THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

Commonwealth (Latimer House) Principles: the Role of the Parliamentary Assembly within the 'Three Branches of Government'

The States are asked to decide:-

Whether, after consideration of the Requête entitled "Commonwealth (Latimer House) Principles: the Role of the Parliamentary Assembly within the 'Three Branches of Government'" dated the 3rd June, 2024 they are of the opinion:

1. To agree that the Latimer House Principles are relevant to ensuring that Guernsey maintains a strong and functioning democratic system which underpins the components of a state (the legislature, the executive, and the judiciary) and that this requires recognition in order to increase the capacity of the States of Deliberation by ensuring that its Members have appropriate space and support to undertake their role as elected representatives.

2. To direct that the States' Assembly & Constitution Committee should consider and report back by June 2026 to the States of Deliberation with any recommendations for the adoption of an appropriate version of the Model Law to establish a special purpose parliamentary body to oversee the institution of the States of Deliberation as a parliament, having regard to our size, scale, and system of government.

3. (A) To designate Court 3 (the Assembly) and the current Royal Court Library as 'parliamentary estate'; and

   (B) To change the order of priority for the use of the parliamentary estate such that in the first instance it is designated as space for the use of the States of Deliberation and its Members and thereafter it shall be available for use by the States of Election, the courts and for ceremonial occasions; and

   (C) To direct the Policy & Resources Committee and the States' Assembly & Constitution Committee in liaison with the Royal Court to agree and make such detailed arrangements as are practically necessary to give effect to this proposition as soon as feasible whilst ensuring the most efficient use of the parliamentary estate by the States of Deliberation, its Members, and the Royal Court.

4. To direct the Policy & Resources Committee and the States' Assembly & Constitution Committee to consider the practicality of further designating Court 6 (the old Greffe's office below the present Royal Court Library) and adjacent office as parliamentary estate and/or identify from within the States'

estate additional space suitable for parliamentary and Members' uses, consulting with among others the Royal Court and St. James' Chambers.

5. To direct the preparation of any necessary legislation.

Rule 4(1) information

(a) The propositions are consistent with international standards, to which the States are committed through the Government Work Plan, so contributing to the States objectives and policy plans.

(b) In preparing the proposition, consultation has been undertaken with the States' Assembly & Constitution Committee and the Policy & Resources Committee

(c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

(d) There are no net financial implications, as set out in paragraphs 18-19.

P.2024/52

Requete

Commonwealth (Latimer House) Principles: the Role of the Parliamentary Assembly within the 'Three Branches of Government'

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH THAT:

Preamble

A. The development of the States of Deliberation as a democratic assembly of elected representatives separate from the Royal Court is a long and continuing evolution. The historical developments to date are summarised in this section (and in more detail in Appendix 1[1].)

The States of Deliberation are the legislature and government of Guernsey. The Royal Court sitting as a Court of Chief Pleas had power to legislate in certain areas. From time to time the Royal Court asserted its power to legislate whilst not acknowledging any power vested in the States to do so.

It was not until 1900 that Deputies were for the first time elected to the States of Deliberation. Nine Deputies were elected to the States on an island-wide basis. In 1920, the system moved on with elections for 28 Deputies in five electoral districts. In 1949, the figures changed to 33 Deputies in 10 electoral districts. A further change in 2000 saw the number of Deputies increase to 45 in the same number of electoral districts, but in 2004, the number of electoral districts was reduced to seven. In 2016, the number of Deputies was reduced to 38. In 2020, island wide voting was introduced.

Other changes have included the removal of: parish clergy, Conseillers, Douzaine Representatives, HM Procureur's and HM Comptroller's right to vote in the States of Deliberation and the Bailiff's casting vote.

B. In an era of increasing threats globally to democratic principles and institutions, the core objective of this Requete is to ensure that Guernsey has a strong and functioning democratic system which underpins the three branches of the state or government (the legislature, the executive, and the judiciary.) This requires enhancement to increase the capacity of our legislature, by ensuring that its Members have appropriate support to undertake their role as elected representatives.

[1] Royal Court Building - Royal Court (guernseyroyalcourt.gg)

Consequently, this Requete has two objectives:

- To direct that the States' Assembly & Constitution Committee should consider and report back to the States of Deliberation with any recommendations to establish a statutory special purpose parliamentary body to oversee the institution of the States of Deliberation as a parliament; and

- To change the order of priority for the use of some space in the Royal Court, such that in the first instance it is designated as parliamentary space for the use of the States of Deliberation and to create space for its Members and thereafter it shall be available for use by the States of Election, the courts and for ceremonial occasions.

C. The Government Work Plan principally sets out the policy and operational priorities for the executive functions of government in the delivery of services to the public. The legislature's requirements to enable the more effective delivery of its role in the system of government will, unsurprisingly, never be seen as a priority for the public. As a parliamentary-led initiative to underpin the Commonwealth (Latimer House) Principles on the Three Branches of Government ("Latimer House Principles") – Appendix 2[2] - and strengthening parliamentary authority, this Requete is the most appropriate, efficient, and effective route for Members to address the shortcomings and deliver the enhancements required. It is also entirely appropriate that Members of the States of Deliberation debate and determine those requirements that will enable them to discharge their role more effectively as elected representatives.

D. The Latimer House Principles highlight the importance of the separation of powers between the legislature, the executive, and the judiciary to ensure effective governance and democracy. The Latimer House Principles provide guidance on the role of the separation of powers in the Commonwealth, its effectiveness in providing democratic governance and the role of civil society. First drafted in 1988/1989, the Latimer House Principles were officially published and agreed in 2003.

E. As part of its commitment to the Latimer House Principles, as well as its work in benchmarking Parliaments against international standards, the Commonwealth Parliamentary Association has developed a 'Model Law for Independent Parliaments' ("Model Law") – Appendix 3[3] - to help empower Parliaments to ensure they and their members have the resources (administrative, operational, and financial) they need to function effectively. The Model Law is designed as a 'Parliamentary Service Commission Bill' which seeks to create a special purpose parliamentary body to oversee the institution of a parliament.

[2] commonwealth_principles_cpa_sept_2023_single.pdf (cpahq.org)
[3] model-law-for-independent-parliaments_final.pdf (cpahq.org)

F. The building in which the Royal Court is sited has been funded wholly or partly by the States of Deliberation of Guernsey since at least 1766, as set out in a history of the building in Appendix 1. In the late 19th Century, there were proposals to build a separate parliamentary building to mark Her Late Majesty Queen Victoria's Golden Jubilee. In 1946, proposals were revived to create a more substantial Chamber for the Royal Court to convene and meetings of the States of Deliberation to be held, resulting in the complete refurbishment of the original first floor Royal Court Chamber. This building is still in use today for meetings of the States of Deliberation, the States of Election, civil court work and ceremonial occasions, albeit with its court role taking precedence over other roles.

G. The legislative branch of government is a key tenet of democratic government. Parliaments and assemblies play a vital role in promoting parliamentary engagement with other parliaments, media and, most importantly, the communities they serve. This Requete can help promote better civic participation in politics and lead to better outcomes from the democratic process. However, to do so, requires that that the States of Deliberation and its Members have independence with appropriate resources, status, and support to enable them to discharge their role as an equal branch of government with the executive and the judiciary.

Model Law and parliamentary estate

1. Section III of the Latimer House Principles states, "*Independence of Parliamentarians: (a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference*."

2. In Guernsey's system of government, the legislature and executive branches of government are effectively fused into a single institution, the States of Deliberation.

3. The history of the emergence and development of the States of Deliberation is set out in Appendix 1.

4. Members of the States of Deliberation are provided with limited resources (other than a laptop.) They are not provided with any office space, research assistance or support to undertake their roles. This inevitably impedes their effectiveness and capacity to discharge their role as elected representatives in providing effective scrutiny of policy and legislation or representing those members of the public who come to them with issues or concerns.

5. It is recognised that, as a small jurisdiction, the resources made available to Members of the States of Deliberation must be both proportionate and affordable. However, within these constraints, it is possible to take steps to underpin and support the independence of our parliamentarians.

6. This was expressly intended at the time of the Board of Administration's policy letter dated 10th February 2000 entitled, '*Extension and refurbishment of the Courts*'[4], which approved the development of the new section of the Royal Court. The policy letter included the following:

> *"1.4 The Board's proposals, which have been formulated after an extensive consultation process, have been generally welcomed and have received broad support from interested parties because the proposals will:...*
>
> *(2) ease courtroom pressure within the existing Royal Court building and as a result provide the potential for alternative uses for many rooms where high-level security is not a major consideration -* ***greater use of part of the Royal Court buildings for parliamentary purposes will be possible****…*
>
> *"2.4 Even though the number of days per annum when the States are in session seldom exceed 30 days nevertheless* ***it is essential that those involved in the parliamentary process have adequate facilities. Their accommodation should be of a standard commensurate with the proper and efficient conduct of parliamentary business.*** *Furthermore if serious criminal cases can be dealt with in another courtroom there will be additional scope to modify the Royal Court Chamber if so required…*
>
> *"3.6 In addition, whilst the future use of the Royal Court Chamber for some civil litigation and appeal cases, as a parliamentary chamber and for ceremonial occasions will ensure that it is fully utilised,* ***the Board has recognised that the future layout of the Chamber and the ancillary accommodation which can be made available for States members will become clearer following the detailed design of purpose built criminal courts and the outcome of the current review of the machinery of government."***
>
> *(emphasis added)*

[4] CHttpHandler.ashx (gov.gg)

Despite the intended objectives and outcomes from the project, there has in fact been no improvement in parliamentary facilities or change in the Chamber's layout since the project's completion. A corollary of the failure to deliver these outcomes is that there are several lesser-utilised rooms and courts. This includes the Chamber itself – Court 3 - which is no longer fit for most criminal cases, because of the lack of appropriate security arrangements.

7. In a report dated 11th April 2002, it was stated that: *"it is no longer appropriate that the Island's Parliament should meet in a Chamber whose primary function is the Royal Court"* and *"the present Royal Court should be adapted for the purpose of the States Chamber once the new Court buildings are erected….[T]he Royal Court would be altered to provide semi-circular seating appropriate to a modern parliamentary system."* In addition, it was proposed that there should be *"ancillary facilities including a Members' Room, library/research facility, small meeting rooms and facilities for support staff together with appropriate level of security both within the Court House and the Chamber itself."*

8. In May 2002, the States then resolved *"to direct the Advisory and Finance Committee to report to the States and submit appropriate proposals for the design and equipping of a States Chamber and supporting facilities."*

9. The intent and will of the States a quarter of a century ago has not been acted upon and at present, the States of Deliberation effectively sits at the pleasure and convenience of the Royal Court's availability. This signals its relative institutional importance as subservient to the Royal Court, rather than one of three *equal* branches of government (i.e., legislature, executive, judiciary.)

10. On States' days, the Royal Court Library is designated as a 'Members' room', however, there are no other dedicated spaces to enable smaller or private meetings. Access to other rooms (e.g., the Jurats' Room) is discouraged and rarely accommodated, not least because this could impede the integrity of the 'judicial corridor' (which ensures judges can transit to and from the courts in which they are sitting without contact with the public.) Most jurisdictions would resolve this by having a separate parliamentary building. That is not necessary, proportionate, or affordable.

11. An appropriate solution in Guernsey would be to simply designate appropriate space as parliamentary estate, whose primary (but not exclusive) purpose is for the States of Deliberation's use. Given the States of Deliberation's sittings are limited to a few days a month, there is no reason why, when not in parliamentary use, the designated space should not continue to be used for other purposes, including by the States of Election, the courts and for ceremonial purposes.

12. Accordingly, it is proposed that Court 3 (the Assembly) and the present Royal Court Library are designated 'parliamentary estate' changing the order of priority for its use such that in the first instance it is designated for the use of the States of Deliberation and its Members and thereafter it shall be available for use by the States of Election, the courts and for ceremonial occasions.

13. It is noted that Court 6 (which occupies the old Greffe's office, below the present Royal Court Library,) is the least utilised court. It is already used from time-to-time for parliamentary or States' related business and it lies outside the 'judicial corridor.' Accordingly, it is proposed that further consultation be directed on the practicality of also designating this parliamentary space and/or alternative space within the States' estate.

14. A proforma of the Model Law is set out in Appendix 3. The Model Law is designed, primarily for a party-based legislature in a Westminster-style system of government. Consequently, the practical application of the Model Law may be more limited in Guernsey.

15. For example, the Commonwealth Parliamentary Association ("CPA") Recommended Benchmarks for Democratic Legislatures (2006) ("the 2006 CPA Benchmarks.")[5] at paragraph 5.1.2. provides, *"The Legislature, rather than the Executive branch, shall control the parliamentary service and determine the terms of employment. There shall be adequate safeguards to ensure non-interference from the Executive."* Consequently, it may be appropriate to make provision for the States Greffier and the parliamentary support team to be appointments of parliament rather than, as at present, civil servants employed by the States, operating under the warrant of HM Greffier.

16. However, the Requete does no more than direct the States' Assembly and Constitution Committee to consider and report back by June 2026 to the States of Deliberation with any recommendations for the adoption of a version of the Model Law relevant and proportionate to Guernsey, having regard to our size scale and system of government.

[5] recommended-benchmarks-for-democratic-legislatures-updated-2018-final-online-version-single.pdf

17. Given the fusion of the executive and legislative branches of government in Guernsey, for those members of the public or the States who believe that further reform of government is required in order to introduce 'executive government,' the enhancements to the legislature through the propositions of this Requete are an essential pre-requisite to any such system to ensure it is underpinned by strong, functioning, democratic institutions.

Resources

18. The propositions do not require additional resources. On the contrary, they will result in the higher utilisation of what is currently the Royal Court estate by formally designating its dual use, when appropriate.

19. The parliamentary estate could be made more accessible for visitors outside of parliamentary proceedings, creating opportunities for income generation through organisation of guided tours or sale of merchandise, as is the case, for example in the Isle of Man.

THESE PREMISES CONSIDERED, OUR PETITIONERS humbly pray that the States of Deliberation may be pleased to direct that:

1. To agree that the Latimer House Principles are relevant to ensuring that Guernsey maintains a strong and functioning democratic system which underpins the components of a state (the legislature, the executive, and the judiciary) and that this requires recognition in order to increase the capacity of the States of Deliberation by ensuring that its Members have appropriate space and support to undertake their role as elected representatives.

