

ROLE OF MEMBERS OF GOVERNMENT DEPARTMENTS  
COUNCIL OF MINISTERS GUIDELINES

General

1. Section 1 (2) of the Government Departments Act 1987 provides that;

*"Each Department shall consist of –*

- (a) the Minister; and*
- (b) one or more other members, who shall be members of Tynwald."*

It is therefore, a statutory requirement that each Department shall have at least one Member to support the Minister.

2. Whilst the relationship between a Minister and his/her Departmental Member(s) depends very much on the personalities of the individuals involved, it is important, in the public interest, that the relationship be both positive and productive. This involves the Minister and Members sharing information and working together, recognising their respective roles and assuming a collective responsibility for the work of the Department.

Delegated Authority

3. Section 3 of the Government Departments Act 1987 states that;

- (1) Subject to subsections (2) and (3), the functions of each Department shall be exercised by the Minister in the name and on behalf of the Department.*
- (2) The Minister may authorise any member or officer of the Department, or any person, to exercise any functions of the Department in his place, either alone or jointly with him or with any other such person or persons.*
- (3) Any person authorised under subsection (2) to exercise any functions of the Department may authorise any officer of the Department to exercise any of those functions in his place.*
- (4) The Department may make standing orders regulating the exercise by any person of any functions of the Department which he is authorised to exercise under subsection (2) or (3).*
- (5) Where any person has under subsection (2) or (3) authorised any other person to exercise any function of the Department in his place, he is not thereby prevented from exercising those functions himself."*

4. The effect of section 3 (1) of the Act, (see above), is to vest all the function of the Department in the Minister but the Minister is able to delegate some or all of those functions, albeit final responsibility for all the functions will remain with the Minister.
5. The section includes a reference to Members and the Member is a specified class of person to whom the Minister may delegate functions of the Department.

6. The extent to which Departmental responsibilities are delegated to Member(s) of a Department is a matter for the Minister, but Ministers are encouraged to put in place delegations which-
  - (a) give decision making responsibilities to Member(s) of the Department in defined areas of Departmental activity, and
  - (b) provide cover in the event of the Minister being not available by virtue of absence from the Island, illness, etc.
7. Where a delegation is made of a Department's functions to a Member [or other person(s)], it should be in the form shown at [Annex 1](#).
8. Where a delegation is made to a Member [or other person(s)] to provide cover in the event of the Minister not being available, it should be in the form shown at [Annex 2](#).

#### Legal and Financial Constraints

9. A Department is not able to take any action for which it has no legal authority nor may it incur the expenditure of money if authority to expend that money does not exist. It follows that a member exercising a delegated authority may not take or direct an action for which there is no sufficient legal or financial authority.

The advice of the Department's Chief Executive should be taken in any case of doubt.

#### Collective Responsibility

10. Unless they have been positively excluded from the process of formulating the policy, non-ministerial members of a Department are collectively responsible for department policy in the sense that they should support that policy in public. This collective responsibility for departmental policy extends to departmental policy as a whole, and not simply to those policy areas for which a non-ministerial member has been given delegated responsibility to act.
11. There are circumstances, as follows, under which Member(s) have freedom to speak publicly against policies and decisions of the Department;
  - (1) **Matters of conscience:** There will inevitably be issues where Members will be guided by a fundamental religious or moral belief [rather than political ideology]. Such issues are readily identifiable and Members will always have the right to a free vote on such issues.
  - (2) **A declared position:** A Member brings with him/her to his/her tasks a set of views and opinions uniquely his/her own. These may, in some cases, include a strongly held and publicly declared position on a particular subject. It would be unrealistic to expect such a Member to change position on that subject for the sake of collective responsibility. Equally, however, it would be unacceptable for that Member to "crusade" in support of his declared position in the knowledge that the Department does not share his/her view.
  - (3) **Constituency matters:** Issues may arise where there is a strong and specific constituency interest which conflict with a Departmental decision. In these circumstances, a Member from that constituency must have the right to represent that interest if he/she so wishes. Where this is so, the Member concerned must make his position clear to the Minister.

- (4) **Inconsequential matters:** Collective responsibility applies to Department policies and decisions. Where small matters of detail arise, where there can be room for disagreement without those policies or decisions being called into question, Members will have the freedom to express themselves.
  - (5) **Unresolved issues:** Issues will be raised from time to time which the Department has not considered or on which the Department has not taken a decision. Until a Departmental position is established, Members will be free to express themselves.
- 12. A personal or political dislike of a Departmental decision is not in itself a sufficient justification for an exemption from collective responsibility.
  - 13. Where Members exercise their right to a free vote or to speak publicly against a policy or a decision of the Department, in accordance with one of the recognised exceptions, it will be important for them to express themselves toward the Minister and other Members in a responsible way. Even in disagreement, courtesy and respect are due to a fellow Member of Tynwald. A display of personal abuse, criticism or animosity would be unacceptable in such circumstances.

#### Inter-Departmental Issues

- 14. It is occasionally necessary for an issue between Departments to be resolved by discussions between the relevant Ministers or for the Council of Ministers to resolve the issue by means of a Direction or otherwise. Where, within a Department, that issue falls within the delegated competence of a Departmental Member, the resolution may be contrary to the views of the Member. In such event, collective responsibility applies and the Member should respect the decision of the Department.

