeking the reaction of the Council to the series of recommendations made.

The Council discussed the recommendations in consultation with –

- (i) a delegation of the PPC consisting of: Connétable D.F. Gray, Chairman; Deputy J. Gallichan, Vice Chairman; and, Mrs. A.H. Harris, Deputy Greffier of the States;
- (ii) a delegation of Assistant Ministers consisting of: Senator J.L. Perchard; Connétable G.W. Fisher; Deputy J.J. Huet; Deputy J.B. Fox; Deputy C.F. Labey; Deputy J.A. Hilton; Deputy A.E. Pryke, and Deputy A.D. Lewis; and,
- (iii) a delegation of the Chairmen's Committee, consisting of: Deputy S.C. Ferguson, President; Deputy R.G. Le Hérisier; Deputy G.P. Southern; Deputy J.G. Reed and Deputy D.W. Mezbourian.

During the course of the above discussions a broad consensus of opinion between the Council and the 3 respective delegations was reached in respect of the subject areas outlined at (a) to (e) above. The Council's decisions in respect of each of the recommendations was as follows –

Rec. No.	Recommendation and Decision
7	'Standing Orders should be amended to provide that a Minister, if present in the Assembly, should only be able to delegate the answering of an oral question with notice to an Assistant Minister with the consent of the questioner. This would ensure that members are not frustrated in their attempts to hold Ministers themselves to account if they wish to do so.'

	<p>The Council was minded to endorse the recommendation. Ministers would nevertheless continue to invite Assistant Ministers to respond to questions concerning detailed matters of policy implementation where responsibility for that matter had been delegated to the Assistant Minister concerned.</p> <p>On a related matter, the Council requested that the PPC consider whether Ministers should be forced to answer questions in cases where the Minister had delegated to an Assistant Minister responsibility for a specific policy area in order to address a possible conflict of interest.</p>
12	<p>‘Ministerial Decision Summaries should be clear, robust and comprehensive, should be cross-referenced with earlier decisions and discussions, and must be accompanied by all appropriate background papers and reports of relevance to ensure that the decision can be seen in context.’</p> <p>The Council endorsed the recommendation. Having been advised that there remained a need for the Deputy Greffier of the States to advise departments on a frequent basis regarding the content, consistency of language and overall quality of ministerial decisions, the Council agreed that the States Greffe, in consultation with the Corporate Management Board, should re-issue to all departments guidelines for the completion of Ministerial Decisions. In particular, all departments were to be reminded of the importance of cross-referencing linked decisions wherever possible. Finally the Council concluded that individual Ministers were responsible for determining whether documentation attached in support of a decision was appropriate.</p>
17	<p>‘Panels should analyse decisions, not the general activity of a Minister, and that a Scrutiny Panel should focus on conducting reviews by receiving/hearing evidence and obtaining advice. Panels should avoid old style ‘committee’ discussion.’</p> <p>The Council endorsed the recommendation.</p>
21	<p>‘The Chairmen’s Committee should consider and publish the procedure for scrutinising the Strategic Plan, the Annual Business Plan and the Budget and that annually, the Council of Ministers and the Chairmen’s Committee should agree the programme for the coming year, and inform the States thereon.’</p> <p>The Council endorsed the recommendation.</p>
22	<p>‘If not already in place, clear procedures should be agreed on the passing of all relevant information to each Scrutiny Panel in relation to the Strategic Plan and Annual Business Plan in a timely fashion, and the Chairmen’s Committee should be responsible for co-ordinating the work of the different panels.’</p> <p>The Council endorsed the recommendation. It further noted that during the ‘What is Scrutiny?’ conference held on 6th February 2008 there had been a marked difference of opinion among certain members of Scrutiny regarding the need for Scrutiny Panels to be provided with more documentation.</p>

