

PRIVILEGES AND PROCEDURES COMMITTEE

(1st Meeting)

10th January 2003PART A

All members were present, with the exception of Deputy F.J. Hill, B.E.M., from whom apologies had been received.

Senator C.G.P. Lakeman
 Connétable D.F. Gray
 Deputy C.J. Scott-Warren
 Deputy R.G. Le Hérisier
 Deputy J-A. Bridge
 Deputy J.A. Bernstein

In attendance -

D.C.G. Filipponi, Assistant Greffier of the States
 P. Byrne, Executive Officer
 S. Drew, Assistant Legal Adviser
 M.P. Haden, Committee Clerk.

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

- Vice-President. A1. The Committee, in pursuance of Article 31(1) of the States of Jersey Law 1966, as amended, appointed Deputy J-A Bridge as Vice President.
- First Report -
 comments.
 465/1(22) A2. The Committee considered correspondence, dated 30th December 2002, from H.M. Attorney General, and 19th December 2002, from Mr. J.M.E Harris, Manager of Government Reform, with their comments on the Committee's proposals in its First Report and noted the following matters -
- Ex.Off.
- (a) **Law Officers' Department (2.24 and 2.27)** - The Committee noted the point made by the Attorney General that, generally speaking, the executive decisions of the Attorney General were not susceptible to review through the scrutiny process and the call-in mechanism. It also noted the firm view expressed by the Attorney General that it was not the function of a Scrutiny Panel to review the legal advice given to those taking executive decisions;
 - (b) **Legal advice for Scrutiny Panels** - The Committee recalled that it had agreed to discuss this matter further with the Attorney General and noted that he had been invited to attend a meeting with the Committee to be held on 14th February 2003 for this purpose. It was further noted that the President and H.M. Attorney General were to meet Professor J. Jowell in London on 14th January 2003 to discuss issues relating to the independent status of the States of Jersey Assembly and to latest developments in constitutional reforms in national and local government in the United Kingdom as they related to the government reforms in Jersey;
 - (c) **Code of Conduct (Appendix XIII)** - The Committee agreed that the proposed Code of Conduct was designed for elected members of the States,

not Crown Officers, the Lieutenant Governor of the Dean, who were unelected members of the States;

- (d) **Members' facilities** - The Committee agreed that further investigation was required into the possibility of using the ground floor of Morier House for members' facilities in the event of this space being vacated by the Viscount's Department. This area might offer a cost-effective and preferable alternative to the current proposals for refurbishing the Registre in the States Building. The Vice-President undertook to liaise with the Director of Architecture, Public Services Department, in this respect. The Committee, accordingly, agreed to defer consideration of the draft report and proposition of the Environment and Public Services Committee on Phase 2 of the refurbishment programme for the States Building;
- (e) **Access to information** - The Committee noted that the Legislation Committee had agreed to set up a Working Party on freedom of information and data protection issues. The Working Party would consist of H.M. Attorney General and members who sat jointly on the Legislation and Privileges and Procedures Committees, namely Senator C.G.P. Lakeman and Deputy J-A Bridge;
- (f) **Scrutiny and resources (2.101)** - The Committee noted that the Attorney General had questioned the statement in its First report that '*scrutiny would be a novel experience for most members*'. The Committee, however, maintained its view that scrutiny would demand a change in culture amongst States members involved in this function and that it would be necessary to develop new investigative and analytical skills in order to progress the scrutiny function fully;
- (g) **Public Accounts Committee (PAC) (2.43 and 2.44)** - The Committee recalled that it needed to give urgent attention to finalising its views on the relationship between Scrutiny Panels and the PAC. The proposals for the PAC had been firmed up for some time by the PAC and Auditor General Working Party. However, the Committee felt that, in a small jurisdiction like Jersey, it was necessary to retain flexibility in delineating the respective roles of Scrutiny and PAC. It was agreed that a meeting should be arranged with the aforementioned Working Party at an early opportunity;
- (h) **Co-optees on Scrutiny Panels (2.54)** - The Committee clarified the position of possible co-optees on Scrutiny Panels, in that it was envisaged that they would be non voting members and that they would not, therefore, take part in decisions on budgets and propositions to be considered by the States;
- (i) **Proposed Corporate Services and Policy Scrutiny Panel (2.62)** - It was clarified that this Panel would review '*financial policy*' (not '*finance*' as stated in the Report);
- (j) **Accommodation (2.115)** - The Committee agreed that the question of whether two dedicated rooms or just one would be required for use by Scrutiny Panels could be left till a later date; and
- (k) **Impact of Scrutiny and Executive response (2.117 - 2.122)** - The Committee clarified that it was intended that, where a Scrutiny Panel report indicated that there was a need for the States to debate a certain issue

arising from one of its reviews, the Scrutiny Panel itself would promote the relevant report and proposition. However, it was not expected that each report from a Scrutiny Panel would necessarily require a debate in the States. Should any individual member be dissatisfied with the response of the Executive to a Scrutiny review on any particular issue, it remained their right to move a proposition to debate the issue.