2. To direct that the States' Assembly & Constitution Committee should consider and report back by June 2026 to the States of Deliberation with any recommendations for the adoption of an appropriate version of the Model Law to establish a special purpose parliamentary body to oversee the institution of the States of Deliberation as a parliament, having regard to our size, scale, and system of government.

3. A) To designate Court 3 (the Assembly) and the current Royal Court Library as 'parliamentary estate'; and

   B) To change the order of priority for the use of the parliamentary estate such that in the first instance it is designated as space for the use of the States of Deliberation and its Members and thereafter it shall be available for use by the States of Election, the courts and for ceremonial occasions; and

   C) To direct the Policy & Resources Committee and the States' Assembly & Constitution Committee in liaison with the Royal Court to agree and make such detailed arrangements as are practically necessary to give effect to this proposition as soon as feasible whilst ensuring the most efficient use of the parliamentary estate by the States of Deliberation, its Members, and the Royal Court.

4. To direct the Policy & Resources Committee and the States' Assembly & Constitution Committee to consider the practicality of further designating Court 6 (the old Greffe's office below the present Royal Court Library) and adjacent office as parliamentary estate and/or identify from within the States' estate additional space suitable for parliamentary and Members' uses, consulting with among others the Royal Court and St. James' Chambers.

5. To direct the preparation of any necessary legislation.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This third day of June 2024

Deputy G A St Pier

Deputy P T R Ferbrache

Deputy A Kazantseva-Miller

Deputy S E Aldwell

Deputy A C Dudley-Owen

Deputy A Gabriel

Deputy J P Le Tocq

Rule 4(1) Information

a) The propositions are consistent with international standards, to which the States are committed through the Government Work Plan, so contributing to the States' objectives and policy plans.

b) In preparing the proposition, consultation has been undertaken with the States' Assembly & Constitution Committee and the Policy & Resources Committee.

c) The proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

d) There are no net financial implications, as set out in paragraphs 18-19.

Appendix 1: extracts from the Royal Court website[1]

History of the Royal Court

Although the earliest existence of a Court building in Guernsey is unclear, the first reference to it dates back to the 12th Century, when medieval documents show that the Royal Court met in a building in St Peter Port in a district known as La Plaiderie (literally translated as the place of pleading).

Following the outbreak of the Civil War, the Court was relocated to Elizabeth College to put it out of the range of the Royalist bombings from Castle Cornet. After the war ended, the Court returned to the building at La Plaiderie, although this was less than satisfactory, as the building was also used as a store for the Governor for dues paid to the Crown in the form of grain.

Records show that, in 1766, the States of Guernsey met to discuss the matter as the building was said to be in a dangerous condition. The States resolved to apply £700 towards the renovation.

The building was not, however, large enough to meet the needs of the Court. Indeed, the States noted in 1792 that it was necessary for the Greffiers (clerks of the Court) to keep the public records at their own houses due to lack of space at the Court.

It was resolved to seek permission from the Crown to sell the old Court property to help finance the purchase of a plot of land and construction of a new building. Funds were also provided from other revenues, including a lottery. The land deemed suitable for the new Court was situated in Rue du Manoir and was owned by the then Bailiff, William Le Marchant, and in November 1792 the site was purchased and building work commenced.

The stone on the pediment of the current Royal Court building bears the legend "GIIIR 1799" recording the fact that the façade was completed in that year of the reign of King George III. It took several years for the building to be completed and records from the time appear to indicate that the first sitting of the new Court took place on 17th January, 1803.

By 1821, the building had been outgrown again and the States agreed to a further purchase of land behind the building to enable expansion of the existing rooms and the construction of an upstairs Chamber which could be used by the States for their meetings.

[1] Royal Court Building - Royal Court (guernseyroyalcourt.gg)

In 1824, the States agreed to purchase more land behind the Court to build stables for the horses of those Jurats who resided in country parishes. By 1876, however, these stables were no longer used and the States agreed that the area should be developed as a fireproof room to house the important public records of the Greffe. There had been concern that, with several open fires being used to heat the buildings, these records were at risk of being damaged or burnt.

There was at this time a concern that prisoners held in the old prison had to be conveyed across the open streets to the Court and it was agreed that property between the Court and the prison should be purchased to allow for a tunnel to be built.

It was not until 1902 that the next stage of development work took place. The original Greffe Strongroom was extended to include a mezzanine floor, reached by a small spiral staircase, still in use today. Further court rooms, offices and a library were also provided.

Over the subsequent years, there were many plans to create a more substantial Chamber for the Royal Court to convene and meetings of the States of Deliberation to be held. However, none of these came to fruition until 1946, when the proposals were revived, resulting in the complete refurbishment of the original first floor Royal Court Chamber. This building is still in use today for meetings of the States, civil court work and ceremonial occasions.

On the northern side of the Court, there remained an undeveloped area. The States decided in 1954 that this should be the site of the new Police Station and the offices for the Law Officers of the Crown. St James Chambers was officially opened on 5th January, 1956.

Demands for space and offices grew steadily and a further extension to the Court was constructed in 1982, providing a third Court room, as well as additional office accommodation.

In 1994, the Police vacated St James Chambers and moved to occupy the former Town Hospital building. This enabled a reorganisation of the cramped facilities and improved access and security for the Courts, with facilities for the disabled.

Royal Court Building today

The original or "historic" Royal Court building has proved to be remarkably flexible since its construction in accommodating the changing needs of the judicial and parliamentary functions and systems housed there. It provided for a very wide range of users, including the Bailiff and Judiciary, the Law Officers, the Guernsey Bar, the States of Deliberation, HM Greffier, HM Sheriff and the Prison, Police and Probation Services. It has also provided

service to those coming through the Court system - plaintiffs, defendants, witnesses and victims of crime, as well as their friends and family.

However, as the 20th Century drew to a close, it became clear that many improvements needed to be made, including:

- The need for more court rooms to deal with increasing caseloads - the number of Court sessions had doubled to 1500 per annum since the 1980s (and have since increased by a further 25%);

- Additional offices for the Judiciary and staff required to support the increased number of proceedings;

- Improving security at the Court building by properly separating the many different Court users, including segregation of victims and witnesses, defendants, the Judiciary and Court staff;

- The need to provided dedicated facilities for witnesses and victims of crime within the Court, including separate waiting facilities and the ability to give evidence by video link;

- Providing disabled and wheelchair access to all parts of the Court;

- The provision of the necessary infrastructure to support changing technology, including digital recording of Court proceedings.

The aim was also to provide a modern, airy and less oppressive environment for the sometimes lengthy proceedings surrounding a trial.

Plans were therefore developed for an extension to the "historic" Court building, which was to be built over the site of the old prison building, which was demolished as part of the scheme. Careful consideration was given to ensuring that the new construction blended in with its historic surroundings, whilst at the same time offering the modern and secure environment required for all concerned. There was also the need to ensure that the day to day operation of the judicial and parliamentary systems could be maintained during the building and development work.

The extension was completed in 2005 and the first Court hearings were held in the new building in December of that year. At this time, all existing operations in the "historic" building were "decanted" into the new building whilst the old one was completely refurbished. Meetings of the States of Deliberation were temporarily relocated from the

Royal Court Chamber in the historic building to Court 1 in the extension during 2006 whilst the careful and sensitive renovation of the original building was undertaken.

The project to refurbish the historic building was completed in December of 2006. At that point, the physical links between the old building and the new extension were opened to provide an integrated Court complex, the main features of which include:

- two criminal court rooms, with dedicated access to the secure docks from purpose built prisoner holding cells
- two civil court rooms
- the Royal Court Chamber, used for ceremonial occasions, civil court sittings and meetings of the States of Deliberation
- a dedicated wedding room for the performance of marriages
- integrated office accommodation for the Judiciary and the staff of the Bailiff's Chambers, the Office of HM Greffier and the Office of HM Sheriff;
- a dedicated victim and witness support suite, manned and operated by the Victim and Witness Support Service.

The Island now has a Royal Court complex which every element of the community can use with confidence and which successfully combines the needs of a present day community with the preservation of its heritage.

States of Deliberation – History

A distinctive and important feature of sovereignty in a community is the emergence of its own parliament. Laws, privileges, practices and usages in nations with largely unwritten constitutions develop over centuries. It is largely by observing practice that one can discover how Guernsey's parliament developed.

It is believed that the States of Deliberation existed in some form in the 15th century and perhaps even earlier. The history of the States of Deliberation in its early days is clouded in some obscurity.

A document in 1481 suggested that there was an assembly or parliament in Guernsey at that time, another document suggests, though less strongly, there was one about 1429 but the assembly was first recorded as bearing the name Les Etats (the States) in 1538. It may be that the States developed out of the Court of Chief Pleas or that it grew up alongside the

Court of Chief Pleas. The assembly of three different estates was the origin of the term States which is used to this day. The three estates were the Royal Court, the Clergy and the Constables representing the ten parishes. The Bailiff was always the President of the States.

In the 1600s the States assembly was convened to elect Jurats to serve for the remainder of their lives. By the 1700s the three estates assembled for such purposes as agreeing addresses to the monarch, dealing with public grievances, raising taxes for a public purpose etc. Meetings were infrequent in those days.

The States of Deliberation are the legislature and government of Guernsey. The Royal Court sitting as a Court of Chief Pleas had power to legislate in certain areas locally but at much the same time the States assembled and also had power to legislate in certain areas by Ordinance. The precise division lines and the dates when the legislative powers emerged and developed are not entirely clear. It would seem that from time to time the Royal Court asserted its power to legislate whilst not acknowledging any power vested in the States to do so.

In the year 1605 we know that the States were revived by an Order in Council on the petition of the inhabitants and this Order in Council referred to "the ancient use and authority of assembling the three States of the Island".

It was not until the late 1700s that the States undertook more public work and maintenance of the highways. More revenue was required and permanent committees were created. It was felt that the Constables of the ten parishes provided a useful connection between the affairs of the parishes and the affairs of the island. It was considered that it had the effect of knitting the island community together and it brought to the States persons who had a very intimate knowledge of their constituents.

Interestingly the evolution of the States is dealt with by the Royal Commissioners in their Second Report on The State of the Criminal Law in the Channel Islands in 1848. A gap between meetings of more than a year in those days was not unusual. It is instructive to note how infrequently the States assembled in the early 19th century. By way of example the Billet D'Etats between 1825 and 1836, an eleven year period, are printed in total on fewer pages than the number of pages contained in an average length Billet for a single month nowadays.

In 1899 the States met 10 times, but the number of items for consideration, were few. Debate was not prolonged.

The activity and power of the States has increased persistently over the last century. Progressively the States have taken over more and more administrative functions

from the parish authorities and legislated more frequently in more areas and in greater volume. A single Order in Council volume for the period 1869 - 1894, a 25 year period, contains fewer pages than the pages of Orders in Council for a single year nowadays.

It was not until the year 1900 that Deputies were for the first time elected to the States of Deliberation. Nine Deputies were elected to the States on an island-wide basis. In 1920, the system moved on with elections for 28 Deputies in five electoral districts. In 1949, the figures changes to 33 Deputies in 10 electoral districts. A further change in 2000 saw the number of Deputies increase to 45 in the same number of electoral districts, but in 2004, the number of electoral districts was reduced to 7.

Existing institutions were adapted and new ones created in order to cope with German Occupation in 1940 - 1945. Almost all States decisions were delegated to a Controlling Committee which was in effect a cabinet of ministers each with executive responsibilities for his own department. The public sector of the economy grew enormously. The Royal Court requested the States to draw up Projets de Loi, the Law Officers ratified them, and the Bailiff as Civil Lieutenant Governor promulgated them.

On 4th July 1945, shortly after liberation of the Island, that system of government was ended. The States concluded that although the cabinet or departmental system had its advantages in wartime, government by numerous committees each directly responsible to the States was much preferred in peacetime. It was felt that administrative work should be spread over many States members instead of concentrating in the hands of a few. However an Advisory Council was created.

CPA COMMONWEALTH PARLIAMENTARY ASSOCIATION

Commonwealth Latimer House Principles on the Three Branches of Government

First published in November 2003. This edition published in September 2023.

Commonwealth Parliamentary Association | www.cpahq.org

20 YEARS OF THE COMMONWEALTH LATIMER HOUSE PRINCIPLES ON THE SEPARATION OF POWERS

The Commonwealth Parliamentary Association (CPA) played a key role in the establishment of the Commonwealth Latimer House Principles on the separation of powers. The Commonwealth Latimer House Principles (*officially titled: Commonwealth (Latimer House) Principles on the Three Branches of Government*) highlight the importance of the separation of powers between the Legislature, the Executive and the Judiciary to ensure effective governance and democracy. The Latimer House Principles provide guidance on the role of the separation of powers in the Commonwealth, its effectiveness in providing democratic governance and the role of civil society.

First drafted in 1988/1989, the Commonwealth Latimer House Principles were officially published and agreed in 2003, and they were further updated with an action plan in 2008/2009. The Commonwealth Parliamentary Association (CPA) was a partner in the establishment of the Commonwealth Latimer House Principles together with partners: The Commonwealth Secretariat, the Commonwealth Magistrates and Judges Association (CMJA), the Commonwealth Lawyers Association and the Commonwealth Legal Education Association.

Commonwealth Parliamentary Association (CPA)
CPA Headquarters Secretariat
Richmond House, Houses of Parliament
London SW1A 0AA, United Kingdom

Telephone: **+44 (0)20 7799 1460**
Email: **hq.sec@cpahq.org** | Online: **www.cpahq.org**
Twitter @CPA_Secretariat | Facebook.com/CPAHQ | Instagram @cpa_secretariat | LinkedIn

COMMONWEALTH (LATIMER HOUSE) PRINCIPLES ON THE THREE BRANCHES OF GOVERNMENT, November 2003

PREAMBLE

Commonwealth Heads of Government warmly welcome the contribution made by the Commonwealth Parliamentary Association and the legal profession of the Commonwealth represented by the Commonwealth Magistrates' and Judges' Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association to further the Commonwealth Harare Principles.

They acknowledge the value of the work of these Associations to develop the Latimer House Guidelines and resolve, in the spirit of those Guidelines, to adopt the Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government.

OBJECTIVE

The objective of these Principles is to provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, Parliaments and judiciaries of the Commonwealth's fundamental values.

I) The Three Branches of Government

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

II) Parliament and the Judiciary

(a) Relations between Parliament and the judiciary should be governed by respect for Parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the law on the other hand.

(b) Judiciaries and Parliaments should fulfill their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

III) Independence of Parliamentarians

(a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

(b) Criminal and defamation laws should not be used to restrict legitimate criticism of Parliament; the offence of contempt of Parliament should be narrowly drawn and reporting of the proceedings of Parliament should not be unduly restricted by narrow application of the defence of qualified privilege.