23	<p>‘The Council of Ministers and the Chairmen’s Committee should agree a protocol on the sharing of information between Panels in relation to States-wide policies, for example in relation to the Strategic Plan, the Annual Business Plan and the Budget.’</p> <p>The Council concluded that in respect of information on States-wide policies, the President of Chairmen’s Committee should be invited to sign a binding confidentiality agreement on behalf of all Scrutiny Panels’. More thought was required regarding the sharing of information concerning department-specific policies. In any event, it was considered vital that personally and commercially sensitive information remained confidential. The Council noted Deputy G.P. Southern’s assertion that in certain other jurisdictions discussions concerning draft business plans were conducted in public; however, and in response to Deputy Southern’s suggestion that the Council should adopt such an open approach, the Council agreed that it should defer consideration of the matter until such time as Deputy Southern had provided substantive evidence of the above.</p>
25	<p>‘It is essential that all major law should be scrutinised so that members fully understand the impacts on the citizen of the legislation, once introduced. The sub-committee is not yet happy with this situation and would like to see an in-depth review of the way in which legislation is scrutinised.’</p> <p>The Council wholeheartedly endorsed this recommendation. It concluded that legislative scrutiny was a comparatively arduous but wholly necessary task and that there was a clear need for the process to begin once drafting instructions for a particular law became available.</p>
27	<p>‘As part of the discussions about “What is Scrutiny?” referred to earlier, agreement should be reached on what Scrutiny comprises, and whether or not Scrutiny should be reviewing the process of making a decision, as well as the actual decision itself.’</p> <p>The Council endorsed the recommendation and advised the PPC delegation that it looked forward to being apprised of the outcomes of the conference held on 6th February 2008</p>
37	<p>‘The Chairmen’s Committee should –</p> <ul style="list-style-type: none"> (i) actively co-ordinate the work of the Scrutiny Panels; (ii) take a lead in the organisation of Scrutiny of the Annual Business Plan and Budget; (iii) monitor the progress of the Panels’ work programmes.’ <p>The Council endorsed the recommendation.</p>
51	<p>‘The Chairmen’s Committee and the Council of Ministers, in consultation with the Privileges and Procedures Committee, should review the possible advantages and disadvantages of amending the States of Jersey Law 2005 and Standing Orders to allow Assistant Ministers, in certain circumstances, to participate in the Scrutiny function.’</p>

	<p>The Council considered that there were important philosophical and practical issues to address before Assistant Ministers could be invited to participate in the Scrutiny function. The Council concluded that it was unable to endorse the recommendation.</p>
54	<p>‘Standing Order 27 should be amended to provide that the Greffier shall refer a Proposition lodged by a private member to the relevant Minister or Ministers so that the Ministers can consider whether or not to report to the States on the matter.’</p> <p>The Council endorsed the recommendation.</p>
4	<p>‘In cases of breach of the Ministerial Code that do not merit dismissal, the Chief Minister should issue a formal written reprimand to the Minister concerned and present this to the States Assembly for information. The issue of such a formal written reprimand would put on record the disapproval of the Chief Minister, supported by a majority of Ministers, in relation to the conduct concerned; and would be available as a formal record if further concern about the Minister’s conduct occurred at a later date. If the Minister concerned had been asked to apologise, details of any apology given could also be recorded in the same document when presented to the Assembly.’</p> <p>The Council was minded to endorse the recommendation. Notwithstanding the foregoing, several Ministers questioned whether it would be necessary or appropriate to present a report to the States in all cases. It was agreed that, prior to finalizing its position, the Council should consider a report from the Chief Executive outlining a proposed procedure to be adopted by the Council in such disciplinary cases.</p>
5	<p>‘The appropriate legislation should be amended to provide that once a proposition for the dismissal of a Minister is lodged by the Chief Minister in accordance with the statutory requirements, the Chief Minister should, supported by a majority of Ministers, be empowered to suspend the Minister concerned from office pending the States debate on the dismissal. In these circumstances, the Chief Minister himself or herself, or another Minister nominated by the Chief Minister, would fulfil the functions of the suspended Minister pending the debate. If the States were to reject the dismissal proposal the suspended Minister would immediately resume his or her duties.’</p> <p>The Council endorsed the recommendation.</p>
1	<p>‘Where reports are of interest to all States members and are not confidential to the Council of Ministers, then presentations on them should be made to all members and not just to the Council.’</p> <p>The Council endorsed the recommendation, although it considered that an element of reasonableness would be required in terms of determining in each case whether a presentation would constitute an efficient use of resources and officer time.</p>