The Executive Officer was requested to reply to both of the above letters indicating the Committee's response to their comments.

Proposed
'Question Time'
in the States.
1240/4(155)

A3. The Committee received correspondence, dated 7th January 2002, from the President of the Policy and Resources Committee, regarding a proposal to hold a regular 'Question Time' in the States, during which members could ask questions of the President of the Policy and Resources Committee with or without prior notice.

C.E., P&R
P.R.E.O.
P.R.C.C.
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The Committee noted that the above proposal had arisen following the success of the recent open question forum in the States for the election of the President of the Policy and Resources Committee. The Policy and Resources Committee had considered whether this practice should be extended to enhance the movement towards more open government and, in advance of the development of the new scrutiny functions, to allow a more structured and frequent scrutiny of current issues with which the Policy and Resources Committee was dealing.

The Committee welcomed the positive suggestion of the Policy and Resources Committee, which it felt might be considered 'courageous', but formed the view that it should be considered in the broader context of a general review of procedures governing the conduct of Questions in the States Assembly. The Committee recalled, with reference to Act No. A3 of 17th September 2001 of the House Committee, that that Committee had had an extensive discussion with the Bailiff on this issue and requested that the Minutes of that discussion be circulated for information to members of the current Privileges and Procedures Committee. It also suggested that an open session, in which States members might be given the opportunity to question the Policy and Resources Committee on its policies, might be instituted as a regular feature of meetings of that Committee.

The Committee directed the Executive Officer to send a letter of response to the President of the Policy and Resources Committee on behalf of the Committee.

Indemnity for
States members.
1240/9/1(90)

A4. The Committee considered a request from Deputy T.J. Le Main that arrangements should be put in place to cover States members against litigation from someone dissatisfied with a political decision.

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The Committee, with reference to Act No. B1 of 13th December 2000 of the House Committee, recalled that this matter had previously been considered by that Committee and that H.M. Attorney General had given advice in a letter, dated 3rd October 2000, which, in summary, was as follows -

- (a) decisions were generally taken by States Committees and not individual States members, and, therefore, any legal action that might arise would normally be taken against the Committee and not the individual. However, the position might be different if an action was taken against an individual member alleging malice, although this would be an extremely high threshold for a would be litigant;

- (b) should a States member face individual legal action brought by a member of the public, the Law Officers' Department would make itself available to advise and represent that individual if he/she so wished. However, should the States decide, in such a case arising, to take action against a member accused of dishonesty or malice under Standing Orders of the States of Jersey, the Law Officers' Department should be on hand to advise and represent the States rather than the individual. Similar difficulties would also exist in such cases where conflicts of interest arise between a States member and a States Committee, or States' departmental Officers, where it would not be possible to represent either party. Therefore, it was not to be assumed that legal assistance was always available to States members;
- (c) insurance policies, although not a matter for the involvement of H.M. Attorney General, might be able to be taken out by individual States members providing cover for legal fees incurred by a member in defending him/herself. Additional insurance would need to be considered in relation to the type of case that might give rise to an award of damages, and if such a case was likely to occur;
- (d) there would be a reluctance by the Law Officers' Department to assist States members who wished to bring their own proceedings as defamation proceedings might end up, if brought unsuccessfully, with the States considering action under Standing Orders of the States of Jersey against the member concerned. For the reasons stated in (b) above, the Law Officers' Department would need to make itself available to the States. In addition, as the resources of the Law Officers' Department were under severe pressure, it would be inappropriate to put the private interest of individual members ahead of the public interest.

The Committee was of the view that it would be difficult to ascertain the value and cost of a relevant insurance policy, as legal proceedings against States members occurred very infrequently in Jersey. Furthermore, it was considered important that any insurance cover should not be seen as providing indemnity against possible unreasonable behaviour on the part of States members. It agreed that the retained States insurance adviser, Mr. N. Tibbo, should be requested to give advice on the matter. The Executive Officer was directed to contact Mr. Tibbo accordingly and to advise Deputy Le Main that the Committee was taking advice on his proposal.

Induction
Programme for
new States
members.
1240/9/1(26)

A5. The Committee, with reference to Act No. A6, dated 29th November 2002, of the Committee as previously constituted, received an oral report from the Vice-President on a meeting which had taken place on 7th January 2003 with representatives of the local media as part of the induction programme for States members.