IV) Independence of the Judiciary

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice.The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country. To secure these aims:

(a) Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process.The process should ensure:

- equality of opportunity for all who are eligible for judicial office;
- appointment on merit; and
- that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;

(b) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;

(c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;

(d) Interaction, if any, between the executive and the judiciary should not compromise judicial independence.

Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties. Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner. An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.

V) Public Office Holders

(a) Merit and proven integrity, should be the criteria of eligibility for appointment to public office;

(b) Subject to (a), measures may be taken, where possible and appropriate, to ensure that the holders of all public offices generally reflect the composition of the community in terms of gender, ethnicity, social and religious groups and regional balance.

VI) Ethical Governance

Ministers, Members of Parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct.These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.

VII) Accountability Mechanisms

(a) Executive Accountability to Parliament

Parliaments and governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business.

Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the Executive to Parliament.

(b) Judicial Accountability

Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies.

In addition to providing proper procedures for the removal of judges on grounds of incapacity or misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness. The criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.

(c) Judicial review

Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution, with relevant statutes and other law, including the law relating to the principles of natural justice.

VIII) The law-making process

In order to enhance the effectiveness of law making as an essential element of the good governance agenda:

- There should be adequate parliamentary examination of proposed legislation;
- Where appropriate, opportunity should be given for public input into the legislative process;
- Parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

IX) Oversight of Government

The promotion of zero-tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process. Steps which may be taken to encourage public sector accountability include:

(a) The establishment of scrutiny bodies and mechanisms to oversee Government, enhances public confidence in the integrity and acceptability of government's activities. Independent bodies such as Public Accounts Committees, Ombudsmen, Human Rights Commissions, Auditors-General, Anti-corruption commissions, Information Commissioners and similar oversight institutions can play a key role in enhancing public awareness of good governance and rule of law issues. Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances.

(b) Government's transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.

X) Civil Society

Parliaments and governments should recognise the role that civil society plays in the implementation of the Commonwealth's fundamental values and should strive for a constructive relationship with civil society to ensure that there is broader opportunity for lawful participation in the democratic process.

ANNEX: PARLIAMENTARY SUPREMACY AND JUDICIAL INDEPENDENCE - Latimer House Guidelines for the Commonwealth, 19 June 1998.

Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles.

PREAMBLE

RECALLING the renewed commitment at the 1997 Commonwealth Heads of Government Meeting at Edinburgh to the Harare Principles and the Millbrook Commonwealth Action Programme and, in particular, the pledge in paragraph 9 of the Harare Declaration to work for the protection and promotion of the fundamental political values of the Commonwealth:

- Democracy;
- Democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary;
- Just and honest government;
- Fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief, and
- Equality for women, so that they may exercise their full and equal rights.

Representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates' and Judges' Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association meeting at Latimer House in the United Kingdom from 15 to 19 June 1998:

HAVE RESOLVED to adopt the following Principles and Guidelines and propose them for consideration by the Commonwealth Heads of Government Meeting and for effective implementation by member countries of the Commonwealth.

PRINCIPLES

The successful implementation of these Guidelines calls for a commitment, made in the utmost good faith, of the relevant national institutions, in particular the Executive, Parliament and the Judiciary, to the essential principles of good governance, fundamental human rights and the rule of law, including the independence of the judiciary, so that the legitimate aspirations of all the peoples of the Commonwealth should be met.

Each institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate discharge of constitutional functions by the other institutions.

It is recognised that the special circumstances of small and/or under-resourced jurisdictions may require adaptation of these Guidelines.

It is recognised that redress of gender imbalance is essential to accomplish full and equal rights in society and to achieve true human rights. Merit and the capacity to perform public office regardless of disability should be the criteria of eligibility for appointment or election.

GUIDELINES

I) Parliament and the Judiciary

1. The legislative function is the primary responsibility of Parliament as the elected body representing the people. Judges may be constructive and purposive in the interpretation of legislation, but must not usurp Parliament's legislative function. Courts should have the power to declare legislation to be unconstitutional and of no legal effect. However, there may be circumstances where the appropriate remedy would be for the court to declare the incompatibility of a statute with the Constitution, leaving it to the legislature to take remedial legislative measures.

2. Commonwealth Parliaments should take speedy and effective steps to implement their countries' international human rights obligations by enacting appropriate human rights legislation. Special legislation (such as equal opportunity laws) is required to extend the protection of fundamental rights to the private sphere. Where domestic incorporation has not occurred, international instruments should be applied to aid interpretation.

3. Judges should adopt a generous and purposive approach in interpreting a Bill of Rights.This is particularly important in countries which are in the process of building democratic traditions. Judges have a vital part to play in developing and maintaining a vibrant human rights environment throughout the Commonwealth.

4. International law and, in particular, human rights jurisprudence can greatly assist domestic courts in interpreting a Bill of Rights. It also can help expand the scope of a Bill of Rights making it more meaningful and effective.

5. While dialogue between the judiciary and the government may be desirable or appropriate, in no circumstances should such dialogue compromise judicial independence.

6. People should have easy and unhindered access to courts, particularly to enforce their fundamental rights. Any existing procedural obstacles to access to justice should be removed.

7. People should also be made aware of, and have access to, other important fora for human rights dispute resolution, particularly Human Rights Commissions, Offices of the Ombudsman and mechanisms for alternative dispute resolution.

8. Everyone, especially judges, Parliamentarians and lawyers, should have access to human rights education.

II) Preserving Judicial Independence

1. Judicial appointments

Jurisdictions should have an appropriate independent process in place for judicial appointments.Where no independent system already exists, appointments should be made by a judicial services commission (established by the Constitution or by statute) or by an appropriate officer of state acting on the recommendation of such a commission.

The appointment process, whether or not involving an appropriately constituted and representative judicial services commission, should be designed to guarantee the quality and independence of mind of those selected for appointment at all levels of the judiciary.

Judicial appointments to all levels of the judiciary should be made on merit with appropriate provision for the progressive removal of gender imbalance and of other historic factors of discrimination.

Judicial appointments should normally be permanent; whilst in some jurisdictions, contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure. Judicial vacancies should be advertised.

2. Funding

Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary.

Appropriate salaries and benefits, supporting staff, resources and equipment are essential to the proper functioning of the judiciary. As a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained.

3. Training

A culture of judicial education should be developed. Training should be organised, systematic and ongoing and under the control of an adequately funded judicial body.

Judicial training should include the teaching of the law, judicial skills and the social context including ethnic and gender issues.

The curriculum should be controlled by judicial officers who should have the assistance of lay specialists.

For jurisdictions without adequate training facilities, access to facilities in other jurisdictions should be provided.

Courses in judicial education should be offered to practising lawyers as part of their ongoing professional development training.

III) Preserving the Independence of Parliamentarians

1. Article 9 of the Bill of Rights 1688 is re-affirmed.This article provides:

"That the Freedome of Speech and Debates or Proceedings in Parlyement ought not to be impeached or questioned in any court or place out of Parlyement."

2. Security of Members during their parliamentary term is fundamental to parliamentary independence and therefore:

(a) the expulsion of Members from Parliament as a penalty for leaving their parties (floor-crossing) should be viewed as a possible infringement of Members' independence; anti-defection measures may be necessary in some jurisdictions to deal with corrupt practices;

(b) laws allowing for the recall of Members during their elected term should be viewed with caution, as a potential threat to the independence of Members;

(c) the cessation of membership of a political party of itself should not lead to the loss of a Member's seat.

3. In the discharge of their functions, Members should be free from improper pressures and accordingly:

(a) the criminal law and the use of defamation proceedings are not appropriate mechanisms for restricting legitimate criticism of the government or the Parliament;

(b) the defence of qualified privilege with respect to reports of parliamentary proceedings should be drawn as broadly as possible to permit full public reporting and discussion of public affairs;

(c) the offence of contempt of Parliament should be drawn as narrowly as possible.

IV) Women in Parliament

1. To improve the numbers of women Members in Commonwealth Parliaments, the role of women within political parties should be enhanced, including the appointment of more women to executive roles within political parties.

2. Proactive searches for potential candidates should be undertaken by political parties.

3. Political parties in nations with proportional representation should be required to ensure an adequate gender balance on their respective lists of candidates for election. Women, where relevant, should be included in the top part of the candidates lists of political parties. Parties should be called upon publicly to declare the degree of representation of women on their lists and to defend any failure to maintain adequate representation.

4. Where there is no proportional representation, candidate search and/or selection committees of political parties should be gender-balanced as should representation at political conventions and this should be facilitated by political parties by way of amendment to party constitutions; women should be put forward for safe seats.

5. Women should be elected to Parliament through regular electoral processes.The provision of reservations for women in national constitutions, whilst useful, tends to be insufficient for securing adequate and long-term representation by women.

6. Men should work in partnership with women to redress constraints on women entering Parliament. True gender balance requires the oppositional element of the inclusion of men in the process of dialogue and remedial action to address the necessary inclusion of both genders in all aspects of public life.

V) Judicial and Parliamentary Ethics

1. Judicial Ethics

(a) A Code of Ethics and Conduct should be developed and adopted by each judiciary as a means of ensuring the accountability of judges;
(b) The Commonwealth Magistrates' and Judges' Association should be encouraged to complete its Model Code of Judicial Conduct now in development;
(c) The Association should also serve as a repository of codes of judicial conduct developed by Commonwealth judiciaries, which will serve as a resource for other jurisdictions.

2. Parliamentary Ethics

(a) Conflict of interest guidelines and codes of conduct should require full dis closure by Ministers and Members of their financial and business interests;
(b) Members of Parliament should have privileged access to advice from statutorily-established Ethics Advisors;
(c) Whilst responsive to the needs of society and recognising minority views in society, Members of Parliament should avoid excessive influence of lobbyists and special interest groups.

VI) Accountability Mechanisms

1. Judicial Accountability

(a) Discipline:

(i) In cases where a judge is at risk of removal, the judge must have the right to be fully informed of the charges, to be represented at a hearing, to make a full defence and to be judged by an independent and impartial tribunal. Grounds for removal of a judge should be limited to: (A) inability to perform judicial duties and (B) serious misconduct.

(ii) In all other matters, the process should be conducted by the chief judge of the courts;

(iii) Disciplinary procedures should not include the public admonition of judges. Any admonitions should be delivered in private, by the chief judge.

(b) Public Criticism:

(i) Legitimate public criticism of judicial performance is a means of ensuring accountability;

(ii) The criminal law and contempt proceedings are not appropriate mechanisms for restricting legitimate criticism of the courts.

2. Executive Accountability

(a) Accountability of the Executive to Parliament

Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the Executive to Parliament. These should include:

(i) a Committee structure appropriate to the size of Parliament, adequately resourced and with the power to summon witnesses, including Ministers. Governments should be required to announce publicly, within a defined time period, their responses to Committee reports;

(ii) Standing Orders should provide appropriate opportunities for Members to question Ministers and full debate on legislative proposals;

(iii) the public accounts should be independently audited by the Auditor General who is responsible to and must report directly to Parliament;

(iv) the Chair of the Public Accounts Committee should normally be an opposition Member;

(v) offices of the Ombudsman, Human Rights Commissions and Access to Information Commissioners should report regularly to Parliament.

(b) Judicial Review

Commonwealth Governments should endorse and implement the principles of judicial review enshrined in the Lusaka Statement on Government under the Law.

VII) The Law-Making Process

1. Women should be involved in the work of national law commissions in the lawmaking process. Ongoing assessment of legislation is essential so as to create a more gender-balanced society. Gender-neutral language should be used in the drafting and use of legislation.

2. Procedures for the preliminary examination of issues in proposed legislation should be adopted and published so that:

(a) there is public exposure of issues, papers and consultation on major reforms including, where possible, a draft Bill;

(b) Standing Orders provide a delay of some days between introduction and debate to enable public comment unless suspended by consent or a significantly high percentage vote of the chamber, and

(c) major legislation can be referred to a Select Committee allowing for the detailed examination of such legislation and the taking of evidence from members of the public.

3. Model Standing Orders protecting Members' rights and privileges and permitting the incorporation of variations, to take local circumstances into account, should be drafted and published.

4. Parliament should be serviced by a professional staff independent of the regular public service.

5. Adequate resources to government and non-government backbenchers should be provided to improve parliamentary input and should include provision for:

(a) training of new Members;

(b) secretarial, office, library and research facilities;

(c) drafting assistance including Private Members' Bills.

6. An all-party Committee of Members of Parliament should review and administer Parliament's budget which should not be subject to amendment by the Executive.

7. Appropriate legislation should incorporate international human rights instruments to assist in interpretation and to ensure that ministers certify compliance with such instruments, on introduction of the legislation.

8. It is recommended that 'sunset' legislation (for the expiry of all subordinate legislation not renewed) should be enacted subject to power to extend the life of such legislation.

VIII) The role of Non-Judicial and Non-Parliamentary Institutions

1. The Commonwealth Statement on Freedom of Expression provides essential guarantees to which all Commonwealth countries should subscribe.

2. The Executive must refrain from all measures directed at inhibiting the freedom of the press, including indirect methods such as the misuse of official advertising.

3. An independent, organised legal profession is an essential component in the protection of the rule of law.

4. Adequate legal aid schemes should be provided for poor and disadvantaged litigants, including public interest advocates.

5. Legal professional organisations should assist in the provision, through pro bono schemes, of access to justice for the impecunious.

6. The Executive must refrain from obstructing the functioning of an independent legal profession by such means as withholding licensing of professional bodies.

7. Human Rights Commissions, Offices of the Ombudsman and Access to Information Commissioners can play a key role in enhancing public awareness of good governance and rule of law issues, and adequate funding and resources should be made available to enable them to discharge these functions. Parliament should accept responsibility in this regard.

Such institutions should be empowered to provide access to alternative dispute resolution mechanisms.

IX) Measures for Implementation and Monitoring Compliance

These guidelines should be forwarded to the Commonwealth Secretariat for consideration by Law Ministers and Heads of Government.

If these Guidelines are adopted, an effective monitoring procedure, which might include a Standing Committee, should be devised under which all Commonwealth jurisdictions accept an obligation to report on their compliance with these Guidelines.

Consideration of these reports should form a regular part of the Meetings of Law Ministers and of Heads of Government.