2	<p>‘The Council of Ministers should review how it liaises with the Comité des Connétables.’</p> <p>The Council endorsed the recommendation. Having noted that the Chief Minister had invited the Chairman of the Comité des Connétables to attend all scheduled meetings of the Council of Ministers, the Council agreed that consideration would need to be given to the possibility that the Chairman of the Comité could play an active rôle in Scrutiny in future years.</p>
3	<p>‘The Council of Ministers should keep items listed on the B Agenda to the strict minimum and should always err on the side of openness in case of any uncertainty about whether an item should be taken as Part A or Part B. Every effort should be made to communicate forthcoming discussions and the subsequent decisions with all members of the States and significant policy decisions should always be notified to other members of the States before they are released to the media. In order to ensure information is as accessible as possible, the Council of Ministers should ensure that minutes of Part B items are recorded in Part A minutes once a decision has been taken so that members are advised of what has been decided. There is also the facility to divide the record of an item between Part A and Part B of the minutes where residual confidential matters remain.’</p> <p>The Council endorsed the recommendation.</p>
6	<p>‘More use should be made of Assistant Ministers appointed to more than one Department and the current limit of 2 Assistant Ministers per Ministry should be removed, albeit with no change to the overall maximum number of Assistant Ministers.’</p> <p>The Council endorsed the recommendation, having concluded that it would allow for Assistant Ministers to play a key rôle in the development of cross-departmental policies. There was recognition of the fact that Assistant Ministers would wish to benefit from clear lines of accountability.</p>
8	<p>‘Assistant Ministers should only be appointed if the Minister concerned has a meaningful rôle for them to undertake. It is clear to the sub-committee that Assistant Ministers who have been given specific, well defined, delegated responsibility, have found their rôle more meaningful than those whose rôle is not clearly defined.’</p> <p>Although the Council endorsed the recommendation, it considered that Assistant Ministers already undertook a broad range of valuable and worthwhile duties. The Council considered that it would not be minded to constrain the range of duties performed through the introduction of precise definitions.</p>
9	<p>‘Ongoing delegations to Assistant Ministers, both in terms of general oversight and statutory functions, should be made clear on each department’s website, so that the public and States members know who is dealing with which issues on a day-to-day basis.’</p> <p>The Council endorsed the recommendation.</p>

10	<p>‘The Council of Ministers, in consultation with Assistant Ministers, the Privileges and Procedures Committee and others, should give consideration to the appropriate arrangements that should be put in place when a Minister is absent. This review should clarify the rôle of the Assistant Minister in these circumstances. If necessary, appropriate amendments can then be brought to the States of Jersey Law 2005 and the Standing Orders of the States to clarify the rôle of an Assistant Minister in a Minister’s absence.’</p> <p>The Council agreed that it would be minded to consider options for minor changes to Article 28 only. Some concern was expressed regarding the possible implication that Assistant Ministers should assume responsibility for departments when the Minister was absent, particularly as Assistant Ministers were not appointed by the States.</p>
11	<p>‘The scope of matters that can be delegated to Assistant Ministers should be reviewed. Subject to the receipt of appropriate legal advice the sub-committee sees no reason, for example, that Assistant Ministers should not be able to make Orders under specific legislation where other statutory responsibilities have already been delegated to them, subject to appropriate limitations.’</p> <p>The Council endorsed the recommendation and agreed that all such delegations of authority to Assistant Ministers should be collated and published on the States of Jersey website.</p>
24	<p>‘At the beginning of each year –</p> <ul style="list-style-type: none"> • the Council of Ministers must inform the Chairmen’s Committee of its indicative programmes in relation to the Annual Business Plan and the Budget, and every third year, the Strategic Plan, and the dates of the key meetings which Scrutiny members would be invited to attend in relation to each; • Scrutiny must provide the Council of Ministers with scheduled dates of each of its Panels for meetings/hearings in relation to these documents; and dates upon which it would seek informal briefing meetings with officers, and meetings with Ministers; <p>with a view to ensuring the timely transfer of information, the dovetailing of meetings of the Executive and Scrutiny, sufficient time for Scrutiny and the efficient and effective use of manpower resources.’</p> <p>The Council considered that it already operated in accordance with Recommendation 24; accordingly it endorsed the recommendation.</p> <p>On a related matter, the Council acknowledged that there would be a clear need for the States to determine the next Strategic Plan by July 2009 in order to provide the next Council and the next Assembly with substantive room for decision making.</p>

