

PRIVILEGES AND PROCEDURES COMMITTEE

(5th Meeting)

27th June 2002PART A

All members were present. Deputy R.G. Le Hérissier was not present for items A3 to A9.

In attendance -

M.N. de la Haye, Deputy Greffier of the States
D.C.G. Filipponi, Executive Officer
M.P. Haden, Committee Clerk.

Note: The Minutes of this meeting comprise Part A only.

Minutes

A1. The Minutes of the Meeting held on 14th June 2002, having been previously circulated, were taken as read and were confirmed.

Policy and
Resources
Committee: Draft
Report and
Proposition on
the Structure of
the Executive -
Role of H.M.
Attorney General.
1240/22/1(18)

A2. The Committee, with reference to its Act No. A5 of 14th June 2002, received H.M. Attorney General and Mr S. Drew, Law Officers' Department, to discuss the future role of H.M. Attorney General as proposed in the draft Report and Proposition of the Policy and Resources Committee on the Structure of the Executive. In this connexion, the Committee received and considered a Memorandum, dated 24th June 2002, from the H.M. Attorney General, together with the comments of the President, and a report from Deputy J-A Bridge concerning a request from Deputy J.A. Martin for advice from H.M. Solicitor General with regard to certain Housing forms.

The Committee considered the role of H.M. Attorney General in the light of potential conflicts of interest that might occur between the Council of Ministers, the Assembly, the Scrutiny Committees and the Crown.

Ex.Off.
A.G.
C.E., P&R
P.R.C.C.
P.R.E.O.

H.M. Attorney General made the following points in the course of the discussion -

- (i) that the Law Officers were advisers in the first instance to the States and Committees. In cases where a States Member was advising an individual challenging the legality of the actions of a Committee, the Law Officers' responsibility was to advise the Committee. In cases where a States Member was seeking advice on a general legal point, the Law Officers' could provide assistance but this would be prioritised against other matters in the Department's workload;
- (ii) that the role of the H.M. Attorney General was to provide advice to the States and Committees on the existing legal position in any issue under consideration. This might include giving a judgement call as well as legal opinion. It was for politicians to consider changes in the Law. It was not within the scope of Scrutiny Committees to question the legal opinion but they might examine how a given Department had applied the Law;
- (iii) that he was concerned at the suggestion that a structure might be set up

which would allow Scrutiny Committees to take separate legal advice. This was on the grounds of duplication of resources and the potential for political debate on the quality of advice given to either side. He suggested that it would be impractical in a small jurisdiction such as Jersey with a limited pool of legal advisers to have separate legal advice teams for the Council of Ministers and Scrutiny Committees. In cases where a conflict might occur in the interpretation of the legal position, States members were not qualified to resolve the issue themselves;

- (iv) that, in his view, the advice given by H.M. Attorney General on any given matter should not be published. He suggested that politicians should have to take responsibility for the decisions they took, not implying that they were relying on the legal advice from H.M. Attorney General;
- (v) that there were occasions, under the current circumstances when Committees might be in conflict over particular issues. It was possible in such cases for a Committee to seek separate legal advice. The convention, though not explicitly stated in the current Law, was that this would not be done without first informing the Law Officers' Department of the intention to do so;
- (vi) that, while the above draft Report and Proposition suggested that H.M. Attorney General would be entitled to sit on all meetings of the Council of Ministers, in practice, he would attend only those meetings where relevant issues were to be discussed;
- (vii) that H.M. Attorney General would be responsible for advising the Council of Ministers on constitutional and international matters. In his view, it was not always possible to draw a clear distinction between what was international and what was domestic; and
- (viii) that he recognised that complexity and sensitivity of the issues but felt that it was possible to be too theoretical about perceived future difficulties. It might be better to wait and see how matters developed and deal with issues of conflict when they arose rather than attempt to counter every possibility in advance.

The Committee expressed the following views -

- (a) that it was concerned that the position of H.M. Attorney General as impartial adviser to the States would be compromised by the perception that he/she was too closely associated with the Executive. It was possible that conflicts of interest would arise between the Executive and Scrutiny Committees where H.M. Attorney General would be seen to have already taken a position on the side of the Executive. It could foresee a situation where a Scrutiny Committee might wish to take legal advice on a matter it was investigating, without wishing information to be passed on to the Executive. This might put H.M. Attorney General in a difficult position;
- (b) that H.M. Attorney General should be the final arbiter for legal opinion, with two sets of legal advisers within his office providing advice separately to the Executive and to Scrutiny Committees. It was felt that this would obviate the perception that might develop that H.M. Attorney General was taking on a more political role and that the Scrutiny Committees would only get a second rate service in comparison with the Executive who would have first call on H.M. Attorney General;

- (c) that separate resources should be made available to enable both Scrutiny Committees and private members to obtain independent legal advice when required. The Committee recalled that this was the situation in the Scottish Parliament;
- (d) that the current role of H.M. Attorney General would inevitably change under the new Ministerial system of government and that it would be important to define his/her role more precisely in the new States of Jersey Law.