Partner Organisations

Commonwealth Parliamentary Association
www.cpahq.org

Commonwealth Lawyers' Association
www.commonwealthlawyers.com

Commonwealth Magistrates' and Judges Association
www.cmja.org

Commonwealth Legal Education Association
www.clea.ac

Commonwealth Secretariat
www.thecommonwealth.org

Booklet designed and edited by the CPA Headquarters Secretariat editor@cpahq.org | September 2023
Image credits: CPA/Commonwealth Secretariat/Shutterstock.

Get the latest training opportunities, events and resources straight to your inbox

Sign up to our mailing list

Scan the QR code below

CPA COMMONWEALTH PARLIAMENTARY ASSOCIATION

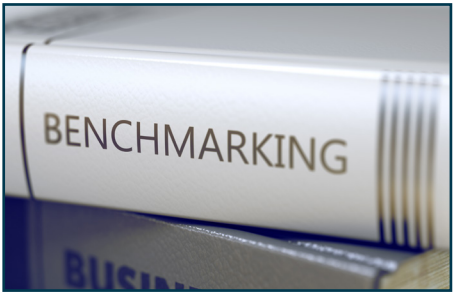
CPAHQ.ORG

CPA COMMONWEALTH PARLIAMENTARY ASSOCIATION

Commonwealth Latimer House Principles on the Three Branches of Government

First published in November 2003. This edition published in September 2023.

Commonwealth Parliamentary Association | www.cpahq.org



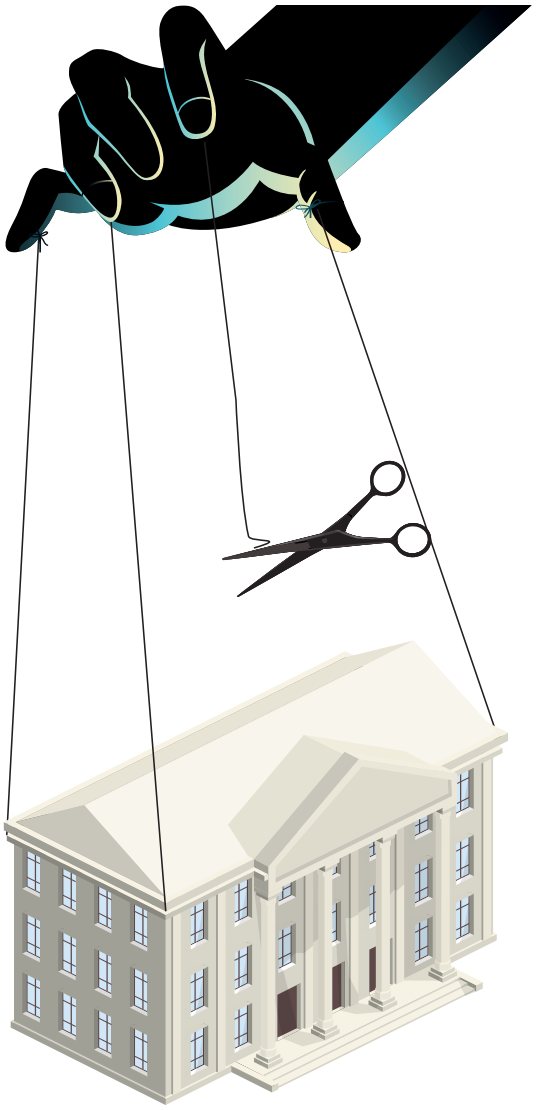
Commonwealth Parliamentary Association (CPA)
CPA Headquarters Secretariat
Richmond House, Houses of Parliament
London SW1A 0AA, United Kingdom

Telephone: **+44 (0)20 7799 1460**
Email: **hq.sec@cpahq.org** | Online: **www.cpahq.org**
Twitter @CPA_Secretariat | Facebook.com/CPAHQ | Instagram @cpa_secretariat | LinkedIn

Published 2020

MODEL LAW FOR INDEPENDENT PARLIAMENTS

ESTABLISHING PARLIAMENTARY SERVICE COMMISSIONS FOR COMMONWEALTH LEGISLATURES



CPA COMMONWEALTH PARLIAMENTARY ASSOCIATION

www.cpahq.org

About the CPA

The Commonwealth Parliamentary Association (CPA) connects, develops, promotes and supports parliamentarians and their staff to identify benchmarks of good governance and the implementation of the enduring values of the Commonwealth. The CPA collaborates with parliaments and other organisations, including the intergovernmental community, to achieve its statement of purpose. It brings parliamentarians and parliamentary staff together to exchange ideas among themselves and with experts in various fields, to identify benchmarks of good practices and new policy options they can adopt or adapt in the governance of their societies.

About the author

Matthew Salik is Head of Parliamentary Development at the Commonwealth Parliamentary Association Headquarters Secretariat.

Acknowledgements

The CPA Headquarters Secretariat extend its thanks to Mr Tom Duncan, Clerk of the ACT Legislative Assembly, Australia, Mr Lenox J. Proctor, Clerk of the Anguilla House of Assembly, Ms Jacquie Miller, Legislative Drafter, Jersey and Sarah Gwynn, Chair of Voyagers, New Zealand and others across the Commonwealth for their expert advice and input into this publication.

CONTENTS

Cover design and illustrations by Matthew Salik with elements from Adobe Stock and freepik.com

Have you used this publication?
If you have, let us know as we are always keen to hear how our products are being used. Our details are on the back.

FOREWORD

Today, more than ever, Parliaments are facing many challenges to their effectiveness. At the time of publishing, the COVID-19 global pandemic is stretching the capacity of Parliaments across the Commonwealth to remain fully functional, requiring costly resources and specialist services as well as the ability to be rapidly adaptive to new ways of working. Parliaments need the independence to remain functioning and continue to hold the Executive to account. To survive such pressures, Parliaments need to have robust leaders, services and finances to respond to such challenges.

As part of its commitment to the Latimer House Principles, as well as its work in benchmarking Parliaments against international standards, the Commonwealth Parliamentary Association has developed this Model Law to help empower Parliaments to take control away from the Executive to ensure it has the administrative, operational and financial resources it needs to function effectively.

The Model Law is designed as a Parliamentary Service Commission Bill which seeks to create a parliamentary corporate body to oversee the institution of Parliament. It has also been structured to accommodate as many versions of the 'Westminster System' Parliament as possible. The Model Law can be adapted to suit an array of different types of Parliaments, large or small, unicameral or bicameral.

The Model Law has been developed with expert and experienced input from leading Commonwealth legislative drafters and Parliamentary Clerks.

The Commonwealth Parliamentary Association hopes you will find this publication an invaluable resource in strengthening your parliamentary institution for the betterment of democracy within your jurisdiction and beyond.

Hon. Emilia Monjowa Lifaka MP
Chairperson of the CPA Executive Committee
Deputy Speaker of the National Assembly Cameroon

INTRODUCTION

This **Model Law for Independent Parliaments** is designed to support Commonwealth Legislatures that face the challenge of being insufficiently independent of the Executive, and as such, have limited access to resources and control mechanisms to function effectively in a modern democratic setting.

Many Parliaments, both large and small will not be able to rigorously scrutinise the Executive, ensure that all legislation passed is of the highest quality or provide Members with sufficient support to aid their constituents and communities. These weaknesses, frequently if not solely, derive from Parliament's inability to access adequate financial resources, to have independent oversight of the administration and governance of Parliament and to access impartial, secure and high quality human resources. It is argued that the root cause of these failures stems from Parliament's lack of independence from the Executive who, either wilfully or through sheer neglect, stifle the democratic process by failing to allow Parliaments the freedom and support they need to participate equally with the other branches of government (namely the Judiciary and the Executive).

Since its establishment in 1911, the Commonwealth Parliamentary Association (CPA) has sought to strengthen parliamentary institutions to enable them to fulfil their democratic mandate, specifically to hold the Executive to account. As such, the CPA has actively, and in partnership with other like-minded organisations, driven the development of the Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence, the Zanzibar Recommendations for the Administration and Finance of Parliaments and more recently, the CPA Recommended Benchmarks for Democratic Legislatures. This publication has evolved from such activities. However, in spite of this work, progress to enable Parliaments to be independent, both in theory and practice, has in many cases been slow and frought with difficulty. For example:

- Parliaments can remain unequal to their judicial counterparts which have their institutional independence enshrined in constitutional and legislative provisions.
- Some Parliaments fail to have both administrative and financial independence, typically one or the other.
- There is frequently a lack of ownership or willingness to drive any such reforms. Where these is a determination for change, such change usually emanates from senior parliamentary officials who may have little to no sway over their parliamentary or ministerial masters.
- Senior parliamentary officials also face difficulties in convincing Treasury/Finance officials to provide adequate finances from the Executive, limiting financial autonomy.
- Many Parliaments have limited legislative drafting resources to legislate for independence, and those that do, are under the domain of the Executive.

With all of the above in mind, the CPA has developed this Model Law for Commonwealth parliamentarians, senior parliamentary officials and legislative drafters to overcome these issues. This draft Law is a template for Parliaments to replicate and modify to meet their specific needs and context. Additionally, it seeks to enable Parliaments, and specifically backbench Members to present such legislation in the form of a Private Member's Bill. In jurisidictions that have existing legal provisions, this Model Law could provide a useful comparison to determine if improvements are needed. The Model Law has been developed by using best practice examples from around the Commonwealth, most notably those used in Canada, Ghana, Kenya, New Zealand, Uganda, United Kingdom and Zambia, with input and support of many experts.

The Model Law is designed as a Parliamentary Service Commission Bill which seeks to create a parliamentary corporate body to oversee the institution of Parliament, as well as provide administrative, operational and financial independence. Whereas it is extremely difficult to develop model laws that are a one-size-fits-all approach, it is designed to accommodate as many versions of the 'Westminster System' Parliament as possible. The Model Law can be adapted to suit unicameral or bicameral Parliaments, small or large Legislatures at either a national or subnational level.

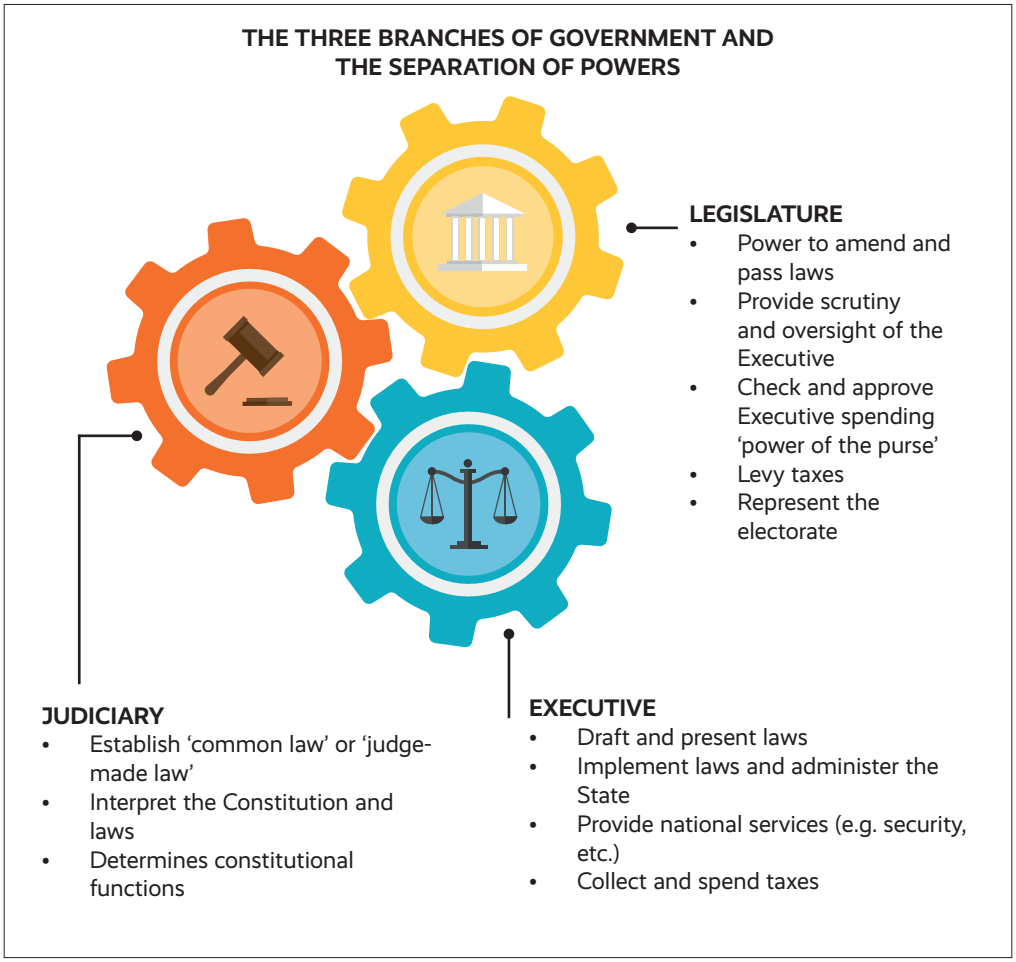
This Model Law attempts to guarantee that there are sufficient checks and balances to provide for an equity of powers between the Executive and Legislative branches. However, the Model Law is not a cure-all for Parliaments lacking in independence. Parliaments must also look to their powers, privileges and immunities in a holistic fashion to ensure they have all the right tools at their disposal. For example, it matters little to effective scrutiny if Parliaments have adequate committee staff numbers, but at the same time lack the powers to summon Ministers to answer questions in a timely fashion.

The material accompanying the Model Law includes a historical background to the principles behind having independent Parliaments. It then goes on to look at the rationale for why Parliaments and Governments should effect change, and how such change can be universally beneficial. There is then an examination of the Model Law itself, including accompanying commentary. The publication concludes with an appendix detailing the specific standards that such legislation should seek to comply with.

BACKGROUND

Although later in this document there is an analysis of the practical implications of not having robustly independent parliamentary institutions, it is important to first look at the theoretical and historical reasoning behind such an approach.

Arguably, for as long as there have been democratic institutions like 'Parliaments' there has been the concept of the separation of powers. The origins of such a concept dates back to ancient Greece and Aristotle, through to John Locke, Baron de la Montesquieu, David Hume and James Madison in the Enlightenment period. Regardless of its history, the principle is the same, power should not be vested in any single person or institution. Initially it was intended to prevent absolutist monarchs abusing power. To mitigate this risk, there should instead be a balance of power shared out and managed in unison with adequate checks and balances in place. Separate but balanced. This 'Separation of Powers Doctrine' contends that powers should be distributed between an Executive, a Legislature and a Judiciary. Each of these three institutions or Branches should have their unique roles and responsibilities, but should work together each providing accountability mechanisms over the other. As highlighted in the illustration below, these 'three cogs' can sometimes face 'friction' which disrupts the mechanics of good democratic governance. The Executive can obstruct the movement of the Legislature, as can the Judiciary obstruct the Executive, and so on. For example, the Executive should not make laws or administer justice and Parliament should not pass laws that are arbitrary and/or inconsistent.