30	<p>‘Ministers should ensure that the 2 processes (policy formulation and Scrutiny) will operate side by side from the start, and that ‘green’ (Discussion papers) and ‘white’ (Draft Policy) papers should be issued and available for Scrutiny. The sub-committee believes it would be helpful for the title pages of discussion papers to be printed on green paper.’</p> <p>The Council endorsed the recommendation. It further considered that there was scope for clarifying the circumstances in which Scrutiny could have a matter referred to it by the States Assembly, particularly when a specific policy proposal had already been considered by the Panel at the green and / or white paper stage.</p>
46	<p>‘The future Strategic Plan brought forward by the Council of Ministers should be a broad policy statement setting out the general overall policy direction of the Council without excessive detail on individual initiatives.’</p> <p>The Council endorsed the recommendation.</p>
55	<p>‘The sub-committee believes that the Council of Ministers should nevertheless give consideration to requesting all departments to identify fee increases currently made by Regulation so that appropriate amendments could be made to enable these to be made by Order in the future.’</p> <p>The Council considered that such changes would require a bid for drafting time within the legislation programme and, further, that there was a need to review the existing policy on fee increases. Although in principle support for the recommendation was expressed, the Council concluded that it would be preferable for the above review to be completed first.</p>
13	<p>‘The Chief Executive to the Council of Ministers should examine ways of expanding the policy support available to the Council of Ministers, possibly drawing on expertise already available in other departments.’</p> <p>The Council endorsed the recommendation. Indeed it noted that the Chief Minister’s Department was due to implement a network of policy support below the level of the Corporate Management Board.</p>
14	<p>‘The Chief Minister’s Department should investigate the creation of a private secretary type support rôle for the Chief Minister. This would be a full-time rôle that might involve a civil servant of approximately Grade 9-11, who would be responsible for undertaking basic research for the Chief Minister, assisting with preparation for official duties and attending meetings with the Chief Minister. In addition, the person appointed could undertake more basic functions such as diary planning for the Chief Minister.’</p> <p>The Council expressed a degree of concern regarding financial and manpower implications arising from the recommendation. It nevertheless considered that the Chief Minister would benefit significantly from provision of a dedicated research and administrative</p>

	capability to call on. It further considered that there was a need to ensure that meetings attended by the Chief Minister in the course of his official duties were recorded appropriately.
40	<p>‘The Chairmen’s Committee and the Council of Ministers should meet specifically for the purpose of exchanging information on the work programme of Ministers and the review programme of Scrutiny. The agenda for this meeting should be agreed in advance, and participants should be aware of their rôles in the discussion. On both sides, prior work should be undertaken to agree priorities and set timetables for the work/review programmes.</p> <p>Update meetings should be timetabled and held if changes to the programme have occurred or are likely to occur, in order that everyone is fully informed, and to ensure as far as possible that no abortive work is undertaken.’</p> <p>The Council endorsed the recommendation and concluded that it should consult with the Chairmen’s Committee with a view to producing during the autumn of 2008 a framework document describing the process of formulating the Strategic Plan and the Annual Business Plan.</p> <p>On a related matter, the Council concluded that Scrutiny Panels should aim to draft their work programmes for the coming year in September and that it would be of considerable assistance to Ministers if Panels would forward to the relevant Ministers key meeting dates for the coming year prior to the commencement of that year.</p>

The delegations, having been thanked by the Council for their attendance and their productive input, withdrew from the meeting.