The delegation withdrew from the meeting.

The Committee noted that there was a clear difference of opinion between its position and that of H.M. Attorney General. It was mindful that the Policy and Resources Committee was expecting the Committee's response to the above draft Report and Proposition but felt that the matters discussed above required further consideration before it could be in a position to formulate its response. The Committee accordingly agreed to consider the issue further at its next meeting.

The Greffier of the States was directed to send a copy of this Act to the Policy and Resources Committee.

Public Accounts
Committee and
General Auditor -
proposed interim
arrangements.
1240/22/1(8)

A3. The Committee, with reference to its Act No. A5 of 24th May 2002, received Ms. E. Burst, Principal Corporate Policy Officer, Policy and Resources Department, in connexion with her draft report on options for the establishment of a Public Accounts Committee (PAC) and the appointment of a General Auditor for the States.

Ex.Off.

The Committee recalled that it had endorsed the recommendations of the Public Accounts Committee and Auditor General Working Party, namely that a General Auditor should be appointed at the same time, or soon after, the appointment of the Chief Executive and departmental Directors and that the PAC should be created at the earliest opportunity. However, it was aware that no funding to this effect had been made available at the 2003 Revenue Decision Conference.

The Committee considered the way forward and was advised of the following three options, together with their advantages and disadvantages -

- (a) delay the creation of the PAC and appointment of the General Auditor until funding was available;
- (b) introduce an interim PAC hearing system based on the current States Audit Commission's work programme; and
- (c) submit a request for funding to enable the appointment of the General Auditor at the same time as the appointment of the Departmental Directors.

The Committee considered that option (b), while it might have some attraction in that it would incur no cost, would be ineffective as it would have no real power. It favoured option (c) as it felt that it was important to establish this post alongside the new Ministerial system so that the postholder might be involved in the formation and development of the audit process from the outset. The Committee noted that it was estimated that the appointment process would take place during the first quarter of 2003 with the postholder taking up the post on 1st July 2003. On this basis the additional costs in 2003 were estimated at approximately £180,000, with future additional annual costs from 2004 of approximately £350,000.

The Committee requested that the above draft report be finalised as quickly as possible and submitted for its consideration at a subsequent meeting.

Accommodation, services and facilities for States Members.
1060/5/1(18)

A4. The Committee, with reference to its Act No. A6 of 14th June 2002, received a report, dated 25th June 2002, from the Executive Officer in connexion with the States Building refurbishment programme and the provision of States members' facilities.

The Committee noted an update report from the Public Services Committee on the refurbishment contract for the States Building.

Ex.Off.

The Committee recalled that it had planned to survey the views of States members on the type of facilities most desired and the level of interest in such facilities. The Committee received a draft survey form setting out the possible options.

The Committee considered a plan of the current proposals which included the conversion of the current Registre to provide a members common room, research library, three interview rooms and a small kitchen. The Committee, having noted that there was no provision at present for a members' office area, considered the possibility of using the Gallery area in the former Library, which had been partitioned off from the main Library area. It would require the installation of a number of work stations and storage facilities for members to work from. Alternatively, it was felt that there might be an advantage in providing a multi-use common room with computer facilities. This would encourage more frequent use of the facility, particularly outside normal business hours. It was also suggested that members would appreciate a comfortable room where they could relax when they were in town and between appointments. It was agreed that the options should be explored further once the members' survey had clarified the level of interest in the type of facilities that could be provided.

The Committee also considered the possibility of making provision for a members' smoking room. It was noted that no such space had been designated at present and that the building was currently a 'no smoking building'. To retain such a facility would mean the loss of a planned meeting room in the Registre and the installation of appropriate ventilation. It was agreed that all aspects of the issue should be put to members as part of the planned survey.

The Committee was advised that the Law Society Library, which was currently housed in the States Building under an historic arrangement, might provide a valuable additional area of accommodation should it become vacant. The Executive Officer was requested to clarify the position. The president declared an interest in this matter as the Librarian of the Law Society.

The Committee agreed to issue the aforementioned survey within the next week, together with a drawing of the current proposals indicating the possible use of the Registre area. It agreed to give further consideration to a suitable route for funding such facilities in due course once the results of the survey had been collated.