In recent years, the CPA and the Commonwealth have worked actively to strengthen good governance processes and specifically the ethos of the Separation of Powers Doctrine to reduce as much friction as possible. A number of these principles which reinforce the need for parliamentary independence, and are sanctioned by Commonwealth Parliaments and Governments are laid out in the following section.

Commonwealth Latimer House Principles
In June 1998 a group of distinguished parliamentarians, judges, lawyers and legal academics joined together at Latimer House in Buckinghamshire, United Kingdom, at a Colloquium on Parliamentary Sovereignty and Judicial Independence within the Commonwealth. The Colloquium was sponsored by the Commonwealth Lawyers' Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges' Association and the Commonwealth Parliamentary Association with the support of the Commonwealth Foundation, the Commonwealth Secretariat and the United Kingdom Foreign and Commonwealth Office. The product of the Colloquium, **The Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence** evolved into the Commonwealth (Latimer House) Principles on the Three Branches of Government. The Principles highlight the importance of the separation of powers between the Legislature, the Executive and the Judiciary to ensure effective governance and democracy. The Latimer House Principles provide guidance on the role of the separation of powers in the Commonwealth, its effectiveness in providing democratic governance and the role of civil society. The Principles were first approved by Commonwealth Law Ministers in 2002 and endorsed by the Commonwealth Heads of Government at their meeting in Abuja, Nigeria in 2003.

Section III of the Principles state:
Independence of Parliamentarians: (a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

In March 2013, the first Commonwealth Charter adopted by Commonwealth Heads of Government validated the Latimer House Principles on maintaining integrity of the three branches of government (article VI).

"We recognise the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance."

CPA Recommended Benchmarks for Democratic Legislatures
In 2018, twenty years after the initial establishment of the Latimer House Guidelines, the CPA completed a consultation and review process that resulted in the adoption of updated Recommended Benchmarks for Democratic Legislatures. The Benchmarks provide a minimum standard and a guide on how a Parliament should be constituted and how it should function. They play an important role in developing the effectiveness of parliamentary institutions across the 180 Parliaments and Legislatures of the CPA and contribute to the implementation of the Sustainable Development Goals (SDGs). Most notably, the Benchmarks highlight minimum standards to ensure Parliaments have mechanisms in place to be as independent as possible (see appendix for those specific Benchmarks). Since 2018, twelve Parliaments have undertaken assessments based on the Benchmarks. The findings of their assessments form the basis of this Model Law.

CPA Study Group on Finance and Administration of Parliaments
In 2005, the CPA in partnership with the World Bank Institute sponsored a study group to identify best practice in corporate management structures across Commonwealth Parliaments, produce recommendations for the establishment of new corporate bodies, examine methods of increasing accountability for the use of public funds and services and develop the capacity of the CPA to assist Branches with issues of corporate management. The study group made twenty-seven recommendations (see appendix for those specific recommendations). These recommendations are the foundation blocks of the Model Law and are essential principles for Legislatures to adhere to.

64th Commonwealth Parliamentary Conference, Kampala, Uganda, September 2019 - Workshop: The Role of Parliament in the doctrine of Separation of Powers; Enhancing Transparency and Accountability
At the CPA's Annual Conference held in Uganda in 2019, a workshop took place focusing on the role of Parliament and the doctrine of the separation of powers. The workshop panellists including: Hon. Shri Rajendra Trivedi MLA, Speaker of the Legislative Assembly (Gujarat, India); Hon. Shamsul Iskandar Mohd Akin MP (Malaysia); Hon. John Mbadi Ng'ongo MP (Kenya); Mr Brian Speers, President, Commonwealth Lawyers Association (CLA) and moderated by Hon. Christine St-Pierre MNA (Québec, Canada). Participants examined the doctrine and highlighted that the Legislature should be resolute in protecting its space. This should be guarded by the level of determination of the head of the Legislature. Rt Hon. Rebecca Kadaga MP, Speaker of Parliament (Uganda), noted in her personal experience, that Legislatures must utilize mechanisms that make it difficult for the Executive to overrun the Legislature and in so doing undermine the Separation of Powers Doctrine. The workshop participants made a number of recommendations (see appendix for those specific recommendations).

THE PARLIAMENTARY RATIONALE

The principal reason as to why independent Parliaments should be an essential characteristic of any democracy is because, without financial or administrative independence, Parliaments struggle to perform their basic functions effectively. The simple fact of the matter is if Parliaments want sufficient staffing levels of high quality, secure, impartial, professional officials to support Members in their core legislative, scrutiny, oversight and representative functions, that can only be developed and secured by enacting legislation such as this Model Law or through a Constitutional provision. For those Parliaments that have not gone down this route, there are many problems that will inevitably arise.

1. Who owns Parliament?

The answer to this question given by parliamentarians varies from "the people" to "the Speaker". But in reality the institution of Parliament is owned by parliamentarians who should determine the rules that structure its systems. This happens by rules of procedure which parliamentarians vote on, yet when it comes to how the Parliament is overseen, strangely many parliamentarians are content that this should fall to the Executive, directly or indirectly. By creating statutory corporate bodies like a Parliamentary Service Commission, such an entity can fill in the administrative and operational gaps left by Standing Orders, precedent, rulings by the Speaker and the Constitution. It can set policies, guidelines, strategies that enhance the functions and performance of Parliaments as well as manage risk and financial transparency. Most importantly, it can provide clarity to all relevant stakeholders, be it the Executive, Members of Parliament, staff and the public as to who is responsible, accountable and answerable for the management and governance of Parliament.

2. Democratic deficit

Parliaments that have little to no powers to appropriate sufficient funds for the operation of their legislatures or have little to no authority to manage staffing requirements will face the following difficulties:

- If Parliaments do not have access to necessary funds, the results can be poor pay provisions for Members in terms of salary or expenses. In turn, there will be a systematic barrier for candidates from more impoverished backgrounds who may want to become parliamentarians or more problematically, incentivise parliamentarians in sourcing alternative forms of remuneration which will inevitably result in conflicts of interest. Members may be forced to find additional sources of income such as a second job. As such, they cannot dedicate all their time to being a parliamentarian and the many pressures associated with the role.
- Parliaments that have poor physical infrastructure because of a lack of funding may be a barrier to effective and efficient working. Specifically, there may not be adequate space to conduct parliamentary business, there may be health and safety risks, it may not provide for adequate facilities which acts as a barrier to greater diversity of women and disabled parliamentarians and staff. There may also be a lack of space to accommodate the official opposition.
- Clerks and officials appointed by the Executive may be political appointees with little to no impartiality and who may not give balanced advice to all Members regardless of their party political persuasion. Staff recruited may not be sufficiently expert in their procedural roles and therefore might not follow Standing Orders correctly. Impartial and specialist staff that give effective advice to the opposition may be moved on to other public service departments or be placed under undue influence for fear of being fired.
- There may not be sufficient financial provision for technology or staffing in place to keep an updated record of parliamentary proceedings, such as the official record/Hansard. Members may not have a formal minute of what was in a Minister's statement or an answer to a question.
- A Parliament without sufficient staffing provision may not be able to provide independently-sourced research or adequate staffing for all legislative or standing committees. Members will therefore be handicapped in their ability to effectively hold the Executive to account or amend legislation to ensure it is fit for purpose.

Many of the above examples happen everyday among Commonwealth Parliaments. The best way of overcoming such Executive interference is to strive for greater parliamentary independence.

3. Low on the to-do list

In the absence of Parliamentary Service Commissions, or their equivalents, Parliaments have a tendency to be administered like any other Ministry or Government Department. However, unlike their ministerial counterparts, these subservient Legislatures may be given less support, resources and time. In other words, they risk becoming neglected and overlooked institutions. Worse still, personnel assigned to oversee Parliament's operations and funding may consequently be less skilled and less aware of the unique requirements and characteristics of a Parliament. They may not realise why it is important to have more time allocated to debating and scrutinising legislation, why a committee or committees need access to a minibus to visit important sites related to a specific

inquiry, what the difference is between a committee clerk or a committee specialist, or why post-legislative scrutiny is different to pre-legislative scrutiny, and the different skillsets required for both. In addition, personnel assigned to oversee parliamentary operations are also under the direction and authority of government authorities. The determination of the terms and conditions of service including promotion is in most cases the responsibility of the Executive Branch. Such divided loyalties has the potential of stifling or affecting the operations and therefore compromising the independence of Parliament. It is therefore essential that a Commission exists, or some other separate administrative body, which oversees its staffing and resource requirements, and determines how much money is needed to deliver the best service possible to ensure Parliament is a fully effective institution.

4. Public perception

It is essential that the public have confidence in Parliament as an institution which is intended to safeguard democracy. Lack of public confidence in Parliament over questions or doubts about its independence, and therefore its ability to hold the Executive to account, will have a number of knock-on effects, which parliamentarians must work actively to overcome. These may take the shape of voter apathy at elections, a lack of engagement in the parliamentary process, such as petitioning or contributing to committee inquiries, or feeling it is worth their time lobbying their Members to be active on issues that impact upon them. The public will question whether parliamentarians deserve their salaries and benefits. Parliaments and parliamentarians must therefore demonstrate their independence from the Executive and be able to flex their democratic muscles when necessary.

5. The Domino Effect

It is important to also consider the wider ramifications of not having effective independence as a Parliament. The Legislature is not the only entity that may exist in a jurisdiction that scrutinises the Executive. There are often other independent parliamentary offices/ombudsmen/commissioners which may sit within or as part of the Legislative apparatus. If Parliament is not independently funded or administered then it is reasonable to assume that these bodies, like Auditors-General, Parliamentary Commissioners for Standards or even Election Commissioners will be either. Where Parliaments lead, others should follow. Parliament therefore should seek to strengthen their institutional independence alongside others, or do so as an umbrella body and thus ensure there is effective oversight of the Executive.

6. Never make the grade

Whilst Parliaments stick to the coattails of the Executive, they will fail to meet the key international benchmarks that the CPA and others have set. Following a review of numerous CPA Benchmark self-assessments, there is clear evidence to suggest that Parliaments perform far better in their democratic and good governance responsibilities than those which have limited or non-existent independent Commissions or independent funding appropriations.

7. More than just a Legislature

In the 21st Century, Parliaments should perform more than just the basic functions of passing laws or holding committee inquiries. They have an important part to play in educating the public and importantly young people on democratic values. They need to be a forum to raise awareness on national and global challenges, from climate change to global pandemics. To do this, Parliaments must have access to technology and other resources to meet the expectations and needs of the people, such as modern IT equipment to undertake e-outreach, or facilities to enable remote working to cater to modern working conditions. However, Parliaments that lack access to funding due to their dependence on the Executive will struggle to remain relevant and evolve as all institutions need to do.

THE GOVERNMENT RATIONALE

It is important to take a moment to look at the issue from an Executive perspective. Whereas it may be obvious to Parliaments what the benefits of greater independence can be (see previous section). For the Executive, loosening their grip on a Legislature and thereby strengthening Parliament's ability to question decisions and make embarrassing observations on the failures and inadequacies of Government policy, would be hard to contemplate. It is easy so see why any Government would want to obstruct any attempts at giving Parliaments greater financial and administrative autonomy. But the simple fact of the matter is, without the majority's support, there can be little chance for constitutional or legislative reform such as this Model Law. It is therefore essential to highlight what the Executive can gain by relinquishing some control over Parliament's purse-strings, and allowing it to govern itself free from the potential excesses of Executive interference. When a politically pragmatic approach is taken, it can in fact be a considerable advantage for the Executive. Below are a list of some of the arguments for why the Executive should be willing to accept this law.

1. Rules aren't meant to be broken

Every Commonwealth country has committed to uphold the Commonwealth Charter and Latimer House Principles that states: "Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference". As such, Governments that fail to provide such freedoms from interference are failing to meet such commitments. Governments in fact risk embarrassment and international criticism if they do not fulfil their regional, Commonwealth-wide or international standards.

It is also important to stress that all Commonwealth jurisdictions have an obligation under the Sustainable Development Goals to meet key targets. Global Goal 16 which clearly states: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Specificially Target 16.6 - Develop effective, accountable and transparent institutions at all levels and Target 16.7 - Ensure responsive, inclusive, participatory and representative decision-making at all levels. As such, Governments have a duty to ensure Parliaments are fully effective institutions for participatory and representative decision-making.

At a national level, Governments will also have to ensure that commitments under national constitutions and other domestic laws are also met. Pressure may exist from civil society, the media and other groups to ensure that the Government uphold the highest standards to protect democratic values.

2. Here today and gone tomorrow

Governments must consider the long-term. For example, it is important for them to contemplate the possibility that although they are the Government today, at the next election they might be out of power and in the opposition ranks. If they are in a Legislature that is limited in its independence from the Executive, being in the opposition can be a stifling and constrained position to be in. There will be little to no resources, little to no office space, a partial and bias Parliamentary Service, etc. Therefore the Executive, for perhaps selfish reasons, should set a precedent and invest in the opposition of the day to secure the benefits later on. If anything, this may result in the current Executive being in opposition only temporarily. It is therefore in the long-term interest of the Government to provide adequate resources for all.

3. Plausible Deniability Factor

At times, the Government will have difficult and unpopular decisions to make. Should the Government spend public money on large infrastructure programmes or do they pay for an increase in Members pay, or for the Parliament to have a refurbished chamber? A chamber that may also serve the interests of the Executive. Governments that pay for that new chamber will most likely be considered self-indulgent, neglecting the people and be on the receiving end of a great deal of bad press. But what if it was not the Government's responsibility or decision? What if Parliament made that decision? By delegating powers and responsibilities on to Parliament, the Executive is potentially freeing itself from making unpopular and difficult decisions.

4. Passing the buck

Government Ministers and their departments are busy and seldom have sufficient staffing or financial provisions to provide adequate support for meeting the day-to-day pressures of governing a country or territory. This is especially so in small jurisdictions. Departments of Public Administration, Offices of the Prime Minister, Ministries of Internal Affairs are frequently given the burdensome task of overseeing the Legislature, and in many places, delivering on this requirement is unfortunately perceived by many to be a distraction from the core work of these

Ministries. Furthermore, overseeing the Legislature is an exceptionally specialist field and there is an opportunity cost for Ministries in hiring legislative experts or experts on financial compliance or human resources. As such, it can be to the Executive's advantage if the administering and financing of the Legislature can be delegated to others, more notably the Legislature itself.