## Confidentiality

15. It is Government Policy to be as open as possible in providing information publicly about its activities. There are, nevertheless, circumstances in which, for good reasons, confidentiality requires to be observed. These circumstances are set out in Governments Code of Practice on Access to Information under a number of headings, the principal of which are:
- Privacy of the Individual
  - Third Party's Commercial Confidences
  - Effective Management and Operation of the Public Service
  - Law Enforcement and Legal Proceedings, and
  - Prematurity

Whilst Members are encouraged to explain and discuss openly the declared policies of the Department, it is important for the effective working of Departments that information in relation to developing policies or activities is not divulged prematurely so as to pre-empt a determination by the Department. Members should therefore, be sensitive to the interests of the Department in discussing the work of the Department with others and, in the event of doubt, to discuss with the Minister whether outside discussion would be premature.

### Relationship between Members of a Department and Civil Servants

16. The Council of Ministers has laid down the following as regards the relationship between a Member of a Department and civil servants:
- (a) Where any Departmental Member (or other person) has been authorised by a Minister to exercise any functions of the Department by virtue of Section 3 (2) of the Government Departments Act 1987, civil servants shall in relation to those functions and subject to the limitation of any instructions from the Minister, be responsible to that Member as though he or she were the Minister.
  - (b) In all other circumstances, so far as is consistent with their responsibilities to their Minister, civil servants shall regard the basic principles governing the relationship between Ministers and civil servants as applying to their relationship with Members of their Department. In particular and subject to any limitations imposed by the Minister, civil servants shall provide such information regarding their Department and the discharge of its functions as a Member of the Department may reasonably require.
  - (c) Any directives issued by a Member of a Department acting under delegated authority should be issued through the Department's Chief Officer.

GOVERNMENT DEPARTMENTS ACT 1987

**Department of (Name of Department)**

**Delegation of Functions relating to (Area of Activity)**

In exercise of the powers conferred to me by section 3 of the Government Departments Act 1987, I hereby authorise

**(Name of Member or other person)**

a member of the Department of **(Name of Department)** until further order to exercise the functions of the Department specified in Schedule 1 below, subject to any standing orders made by the Department under section 3 (4) of that Act and to the conditions and limitations specified in Schedule 2 below.

Nothing in Schedule 1 shall be taken to impinge on the authority of the Chief Executive to manage the staff of the Department, nor to execute his responsibilities as Departmental Accounting Officer.

Dated: **(Date)**

**Signature of Minister**

Minister for **(Name of Department)**

**(Description of Functions)**

- (1) The functions of the Department, whether created by stature or otherwise, in connection with **(Name of Service or Function)** including the powers, duties and responsibilities of the Department arising there from.
- (2) Without prejudice to the generality of paragraph (1), the functions of the Department under –  
**(list of specific statutory functions, if appropriate)**
- (3) Without prejudice to the generality of paragraph (1) the functions to which this Schedule refers include -
  - (a) power to consider or prepare proposals in respect of **(Name of service or function)** including matters ancillary thereto whether within the enactments referred to in paragraph (2) or otherwise, and
  - (b) power to prepare annual revenue or capital expenditure programmes in respect of **(Name of service or function)** for submission to the Minister.

**(Conditions of Limitations)**

- (1) The authority to exercise the functions referred to in Schedule 1 shall not be taken to include powers to –

**(The following are examples)**

- (a) promote new or amending primary or secondary legislation; or
- (b) request Tynwald, Council of Ministers or Treasury authorities; or
- (c) implement non-legislative policy changes having financial implications beyond existing budgetary provision; or
- (d) determine annual revenue or capital expenditure programmes; or
- (e) subject to paragraph (2), increase or modify approved expenditure programmes;
- (f) dispose of land for which Treasury consent is not required by virtue of paragraph 1 (4) of Schedule 1 to the Government Departments Act 1987;
- (g) increase service charges; or
- (h) increase staffing establishments; or
- (i) alter staff employment terms and conditions; or
- (j) engage consultants;

in relation to those functions without reference to and approval from the Minister (in addition to any other approvals required by statute, rule or otherwise).

- (2) The Member may only authorise financial expenditure in relation to those functions delegated to them and within agreed annual revenue and capital vote codes. Any proposed virements between expenditure codes or any proposed changes in agreed personnel budgets require prior Ministerial approval.
- (3) The member must hold formal meetings with relevant officers in connection with their relevant areas of responsibility at least **(once a month)**. Notes of all such meetings must be taken and copies forwarded to the Minister and Chief Executive within **(number)** days of the meeting.
- (4) The Member may delegate, in turn, any or all of the functions delegated to them but only to an officer of the Department and by a formal authority, a copy of which must be forwarded to the Minister and the Chief Executive.
- (5) If the Member requires to be absent from the Island on Departmental business, he/she must seek the approval of the Minister.
- (6) For the avoidance of doubt, nothing in Schedule 1 or in this Schedule shall be taken to permit the exercise of a function which could not have been exercised by the Minister, nor to permit the exercise of a function in such form or manner as would not have been available to the Minister.
- (7) Nothing in Schedule 1 shall be taken to permit the exercise of a function which has been delegated under Section 3 (2) of the Act to another person, save to such extent as the Minister may direct either generally or in any particular case.