On a related matter, the Committee considered correspondence from Deputy P.J. Rondel regarding States members' access to the States Building. He proposed that members should be provided with keys or key cards to enable access outside normal business hours. The Committee was aware that this was a matter for the Public Services Committee. It agreed that this matter should be considered in the wider context of the provision of facilities for members. It was also agreed that the question of members' access to Morier House should be addressed as a matter of priority. The Executive Officer was requested to liaise with the officers of the Department of Public

Services in this connexion.

Remuneration
and expenses
provision for
States members -
consultation
paper.
1240/3(64)

A5. The Committee, with reference to its Act No. A4 of 24th May 2002, received a draft consultation paper, prepared by the Deputy Greffier of the States, regarding the provision of remuneration and expenses for States members.

The Committee recalled that it had agreed that the level of enhancement to be provided to Ministers and chairman of Scrutiny Committees should be modest at the outset. It was aware, however, that support for a considerably greater level of enhancement had been expressed at a meeting regarding the Structure of the Executive organised by the Policy and Resources Committee on 21st June 2002. The Committee recognised that some regarded the post of Minister under the new system of government as a full-time position. Consequently, they felt that the post should be rewarded adequately to attract the highest calibre of member. Others, however, felt that, in the Jersey context, Ministers could not be expected to give up their jobs entirely. Many professional people would be discouraged from entering politics if this was the case. The Committee agreed to maintain its position with regard to enhanced salaries for Ministers.

Ex.Off.

The Committee endorsed the draft consultation paper but decided to defer issuing the paper for a short period pending the survey on members' facilities.

States of Jersey
Law 1966 -
Amendment (No.
11) of Standing
Orders relating to
Certain
Transactions in
Land.
1240/4/1(24)

A6. The Committee considered the draft Amendment (No. 11) of Standing Orders relating to Certain Transactions in Land, together with a report prepared by the Department of Property Services.

The Committee accepted that the above Standing Orders were part of its responsibility as they were made under Article 27 of the States of Jersey. It was advised that the purpose of the draft amendments were to increase the financial thresholds relating to certain transactions in land below which the consent of the States did not need to be obtained. The opportunity had also been taken to clarify a point concerning amounts of annual rent.

Pub.Ed.
States (2)
T.O.S.
F.E.C.C.
C.I.Aud.
D.P.S.

The Committee approved the above amendment which was to come into force forthwith, and agreed that it should be lodged "au Greffe" once the necessary accompanying report was finalised.

The Greffier of the States was directed to send a copy of this Act to the Finance and Economics Committee for information.

Proposed States
meeting dates
2003.
1240/2(60)

A7. The Committee considered the proposed meeting dates for states meetings in 2003 and approved the following -

January 21
February 4 and 18
March 4 and 18
April 1, 8 and 29
May 13 and 20
June 10 and 24
July 8 and 22
September 9 and 23
October 7 and 21
November 4 and 18
December 1 and 3 (Budget) and 9

Ex.Off.
P.S.C.(2)

The Committee noted that some of the above dates did not comply with Standing

Order 4(1) of the Standing Orders of the States of Jersey and it would, therefore, be necessary to obtain the approval of the States to suspend the Standing Order in order that the dates might be confirmed. The Deputy Greffier of the States was requested to prepare the necessary report and proposition for consideration by the Committee.

The Greffier of the States was directed to send a copy of this Act to the Public Services Committee for information.

Acts of other Committees and matters for information.

A8. The Committee noted the following Acts of other Committees and matters for information -

- (a) Act No.B12, dated 27th May 2002, of the Public Services Committee regarding the States Members' car park to the rear of the Tourism building;
- (b) Act No.A6, dated 30th May 2002, of the Policy and Resources Committee regarding its report and proposition on the Structure of the Executive Government;
- (c) Act No.B5, dated 30th May 2002, of the Policy and Resources Committee regarding the review of the Public Finances (Administration)(Jersey) Law 1967, as amended;
- (d) Act No.B6, dated 30th May 2002, of the Policy and Resources Committee regarding legal instruction resources for the Privileges and Procedures Committee;
- (e) Act No.B8, dated 30th May 2002, of the Policy and Resources Committee regarding resources for the Special Committee on the Composition and Election of the States Assembly; and
- (f) a paper detailing outstanding Committee items and work in progress.

Date of next meeting

A9. The Committee agreed to meet on Tuesday 2nd July 2002, commencing at 1 p.m. in the Peirson Room, Morier House in order to consider the Executive proposals of the Policy and Resources Committee in its draft report and proposition.