5. Role for Government Backbenchers

The reality for most governing parties is that they cannot give ministerial positions, junior or senior, to everyone. In most jurisdictions, particularly small ones, there are limits in place to ensure that there are always some Members who must remain as backbench Members of Parliament. Therefore the Government of the day must then think of what to do with such individuals to give them something worthwhile and influential to do. This is politically expedient in seeking to mitigate the risk of Members of the governing party defecting to other parties for better positions, or being rebellious and not voting with the Government. A well resourced Parliament that can administer committees will need Chairs and Members to populate them, a well resourced Parliament may need Members on the Parliamentary Service Commission which will carry enormous influence, a well funded Parliament can facilitate parliamentary diplomacy activities and outreach work. All of which are valuable and important roles that government backbenchers can and should take on.

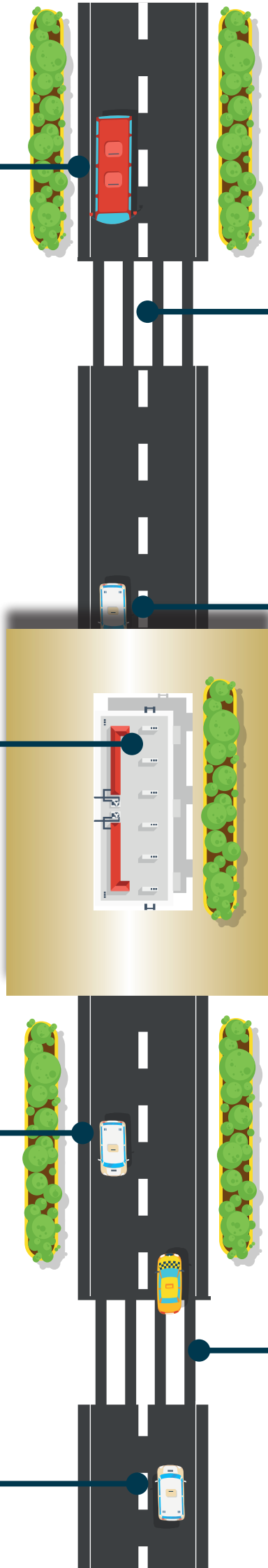
6. You get what you pay for

In the Westminster System, Ministers are parliamentarians and therefore have to fulfil part of their work in Parliament. But a poorly administered, poorly resourced Legislature can be detrimental to Governments as well as ordinary backbench Members. For example, if Ministers have to answer questions that are already in the public domain, this is arguably a waste of their time and the time of the Ministry in researching and formulating an answer. But if the Legislature had a Table Office with sufficient staffing and expertise this could enable a good system of questions and answers that can benefit the Minister (who may not know the answer), the MP who asked the question, and the public and civil society who will see that the government is operating with an abundance of transparency and accountability. A well resourced Parliament that has experienced, impartial, qualified staff can offer advice to Ministers (as parliamentarians) as much as they can for others.

7. Still in control

Many Governments make a mistake by assuming that by delegating powers to Parliament or giving Parliaments greater independence will somehow result in the Government losing control and influence over what Parliament does. The reality is that the Government in a 'Westminster System' will still retain significant influence. After all, the Government and the governing party Members in Parliament will still be in the majority (although there are occasionally minority Governments). If a Commission is created, the majority of its Members will and should be from the governing party/parties, and in many instances the governing majority or a separate Executive (in more presidential systems) will elect or appoint a Presiding Officer who will Chair such a Commission. If a Parliamentary Service Commission places too great a financial burden on the national finances, it would be a Government held majority in Parliament that would seek to vote against such budgetary provisions, or a Head of State who could veto. Furthermore, the Parliament would have the power to overturn or ratify any decision a Commission makes and therefore yet again, if the majority is from the Government benches then the Government can still hold sway in what decisions are made and how. Although this may not be universally applicable, especially when consideration is given to the power-dynamics between national Executives and subnational Legislatures. For example the political party of the Executive at a national level may not be the majority party at a subnational legislative level. However, there will inevitably be mechanisms that exist for the Executive at the national level to work in a consultative manner to reach amicable outcomes with subnational stakeholders to maintain an element of influence if not direct control.

ROADMAP FOR IMPLEMENTATION



STEP 1
Parliaments should establish a Working Group of key senior parliamentarians and officials to review the Model Law and other relevant documents (for example, the Constitution, existing legislation, Standing Orders, etc.), as well as examine existing arrangements for managing the Parliament. Keeping in mind the need, nature and purpose of reform.

STEP 2
Parliaments should undertake an internal consultation with parliamentarians and officials as well as government stakeholders to seek their views.

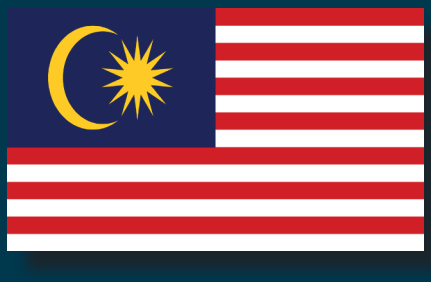
STEP 3
Legislative drafters should draft the Parliamentary Service Commission Bill with input from key parliamentarians and lay before Parliament as either a Government Bill or Private Member's Bill.

STEP 4
The Bill should follow the legislative process in the Parliament (specific to individual jurisdictions).

STEP 5
If successful, senior officers of Parliament (the Speaker, Clerk, etc.) should begin the process of implementing the Act in a transparent, communicative and open fashion which meets the short and long-term needs of Parliament.

STEP 6
Following the complete implementation of the Act and after a reasonable period (for example 6 months to a year), the Commission should undertake a holistic review, including a broad consultation with relevant stakeholders on the actions taken, assess the results and examine whether there is a need for further reforms. Ensure outcomes are publicly available.

STEP 7
Following an election and new Parliament, the Commission should undertake a further assessment and continue to do so at regulate periods. Such reviews can also be done by independent agents to ensure broader perspectives are taken on-board.



MALAYSIA – A bicameral approach

The Parliament of Malaysia, a bicameral Parliament (comprising of the Dewan Rakyat or House of Representatives and the Dewan Negara or Senate) has no single Parliamentary Service Commission. However, there are House Committee's for the House and Senate which includes of the Speaker and the President respectively, both of whom act as the Chairman. Both Committees advise their respective Chairman on all matters related to all the conveniences, services and privileges of each Chamber. Both Committees have the power to assemble or conduct meetings as a Joint Committee.

A Parliamentary Service Act was enacted and enforced in 1963, but it was repealed in 1993. The appointment of the members of parliamentary service is determined in accordance with the public service's general policy and staffed by the members of the general public service who fall under the control of executive branch (Prime Minister Department).

The position of Chief Administrator is appointed from the Public Service and responsible for the administration and financial affairs of Parliament. The Chief Administrator is assisted by two Secretaries of the Parliament; the Clerk of the Senate and the Clerk of the House of Representatives. The Constitution stipulates that both Clerks shall be appointed by His Majesty the King of Malaysia.

There is no independent body or mechanism responsible for setting and administering MPs' pay and pensions, independently of both Parliament and Government. The remuneration, benefits and other statutory entitlements of legislators are subjected to the Members of Parliament (Remuneration) Act 1980.

GHANA – A unicameral approach

Ghana has a unicameral Parliament. The Parliament of Ghana has its own Parliamentary Service which was established by the 1993 Parliamentary Service Act (PSA), pursuant to Article 124 of the 1992 Constitution. Staff of the Service are required to be non-partisan. It's Commission also known as the Parliamentary Service Board, is chaired by the Speaker who is responsible for policy, control and determination of the conditions of service of staff. The recruitment and adequacy of staff of the Service is regulated by the Scheme of Service and the Parliamentary Service (Staff) Regulation, CI 118. Pay is comparable to the Public Service. The Clerk to Parliament is the head of the Parliamentary Service.

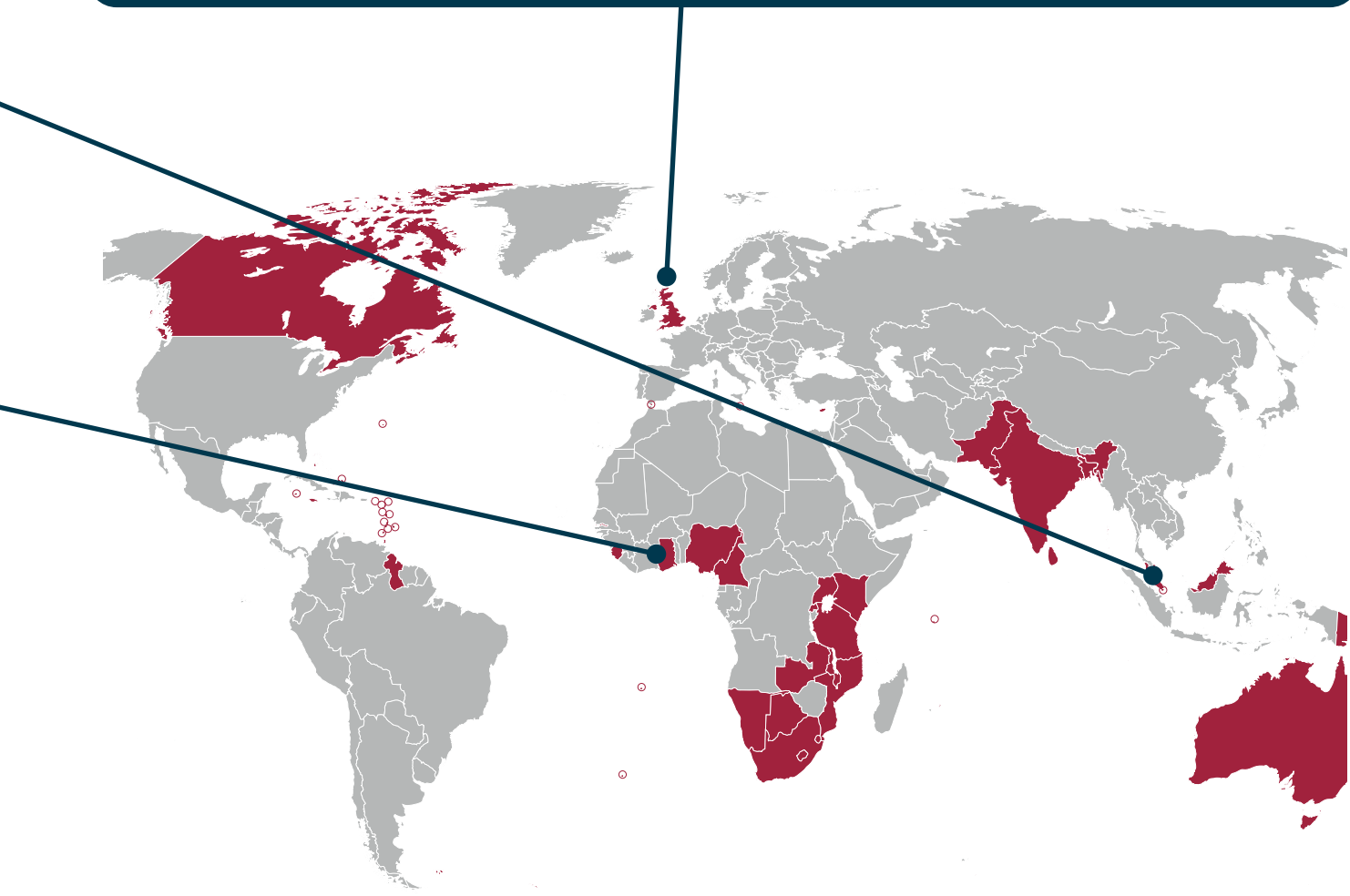
The financial autonomy of the legislature is guaranteed by Article 179(2) of the Constitution and Act 460 of 1993 which provides that administrative and operational expenses of the Parliamentary Service are neither subject to budgetary review or control by the Ministry of Finance nor to be voted on, but only laid before Parliament for the information of Members. However, in practice, the legislature submits budget estimates to the Ministry of Finance which makes substantive changes in the estimates.

SCOTLAND, UK – A subnational approach

The Scottish Parliament, one of the newer Parliaments of the CPA was established in 1999. As a unicameral subnational legislature it has its own corporate body. The Scottish Parliamentary Corporate Body (SPCB) is a statutory body provided for by the Scotland Act 1998 and consists of at least 5 members – the Presiding Officer, who chairs the Body, and at least 4 Members elected by the Parliament. Members are elected as individuals to represent the interests of all the MSPs and not as party representatives. The SPCB provides the staff, accommodation and services needed by the Parliament to carry out its work. The SPCB is accountable to the Scottish Parliament.

The Scottish Parliamentary Corporate Body employs around 450 staff dedicated to supporting the work of the Parliament and its Members. As such, staff work directly for the Parliament and not the wider Scottish Government's civil service.

Funding for the Scottish Parliament is sourced from the UK following the transfer of the main UK Consolidated Revenue Fund to the Scottish equivalent. The SPCB sets the budget of the Scottish Parliament which is submitted to the Finance and Constitution Committee of the Scottish Parliament which is then submitted to the Scottish Government for noting. The budget for the Parliament is then incorporated into the main Budget Bill which is voted on by the Scottish Parliament.



HOW TO USE THIS MODEL LAW

The Model Law is divided into six parts. **Part 1** is the preliminary or introductory part of the Model Law which sets out the parameters of the Law including its title and interpretations of terms used.

Part 2 establishes the Parliamentary Service Commission as a corporate body. It then proposes a composition for the Commission. The basis of this has been determined by similar Commissions that exist across Commonwealth Parliaments as well as some elements deemed to be best practice, for example the inclusion of an external member to the Commission. The remaining provisions of Part 2 propose the composition variations dependent on the vacation of membership, or in the instance that the Parliament dissolves.

It is important to stress that the Model Law is based on a unicameral Parliament as opposed to a bicameral one. For those wishing to adopt this Model Law, it is necessary to determine early on if the Commission should cover both Legislatures or just one, which may then precipitate having two separate laws. Whichever option is considered it is essential to consider the relationship and interactions between both Legislatures. In particular, who has supremacy, how independent do the two chambers wish to be, are services shared and if so, how will decisions be ultimately taken? It is perhaps advisable that the Law covers both Legislatures with a mixed membership on the Commission. The rationale for such an approach, beyond simplifying the reform process, is that the Parliament speaking with one voice would have greater weight in leveraging the required funding needs. However, history and precedent may prevent such an approach.