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The Committee was advised that the meeting had been considered very worthwhile but was disappointed to note that the BBC had been unable to send any representative. The Committee requested that, in view of the important role played by the BBC in the island's political life, the BBC should be requested to suggest alternative opportunities for new States members to meet journalists working on both BBC radio and television in order that members might become more aware of the protocols and benefits of working closely with these arms of the media.

The Executive Officer was directed to write to the Managing Director, BBC Radio Jersey, accordingly.

Development of

A6. The Committee considered how the Scrutiny Function might be trialled over

trial Scrutiny
function.
1240/22/1(9)

Ex.Off.

coming months in advance of the formal establishment of Scrutiny Panels.

The Committee was mindful that any trial system should be well planned and well resourced. The objective of a trial system would be to enable States members and officers supporting the work to start to acquire the skills necessary for effective scrutiny so that a robust framework could be in place to complement the Executive arm of government once the new ministerial system was established in 2005. The Committee recognised that any shadow Scrutiny Panel set up under current circumstances would not be reviewing the ministerial system for which Scrutiny was devised. Nor had the full powers which would eventually be available to Scrutiny Panels yet been decided in advance of a redrafted States of Jersey Law. The Committee, however, agreed that it should still be possible to establish a simplified set of rules of engagement on a voluntary basis to enable effective shadow Scrutiny Panels to operate.

It was proposed that the States should be requested initially to establish two shadow Scrutiny Panels, one reviewing a Department and another looking at a cross-departmental policy issue. There was some initial discussion on whether one of the new merged departments, such as Education, Sport and Culture, might be the focus of a review, or an established department initiating internal changes, such as Health and Social Services. The Committee agreed to give the matter further consideration at its Strategic Policy meeting on 17th January 2003.

The Committee noted that the Policy and Resources Department had requested the return of Mrs J. Bourke, Administrator, from her secondment to the Privileges and Procedures Committee. The President and Vice-President undertook to speak to the President of the Policy and Resources Committee regarding continuing support for the Committee.

The President agreed to make a statement at the first sitting of the States Assembly in 2003 regarding the Committee's plans for trialling scrutiny. He would also make a progress statement on the work on the Committee's Second Report

Matters for
information.

A7. The Committee noted the following matters for information -

- (a) that the Bailiff had been invited to attend the next meeting of the Committee, to be held on 24th January 2003, to discuss his concerns in respect of certain 'constitutional issues' raised by the Committee's proposals on States members' remuneration contained in its report and proposition (P.238/2002). The Committee agreed that it would defer requesting a date for a debate in the States for its proposition pending that meeting. In this connexion, the Committee also noted the views of Deputy T.J. Le Main, who had proposed that the level of remuneration for States members should be frozen at current levels in view of the reduction in workload brought about by the decrease in the number of States Committees;
- (b) correspondence received from former Deputy D.R. Maltwood regarding the entrance to the Public Gallery in the States Building. The Committee agreed that this area needed to be cleaned up and endorsed the suggestion that glazed screening would provide a more acceptable entrance for the public. The Executive Officer was requested to approach the Assistant Director, Design and Conservation, Planning and Environment Department for advice on this matter in the first instance;
- (c) correspondence, dated 2nd January 2003, from the former Deputy K.W. Syvret, M.B.E., previously President of the Special Committee to consider the Relationship between Committees and the States, together with various

correspondence from members of the Administrative Review Board. The Committee, mindful that it had assumed the responsibilities of the above Special Committee, requested that a paper be prepared regarding the terms of reference, functions and procedures for appointment of the Administrative Appeals Panel;

- (d) copy of Birmingham City Council Media Officer Job Description;
- (e) correspondence from Channel Television and the Jersey Evening Post regarding their phone connexions to the States Chamber. It was noted that the BBC had chosen not to accept the Committee's offer to pay for their phone connexion, preferring to affirm its independence;
- (f) Deputy J. A. Bernstein undertook to look into alternative provision for sandwiches for the Committee;
- (g) Act No. A5, dated 29th November 2002, of the Finance and Economics Committee in connexion with the Privileges and Procedures Committee's report and proposition on States members' remuneration; and
- (h) Act No. B12, dated 29th November 2002, of the Finance and Economics Committee in connexion with funding for Phase II of the States Building works.

Dates of meetings 2003. A8. The Committee approved the following dates for future meetings -

- (a) 17th January 2003 - Strategic Policy meeting, commencing at 8 a.m. in the Regency Room, Grand Hotel, St. Helier;
- (b) 24th January 2003, commencing at 12 noon, in the Halkett Room, Morier House, including a meeting with the Bailiff;
- (c) 7th February 2003, commencing at 12 noon, in the Halkett Room, Morier House; and
- (d) 14th February 2003, commencing at 2.30 p.m., in the Halkett Room, Morier House, to meet H.M. Attorney General.