The Council agreed that it would submit a detailed response to R.105/2007 to the Privileges and Procedures Committee in due course.

The Policy and Research Manager was authorized to take the necessary action.

Seat belt
legislation.
1083/21(4)

A4. The Council considered an oral report from Deputy G.W.J. de Faye concerning recent media coverage of a campaign by the head injury charity known as Headway (Jersey) to encourage the introduction of legislation requiring that all rear seat occupants in motor vehicles wear a seat belt.

Deputy de Faye explained that the Chief Minister had advised him of his provisional intention to bring a proposition to the States Assembly calling for the introduction of legislation requiring rear seat passengers in motor vehicles to wear a seat belt. In response Deputy de Faye had acknowledged that, like all States members, the Chief Minister was entitled to bring any proposition to the States.

Deputy de Faye had clarified that he would readily support the proposition proposed by the Chief Minister on the basis that it would rightly provide the States Assembly with an opportunity to debate the issue. In this connexion he had agreed that the Transport and Technical Services Department should contribute to the report accompanying the proposition and had stated that he would expect to see

similar contributions from both the Health and Social Services and Home Affairs Departments. Notwithstanding the foregoing, Deputy de Faye believed that the removal of personal freedoms in favour of criminal sanctions was a very serious matter; accordingly he believed that States members should be comprehensively informed on all the relevant issues before taking a decision.

The Council noted the position adopted by Deputy G.W.J. de Faye and determined that the Chief Executive, in consultation with relevant officers from the Health and Social Services, Home Affairs and Transport and Technical Services Departments, should produce a detailed report for consideration by the Council at its next scheduled meeting highlighting the extent to which available evidence supported the introduction of legislation in Jersey to make the wearing of rear seat belts in motor vehicles compulsory.

Code of
conduct:
maintaining
trust between
Ministers.
450/2(2)

A5. The Council, with reference to its Minute No. A9 of 16th December 2005, recalled that it had identified a need to work collectively and to maintain trust and confidence between Ministers. In this connexion the Council considered representations made by Senator P.F.C. Ozouf and by Deputy G.W.J. de Faye concerning certain critical comments reported by local media organizations and attributed to Senator B.E. Shenton.

The Council re-affirmed its view that it should remain a forum for frank and open discussion and that it was committed to working collectively and to maintaining trust and confidence between Ministers. Although it was fully accepted that individual Ministers remained entitled to criticize policies of fellow Ministers in public, it was agreed unanimously that whenever a Minister was minded to exercise that right, that Minister should first contact the Minister with responsibility for the relevant policy and discuss the facts of the matter. In the event that the Minister remained dissatisfied, he or she should then speak out in public as necessary; however, the Council agreed that the use of unnecessarily aggressive or personal language would inevitably detract from the process of good government and should therefore be avoided.

Annual
Performance
Report:
forwarding to
Scrutiny.
1444/4(9)

A6. The Council noted that, during the course of the 'What is Scrutiny?' conference held the previous day, the Chairmen's Committee had requested that the Council make available a copy of the 2006 Performance Report for review. The Council recalled that it had considered the draft report on 31st May 2007 (Minute No. B2 refers) but that it had not subsequently been finalized. **Notwithstanding the foregoing, the Council agreed that a copy of the report should be forwarded to the Chairmen's Committee for dissemination to individual Scrutiny Panels.**

Senator W. Kinnard and Senator P.F.C. Ozouf were not present for this item.