Furthermore, this Model Law does not cover the role of the Opposition, nor does it confer powers or specific support for the office of the Leader of the Opposition. Many laws on Parliamentary Service Commissions do provide such provisions. However, to ensure this Model Law is as applicable as possible, it has not been included here. Nevertheless, it is important that Opposition and independent representatives have a presence and a voice on any Commission and is therefore included as part of this Model Law.

Part 3 of the Model Law, which is arguably one of the most important, deals with the functions and powers of the Commission and by extension the powers and independence of Parliament. Part 3 examines the interconnectedness of the Commission and the institution of Parliament. In particular, emphasising that Parliament has the final say, and can through resolutions, overturn decisions of the Commission. As such, it ensures there are sufficient checks and balances internally within Parliament as well as Parliament's relationship with the Executive. Part 3 is also concerned with the management and oversight of the Parliamentary service. Finally, Part 3 outlines what the limitations are of the Commission.

Equally important is **Part 4** of the Model Law which establishes the Commission and Parliament's financial independence. It is vital however to emphasis that Parliament cannot be 100 percent financially independent because of the principles of the separation of powers doctrine which give the Executive resources (namely the public service) who will determine what funds there are. As such, it is the Executive which has the capability to determine how public funds are administered. Therefore Parliament must inevitably work in tandem with the Executive. It is ultimately about distinguishing the theoretical authority with the practical realities. Executives that are not consulted can slow or obstruct the process of distributing funds even when Parliament exerts its sovereign powers. With this in mind, the Model Law has been designed to give the appropriate authority to Parliament through the Commission to determine estimates and to appropriate them, but in a consultative manner. Nevertheless, Parliament through the budget approval process will get the final say. It cannot be a situation, as it is in some jurisdictions, whereby the Executive pays for the services and outputs that Parliament provides. This Provider-Service model places too much control in the hands of the Executive.

Part 4 also contains provisions for how public funds should be allocated by the Commission. As a starting point, it proposes funding should go towards the costs of the Parliamentary service and Members' remuneration. It also gives provisions that enable the Commission to access funds from alternative sources, such as development agencies. In principle, the Model Law could be extended to support any parliamentary semi-autonomous ombudsman or commission, and potentially copy a New Zealand model for distributing election expenses should these come from public funds.

Part 5 of the Model Law details what the Parliamentary Service should comprise of, including the Clerk of Parliament. It builds into the Model Law flexibility for the Commission to manage the service as it sees fit, but again, ensuring Parliament has the final say. Importantly though, it emphasises that the service is independent of any Executive-controlled public service.

Finally **Part 6** covers the essential provisions which should ensure a smooth transitional process for moving from an existing system to the one resulting from this Model Law.

PARLIAMENTARY SERVICE COMMISSION BILL

PARLIAMENTARY SERVICE COMMISSION BILL

An ACT to make provision for the establishment of the Parliamentary Service Commission to oversee the administration and functions of Parliament; for conferring powers on Parliament to regulate its own finances, and for connected purposes.

Although this Model Law calls such a Commission a Parliamentary Service Commission, the body could be called a Parliamentary Administration Commission or House Service Commission. The use of Committee however should be avoided to prevent confusion with formal standing or select committees of Parliament.

PART 1

Introduction

Short Title

1. (1). The Act may be cited as the *Parliamentary Service Commission Act*.

Commencement

1. (1). This Act comes into force on 1 January 2020.

This date is dependent on the date the Act comes into force.

Interpretations

2. (1). In this Act, unless the contrary intention appears:

This may be expanded to include other terms and provisions.

"Accounting Officer" has overall responsibility for the Parliament's finances, resource accounting and internal controls;

"Commission" means the Parliamentary Service Commission established under Part 1;

"Corporate Officer" has the authority to acquire, hold, manage and dispose of property, and to enter into contracts on behalf of Parliament;

"Development Assistance" means those financial flows to the Parliament which are provided by international or national official agencies and each transaction of which is administered with the promotion of the economic development and welfare of developing countries;

"Donor Organisations" means those organisations that provide Development Assistance;

"External Member" means the person established under Section 4.(1)(g);

"Governing Party" means the party or parties which controls a majority in Parliament;

Definitions of the Governing Party or Opposition may differ dependent on the definitions of respective jurisdictions. For example, the governing party maybe the largest party or grouping in Parliament or the same party of the Executive, which may differ in a presidential system.

"Key performance Indicators" or *KPIs* means the mechanism to evaluate the success of the Parliament or an activity in which Parliament engages;

"Leader of the Opposition" means the person who is the leader of the opposition party or party grouping in Parliament;

"Opposition" means second largest party or party grouping in Parliament;

"Precinct" means the land and premises which is used by Parliament;

"Public Service" means the civil service provided by the government in the service of the state;

"Service" means the Parliamentary Service established under Section 14.

PART 2

Parliamentary Services Commission

Incorporation

3. (1). There must be a body corporate named the Parliamentary Service Commission to perform the functions conferred on it by this Act.

(2). The Commission is not an instrument of the executive government.

This provision establishes the Commission as a Corporate Body.

Composition of the Commission

4. (1). The Commission must consist of –

(a). The Speaker of the Parliament who must be the Chairperson,

(b). A Deputy Speaker of the Parliament who must be Vice-Chairperson,

This is dependent on whether it is a bicameral Parliament or not. If unicameral, then the Deputy Speaker may be Vice-Chairperson. If bicameral then the Presiding Officer of the Upper House may be Vice-Chairperson the Chairpersonship of the Commission may rotate between presiding officers on an annual or sessional basis.

(c). The Clerk of the Parliament,

As the Senior Accounting Officer and Head of the Parliamentary Service it would be considered to give a stronger voice to the Parliamentary Service if the Clerk was given an equal voice to Members on the Commission, however they could also be Secretary to the Commission.

(d). A Member of Parliament from the governing party,

(i). nominated by the Government; and

(ii). who must not be a member of the Cabinet;

(e). A Member of Parliament from the opposition,

(i). nominated by the Leader of the Opposition;

If the intention is to have a Commission that is reflective of the political composition of the Parliament or respective Chamber then more Members should be added. This will also ensure there is a quorum.

(f). An Independent Member of Parliament,

(i). elected by independent Members of Parliament;

How independent Members may undertake an election would be specific to the jurisdiction, which could also be defined here. An election is important to give the individual/s more influence on the Commission.

(g). An external member appointed by resolution of Parliament,

(i). based on merit and through open and fair competition; and

(ii) must not be—

(a). a Member of Parliament; or

(b). a member of the Parliamentary Service; and

(iii). who must not be under Executive control;

It is considered good practice to also include an external member on the Commission. This can assist in giving an independent and expert voice. For example an accountant or an expert in corporate governance.

Although it is proposed that they are appointed by resolution, alternatively they could be appointed by an Appointments Committee or panel.

A decision should also be taken on whether they have voting rights and their levels of remuneration and terms and conditions of employment.

(h). An official of the Parliamentary Service who must serve as Secretary to the Commission,

(i). who is appointed by the Chairperson;

(ii). but who must not have voting rights.

There may be other types of Members (Chieftains/Elders, reserve Members representing women, the disabled or young people that should also be included on the Commission.

There is also value in specifying what would constitute a quorum. However this would be determined by the exact composition of the Commission.

(2). A member of the Commission must vacate office –

(a). upon the dissolution of Parliament prior to a general election; or

(b). in the case of a Member of Parliament, if that member ceases to be a Member of Parliament other than by reason of the dissolution of Parliament;

(c). if he or she becomes disqualified for appointment;

(d). if the member fails to attend 3 consecutive meetings of the Commission;

(e). is unfit to discharge his or her functions as a member;

(f). is incapacitated by physical or mental illness;

(g). if a member resigns from the Commission;

i. after submitting their notice in writing one month in advance to the Chairperson of the Commission unless a waiver for this period has been issued by the Chairperson of the Commission;

(h). is formally removed as a member of the Commission by a resolution of Parliament.

(3). If the office of Chairperson of the Commission is vacant or the Chairperson is for any reason unable to exercise the functions of their office, then, until a Speaker has been elected and has assumed the functions of Chairperson, or until the person holding that office has resumed those functions, as the case may be, the Vice-Chairperson must be the Chairperson.

(4). If the office of Chairperson and Vice-Chairperson is vacant, one of the other members of the Commission must act as Chairperson and the Vice-Chairperson until a person has been elected to the office of Speaker and assumed the functions of Chairperson.

(5). Past service is no bar to nomination or appointment as a member of the Commission.

This section looks at the vacating of membership of the Commission and what occurs when there is an election.

This is important to ensure there is sufficient cover for absent members and the Commission can still function effectively.

This may increase or decrease dependent on various factors, but is useful to include to ensure attendance and quorums.

The manner in which there is movement within the Commission in the case of vacancies may differ in a bicameral context. However, a notice period is important to ensure a replacement can be sourced.

This is important to ensure there are sufficient checks and balances, specifically to guarantee that the Speaker of the executive doesn't force any members off the Commission.

Term limits could also be included as a provision.

PART 3

Functions of the Commission

Independence and Delegation of Powers

5. (1). In the exercise of its powers or the performance of its functions under this Act, the Commission must not be subject to the direction or control of any other person or authority;

(a). other than through a resolution of Parliament.

(2). Subject to this section, the Commission may,

(a). determine its own procedure; and

(b). with the consent of the Executive, as may be appropriate, may confer powers or impose duties on any public officer or authority for the purpose of the discharge of its functions.

(3). The Commission may, by directions in writing, delegate any of its powers under this section to any one or more of its members, Parliamentary Committees or to any officer in the Parliamentary Service;

(a). in creating a Parliamentary Committee to assist in its work, the Commission must do so by a resolution of Parliament and with approval of Parliament amend the procedures/Standing Orders, where applicable.

This emphasises the importance of the independence of the Commission which should only be answerable to Parliament and not the Executive.

This provision gives the flexibility to the Commission to self-determine how it should conduct its business.

However, where it wishes to seek the services of others outside of Parliament it should seek the consent of the Government, where applicable.

If the Commission should wish to give greater autonomy to a Management Board, or create an internal Committee of Parliament it should have the flexibility to do so.

Typically, Parliaments, through resolutions of the Parliament can amend Standing Orders to create full Committees.

Employing Staff

6. (1). The Commission must have the powers to appoint all staff in the Parliamentary Service, and must determine their numbers and their remuneration and other terms and conditions of service.

(2). The Commission must ensure that the complementing, grading, pay and allowances of staff in the Parliament are kept reasonably consistent with those in the public service so far as consistent with the requirements of the Parliament.

(3). The other conditions of service of staff in the Parliament are also kept broadly in line with those in the public service.

(4). Notwithstanding anything to the contrary appearing in this section, the Commission may -

(a). engage persons under individual contracts of service upon such terms and conditions as the Commission may determine;

(b). engage any person who, in its opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient and effective carrying out of its functions;

(c). appoint competent persons, whether members of the Commission or not, to be a committee(s) to assist the Commission on such matters within the scope of its functions as are referred to them.

Section 6. gives the Commission the powers to hire and fire. This is important as it gives independence to the Parliamentary service but also gives it the flexibility to determine who it can hire and when.

This is a politically pragmatic approach to ensure that remuneration of staff is fair and equitable with the wider public service. But also gives the Commission the flexibility to retain staff by compensating them appropriately.

The Commission may wish to source short term contractors to undertake specialist work. This could be on areas like IT, infrastructure or organisational restructuring.

This gives the Commission the option to create Subcommittees to focus on a specific issue, such as the creation of a staff code of conduct.

(5). The Commission must ensure that pensions and other similar benefits of staff of the Parliamentary Service are kept in line with the provisions of the public service, but need not do so in the case for whom provision for such benefits was made under another scheme before they entered service in the Parliament and continues to be so made in respect of such service.

(6). The Commission must have the powers to exercise disciplinary control over staff of the Parliamentary Service, consistent with employment laws and the specific terms and conditions of service in their employment agreement.

(7). The Commission must ensure there is a staff performance appraisal system in place like that used by the public service and must set objectives for those in the Parliamentary Service to meet on an annual basis or at intervals determined by the Commission.

(8). The Commission must promote the welfare of Members of the House and members of staff and the dignity of Parliament.

For the purposes of this Model Law, the scope of the Commission does not extend to the hiring of staff for Members themselves, such as constituency caseworkers or special advisers. In many jurisdictions Members prefer to do so independently. Although the Law could be amended to do so.

Typically Commissions only appoint staff directly for the Parliamentary Service and for all Members. This prevents the Commission being forced to get involved in recruitment, disciplinary or pay conditions for Members personal appointments.

The Commission may wish to set guidance, advice and procedures, but that should arguably be the extent of its involvement.

It is advisable that Commissions are encouraged to ensure staff perform to the highest of standards and their welfare remains enshrined as a priority.

Powers of the Parliamentary Service

7. (1). Make publically available an annual report on the work of the Parliament and the Commission including audited accounts and budget estimates.

(2). Make publically available a code of conduct for staff of the Parliamentary Service, which is to be reviewed on an annual basis.

(3). Make publically available a Strategic Plan for the Parliament which must include key performance indicators and strategies for public engagement, education and outreach.

These provisions highlight the need for the Commission to be robust in their governance, strategic and public engagement role.

Parliamentary Precinct

8. (1). The control and administration of the whole of the parliamentary precincts is vested in the Parliamentary Service Commission on behalf of the Parliament, whether Parliament is in session or not.

(2). The Commission and every person authorised by the Commission for this purpose has, and may exercise, in respect of every part of the parliamentary precincts, all the powers of an occupier.

(3). The Commission may from time to time, by resolution of Parliament —

(a). add any land or premises to the parliamentary precincts; or

(b). exclude from the parliamentary precincts any land or premises that are part of the parliamentary precincts by virtue of this Act.

(4). The Parliamentary Services Commission must delegate to the Speaker of Parliament in coordination with the Clerk of Parliament and other relevant individuals the day to day management of the precinct, and with specific reference to the security and access arrangements on and to the precinct.

It is essential that the Commission and Parliament has control over its own precincts to ensure physical independence from the executive. This is to ensure the government does not limit access to Parliament, impose its security on Parliament or limit Parliament's potential commercial use of the precinct.

Limitations on the Commission

9. (1). The Commission does not have a role in relation to—

(a). business transacted at meetings of Parliament or meetings of committees of Parliament; or

(b). any other proceedings of Parliament; or

(c). any matter for which the Clerk of Parliament has responsibility, as set down in the Constitution (and amendments) and the Standing Orders of Parliament or subsequent amendments to these regulations.

It is important to emphasise that the Commission should not usurp the powers of Parliament as an institution and that the powers this Law gives the Commission should not extend to the procedural workings of Parliament in the Chamber(s) or in Committee. If Parliament wishes to extend the powers of the Commission it should arguably be done so through amending Standing Orders.

In many jurisdictions the Clerk of the Parliament or the Clerks to the various bicameral chambers of Parliament may have their role or powers enshrined in the Constitution. Any provisions included in this Law should be consistent with those constitutional provisions.

PART 4

Financial Powers and Provisions

Financial Independence

10. (1). The Parliamentary Service Commission must have the power —

(a). to provide such services and facilities as are necessary to ensure efficient and effective functioning of the Parliament;

(b). to direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;

(c). to prepare and lay before Parliament in each financial year estimates of expenditure, which must be a charge on the Consolidated Fund for the Parliamentary Service, for the following financial year;

(d). to determine, through consultation with the Executive, but without prior consent from any authority other than the Parliament, an amount appropriated under an annual Appropriation Act in respect of the Parliamentary service.

This section gives the Commission the power to determine its budget, to source revenue to deliver the Parliamentary Service and to do so independently, if in consultation with the Executive.

This provision is important to ensure that the Commission determines its budget and the mechanism to do so.

Although in an ideal world the Commission should be empowered to source whatever monies it needs to ensure the Parliament functions effectively, it is politically expedient that it does so in consultation with the Executive. But Parliament should not be dictated to by any official of the Government.

It should be at this stage that the Parliament and the Commission consult with the Executive for the appropriate sum.

The mechanism to appropriate such monies should be done via an annual Appropriation Act.

Financial Accountability

11. (1). The Parliamentary Service Commission must —

(a). be audited and a report thereon laid before Parliament at least once every year, the accounts of the Commission (also known as the accounts of the Clerk of Parliament);

(b). appoint a member of the staff in the Parliamentary Service to be the Accounting Officer responsible for accounting for the sums paid out of money provided by Parliament for the service of Parliament.

It is essential in terms of good practice for transparency, accountability and oversight that the budget and expenditure of the Parliament is audited and that the consequential report be for public consumption.

The Accounting Officer could be the Clerk, but to have appropriate checks and balances in place this should be a Director of Finance or other senior specialist officer.

In addition, this Law could be expanded to create a Parliamentary Budget Office to oversee this process.

Members Pay and Remuneration

12. (1). The Commission should establish an independent body to set and pay the salaries, allowances and benefits (such as pensions) of Members of Parliament in accordance with the relevant resolutions of Parliament -

(a). that is subject to anything done in exercise of the disciplinary powers of the Parliament;

(b). that payments are made in a fair and equitable manner regardless of a Members' partisanship, gender, religion, sexuality, race or ethnicity;

(c). to be reviewed on an annual basis;

(d). to be released in a timely manner.

In some jurisdictions the Commission may also cover election and campaign expenditure.

It could also cover Constituency Development Funds. If this is to be the case, guidance on the best process should be based on the CPA's *Handbook on Constituency Development Funds (CDFs): Principles and Tools for Parliamentarians*

Additional Revenue Raising Powers

13. (1). The Commission must have the power to seek and receive financial assistance to strengthen the institution of Parliament, including, by sourcing funds from international donors, corporate sponsorship and commercial use of the Parliamentary precinct.

(2). The Commission must have an open and transparent process in which it seeks and recieves its financial assistance in compliance with government or parliamentary procurement policies.

It is essential that Parliaments have the discretion and flexibility to source additional financial resources to augment or subsidise the funding allocated from the Consolidated Fund.

PART 5

Parliamentary Service

14. (1). There is established by this Act a Parliamentary Service, referred to in this Act as "the Service".

(2). The Service is not an instrument of the executive government.

(3). The Service must comprise such officers and departments as may be prescribed and determined by the Commission.

(4). The Service will be outside the jurisdiction of the Public Service and the Public Service Commission.

(5). The Service may, with the approval of the Commission, provide administrative and support services for the following persons and agencies -

(a). any officer of the Parliament;

(b). any office of Parliament;

(c). any department or other instrument of the Parliament.

This section is a core element of the Model Law to form a Parliamentary Service that is independent of the public service.

The Public Service may be know as the Public Administration or Civil Service. This should be amended dependent on the national context.

Clerk of the Parliament

15. (1). There must be a Clerk of the Parliament who must be the Head of the Parliamentary Service and is to be responsible for the day to day business of the Parliamentary Service and must report to the Commission.

(2). The Clerk must be the Senior Accounting Officer and Corporate Officer of Parliament and must have the power to enter into contracts on behalf of the Commission.

(3). The Clerk of the Parliament must be appointed by a resolution of Parliament on the recommendations of the Parliamentary Services Commission and Public Services Commission, or its equivalent.

(4). The Clerk of Parliament is not subject to the direction of the Executive.

(5). The Commission must set the pay, allowances, benefits, pensions and terms and conditions of employment which is commensurate with the role of Clerk of Parliament.

There may be a different body responsible for public service appointments. This provision should be an amendment dependent on the appointments process in place for the jurisdiction. It could of course be just the Commission.

It is essential however that the Clerk of the Parliament is appointed by the Commission and not another entity, most notably the executive as this would risk undue influence.

Principal functions of the Parliamentary Service

16. (1). The principal functions of the Parliamentary Service are—

(a). to provide administrative and support services to the Parliament, its Members and any committee or agency of the Parliament for the purpose of ensuring the full and effective exercise of the powers of Parliament;

(b). to provide such other services as the Parliament may by resolution determine.

Similar Laws will include a breakdown of the minimum officers, departments and services the Parliamentary Service should provide. This is not included in this Model Law as such a composition would be unique to the individual Parliament

PART 6

Transitional Provisions

17. (1). Staff must be deemed to be appointed to the Parliamentary Service, if immediately before the commencement of this Act, they -

(a). were employed by the former legislative service, or;

(b). assigned or seconded to Parliament by the public service.

(2). Staff must have the option to remain in the Parliamentary Service or to be redeployed to the public service.

(3). A person who fails to exercise the option conferred by subsection (2) within a period specified by the Parliamentary Service Commission, must be deemed to have opted to retire from the Service.

Part 6. covers any transitional requirements and provisions to ensure that there are processes in place for existing staff working in the Parliament to be transfered to the new Parliamentary Service.

FURTHER READING

Publications

Benwell, R. and Gay, O. (2011) Separation of Powers, House of Commons Library

Breukel, J. et al (2017) Research Paper: Independence of Parliament (Parliamentary Library & Information Service, Department of Parliamentary Services, Parliament of Victoria)

Commonwealth Secretariat (2008) The Edinburgh Plan of Action for the Commonwealth for the development, promotion, and implementation of the Commonwealth Latimer House Principles

Commonwealth Secretariat (2013) Charter of the Commonwealth

Commonwealth Secretariat (2017) The Commonwealth Latimer House Principles: Practitioner's Handbook

CPA and the World Bank Group (2005) Administration and Financing of Parliament

CPA (2009) Commonwealth Latimer House Principles on the Three Branches of Government

CPA and SUNY/CID (2016) Handbook on Constituency Development Funds (CDFs): Principles and Tools for Parliamentarians

CPA (2017) The Parliamentarian - Issue 3, Parliamentary Independence and the Separation of Powers. Article by Breukel, J., An analysis of the Commonwealth Latimer House Principles

CPA (2018) CPA Recommended Benchmarks for Democratic Legislatures

CPA (2019) The Parliamentarian - Issue 4, Conference Issue: 64th Commonwealth Parliamentary Conference in Uganda

Example Legislation

Legislative Assembly (Office of the Legislative Assembly) Act, 2012, ACT

Parliamentary Service Act 1999, Commonwealth of Australia

Parliament of Canada Act 1985, Canada

Parliamentary Service Act – 1993, Ghana

The Constitution of Kenya (Amendment) Act, 1999, Kenya

Parliamentary Service Act 2000, New Zealand

Appropriation (Parliament) Act 2019, Queensland

The Scotland Act 2012, Scotland

The Administration of Parliament (Amendment) Act, 2006, Uganda

House of Commons (Administration) Act 1978, United Kingdom

House of Commons Commission Act 2015, United Kingdom

The Parliamentary Service Act, 2016, Zambia

APPENDIX

Where applicable, the following Commonwealth-wide guidelines, principles and standards have been in incorporated into the Model Law. There are however other international standards which could be added.

Commonwealth Latimer House Principles

Section III of the Principles state:
Independence of Parliamentarians: (a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

Commonwealth Charter

In March 2013, the first Commonwealth Charter adopted by Commonwealth Heads of Government validated the Latimer House Principles on maintaining integrity of the three branches of government (article VI).

"We recognise the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance."

CPA Recommended Benchmarks for Democratic Legislatures

1.5 Remuneration and Benefits

1.5.1 Fair remuneration and reimbursement of parliamentary expenses shall be provided to legislators for their service, to ensure that they give priority to parliamentary duties. All forms of compensation shall be allocated on a non-partisan basis.

1.5.2 An independent body or mechanism should determine the remuneration, benefits and other statutory entitlements of legislators.

5. General

5.1.1 The Legislature, rather than the Executive branch, shall control the parliamentary service and determine the terms of employment. There shall be adequate safeguards to ensure non-interference from the Executive.

5.4 Organisation and Management

5.4.1 The head of the parliamentary service shall have a form of protected status defined in legislation or in the Constitution to prevent undue political pressure.

5.4.2 The remuneration of the head of the parliamentary service shall be set by an independent body or mechanism.

5.4.3 The Legislature should, either by legislation or resolution, establish a corporate body responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service.

7.2 Financial and Budget Oversight

7.2.6 The Legislature shall have access to sufficient financial scrutiny resources and/or independent budget and financial expertise to ensure that financial oversight is conducted effectively.

CPA Study Group on Finance and Administration of Parliaments

The Zanzibar Recommendations
In conclusion, the Study Group made the following recommendations which were subsequently endorsed by Parliaments across Africa, Asia and India. They were:

The Independence and Integrity of Parliament

- All Commonwealth Parliaments should implement the Commonwealth Principles on the Accountability of and Relationship Between the Three Branches of Government, especially those relating to the independence of the Legislature.
- Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with their constitution, free from unlawful interference.
- Parliamentarians should maintain high standards of accountability, transparency and responsibility in the conduct of all public and parliamentary matters.

The Governance of Parliament

- Parliaments should, either by legislation or resolution, establish corporate bodies responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service.
- There should be an unambiguous relationship between the Speaker, the corporate body and the head of the parliamentary service.
- Members of corporate bodies should act on behalf of all Members of the Legislature and not on a partisan or governmental basis.
- The corporate body should determine the range and standards of service to be provided to Parliament, e.g.. accommodation, staff, financial and research services.
- Corporate bodies should promote responsible governance that balances the unique needs of Parliament with general legal requirements, e.g.. employment law, freedom of information and occupational health and safety.
- The head of the parliamentary service should be appointed on the basis of merit and have some form of protected status to prevent undue political pressure.
- The head of the parliamentary service should be given appropriate levels of delegated authority.

Financial Independence and Accountability

- Parliaments should have control of, and authority to set out and secure, their budgetary requirements unconstrained by the executive.
- The remuneration package for Parliamentarians should be determined by an independent process.
- The corporate body should ensure that an effective accountability framework is in place.
- Corporate bodies should ensure regular monitoring of actual expenditure against the amount of money appropriated for parliamentary services.
- The corporate body should ensure compliance with generally accepted accounting standards.
- The head of the parliamentary service should have ultimate financial responsibility for the Legislature.

Parliamentary Service

- Parliaments should be served by a professional staff independent of the public service and dedicated to supporting Parliamentarians in fulfilling their constitutional role.
- The corporate body should ensure that the parliamentary service is properly remunerated and that retention strategies are in place.
- The statutory terms and conditions for the parliamentary service should be based on the needs of the Legislature and not constrained by those of the public service.
- There should be a code of conduct and values for members of the parliamentary service.
- The parliamentary service should include not just procedural specialists, but staff with specialized expertise, e.g. finance, ICT, human asset management, research and communications.
- Effective recruitment on the basis of merit and equal opportunity strategies should be in place that will ensure that the parliamentary service is representative of the diversity of the wider community.
- Corporate bodies should promote an environment that encourages best practices for employee well-being.

Public Accountability

- The corporate body should publish an annual report on its work on behalf of the Legislature including information on the audited accounts and budget estimates.
- There should be an information strategy detailing how the membership and operations of the Legislature will be communicated to the general public.
- Parliaments should develop programmes to promote the general public's understanding of the work of the Legislature and, in particular, to involve school children in increasing their awareness of citizenship issues.
- The corporate body should ensure that the media are given appropriate access to the proceedings of Parliament without compromising the dignity and integrity of the institution.

Commonwealth Parliamentary Conference 2019 - Workshop H: The Role of Parliament in the doctrine of Separation of Powers; Enhancing Transparency and Accountability

At the close of the workshop, recommendations were proposed and endorsed as follows:

- Through Parliament, people exercise their sovereign power. Parliaments must diligently secure practical and well-executed constitutional separation of powers for greater democratic dividends and good governance.
- Parliaments should seek to replicate Gujarat's approach to ensure the doctrine of separation of powers is well entrenched in constitutions, and that legislation passed, is done so in a transparent manner.
- As the stark reality of the authoritarian tendency of the Executive, Parliamentarians must be able to speak their mind in debates, without fear or favour.
- The Commonwealth Lawyers Association supports the promotion of and training in the Commonwealth Latimer House Principles and notes:
    - the continuing need for implementation and compliance by Governments, particularly to ensure that Legislatures have robust independent accountability mechanisms (e.g. through Select Committees) by which Ministers are held to account; and
    - the need to ensure the peer review mechanism by the Commonwealth Ministerial Action Group (CMAG) is appropriate and effective.

Image credits: CPA Secretariat and CPA Branches, Shutterstock file images and freepik.com

Published by the Commonwealth Parliamentary Association (CPA).
Registered Charity Number 263147.

CPA Headquarters Secretariat
Richmond House, Houses of Parliament
London SW1A 0AA
United Kingdom

Telephone: +44 (0)20 7799 1460
Email: hq.sec@cpahq.org
Website: www.cpahq.org