

PRIVILEGES AND PROCEDURES COMMITTEE

(3rd Meeting)

24th May 2002PART A

All members were present, with the exception of Deputy H.H. Baudains, from whom apologies had been received.

In attendance -

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

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

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| Minutes | A1. The Minutes of the Meeting held on 15th May 2002, having been previously circulated, were taken as read and were confirmed. |
| Matters arising | A2. The Committee noted the following matters arising from its meeting held on 15th May 2002 - <ul style="list-style-type: none"> (a) Act No.A2 - Resources - The Committee agreed that it would be appropriate to publicise the launch of its Executive Support team, which would be based in the Peirson Room, Morier House, commencing on 10th June 2002. It was also agreed that, while its Executive Support would be independent of the Policy and Resources Department, it was appropriate for close liaison to be established at officer level to ensure good communications and avoid duplication of effort; (b) Act No. A6 - Accommodation, services and facilities for States members - that the President would liaise with the Deputy Greffier of the States in producing a preliminary list of requirements for members to be considered at the next meeting; and (c) Act No. A8 - E-Government Working Group - The Committee decided to invite Dr. S. Chiang, Director IT Services and/or Ms S. Du Feu, Programme Manager, e-government, to its next meeting to discuss the issues relating to the above Working Group |
| Formation of Scrutiny Committees.
1240/22/1(19) | A3. The Committee, with reference to its Act No. A3 of 15th May 2002, received an outline paper, prepared by Deputy R.G. Le Hérissier, regarding points to be considered in relation to the formation of Scrutiny Committees.

The Committee was advised that the above outline paper would serve as a framework for its future report on the terms of reference, conditions and facilities for Scrutiny Committees. It also received further documents relating to scrutiny arrangements in the United Kingdom, namely 'Overview and Scrutiny: a Practitioners Guide' by Professor P. Corrigan and two case study summaries from the Department of Transport, Local Government and the Regions Overview and Scrutiny Project. These documents, |

together with others already received, would be included as appendices to the above report.

The Committee considered arrangements for the planned seminar for States members on the scrutiny function. It agreed that this should take place on Monday 1st July 2002 as a lunchtime meeting at a venue to be confirmed. The Committee, having noted that Deputy R.G. Le Hérisier had contacted the Institute of Local Government Studies, Birmingham, in relation to possible consultancy work on scrutiny, suggested that the Institute be approached with regard to a possible facilitator for the above seminar. It recognised that it would be important for such a facilitator to be well briefed on the local situation, including the Implementation Plan and the decision of the States on 28th September 2001 to develop a ministerial system of government. Deputy Le Hérisier agreed to work with the Committee's officers in this regard and to prepare a draft paper for the next meeting outlining the issues that might be addressed at the seminar.

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

A4. The Committee, with reference to its Act No. A7 of 15th May 2002 gave further consideration to a report, dated 12th May 2002, prepared by the Deputy Greffier of the States regarding the provision of remuneration and expenses for States members.

D.G.O.S.

The Committee, having regard to the consultation paper produced by the former House Committee (R.C. 33/2001) together with the subsequent comments received from States members, agreed as follows -

- (a) that a basic salary should be available to all members irrespective of income from outside sources;
- (b) that the level of payment should be linked to Grade 10/11 of the Civil Service scale of salaries;
- (c) that an enhancement to the basic salary should be paid in respect of a member's responsibility position. For the time being this should be limited to the posts of Ministers and Chairmen of Scrutiny and Public Accounts Committees, pending further clarification of the position of Assistant Ministers within the Executive;
- (d) that the level of the above enhancement should be modest at the outset:
Ministers/Chairman of Scrutiny Committees: 10/15 per cent of basic salary
Chief Minister: 50 per cent of basic salary; and
- (e) that, rather than establishing a specific pension scheme for members, the level of the basic salary to be made available to members should be adequate for members to make their own financial arrangements for retirement; and
- (f) that the question of expenses should be linked to the provision of adequate accommodation and facilities. The Committee was of the opinion that, with improved administrative support available to members in the future, it might be possible to restrict members' expense allowance to the level set by the Comptroller of Income Tax as tax deductible without a formal claim (currently £3,500).

The Committee requested the Deputy Greffier of the States to prepare a draft consultation paper for its consideration at a subsequent meeting, setting out the

principles and likely costings for a scheme based on the aforementioned points of agreement. It agreed that this consultation paper should be circulated to members in conjunction with the planned paper on accommodation, facilities and services for States members.

Public Accounts
Committee and
Auditor General
Working Party -
report.
1240/22/1(18)

A5. The Committee, with reference to its Act No. A10 of 15th May 2002, received a delegation from the Public Accounts Committee and Auditor General Working Party, comprising Deputy P.F.C. Ozouf, Mr I. Black, Treasurer of the States and chairman of the Working Group, Mr T. Dunningham, Chairman of the States Audit Commission, Mr K. Hemmings, Acting Chief Internal Auditor, and Ms E. Burst, Principle Corporate Policy Officer, Policy and Resources Committee, in connexion with the recommendations contained in their final report to the Policy and Resources Committee.

C.E., P&R
P.R.C.C.
P.R.E.O.

The Committee recalled that the above report had been endorsed by the Policy and Resources and Finance and Economics Committees. In accordance with the States decision of 26th April 2002 (P.23/2002), the responsibility for implementing the Public Accounts Committee and Auditor General fell within the Committee's terms of reference.

The Committee received a presentation, prepared by Ms Burst, and discussed the following points with the delegation -

- (a) **Auditor General:** The Committee was advised that this post was of high importance within the new Machinery of Government. Ideally, the postholder should be in place to help shape the formation and development of the audit process from the outset. However, there were currently no funds allocated to the establishment of this post in 2003.

It was agreed that, once established, it would be appropriate for the Auditor General to be sited in the States Greffe, Morier House, subject to the availability of suitable accommodation space.

It was suggested that the term 'General Auditor' should be used to avoid any confusion with H.M. Attorney General when abbreviating the designation;

- (b) **Interim Public Accounts Committee (PAC):** The Committee formed the view that, until funding became available for the establishment of the PAC and Auditor General, an interim PAC could be put in place based on the current Audit Commission. The Committee agreed to give further consideration to this suggestion;
- (c) **Responsibilities of the Public Accounts Committee (PAC):** It was agreed that it was important to clarify the distinction between the role of the PAC and Scrutiny Committees. The role of the PAC would to review how policy was administered and to scrutinise public expenditure, income and assets. It would also be responsible for value for money audits.

Scrutiny Committees, on the other hand, were responsible for examining the formulation of policy. Thus they might question a Minister on political decisions taken, while the PAC might call civil servants to explain how the policy had been administered in order to assess value for money and the use of public funds.

The Committee received flowcharts representing the process for both

financial audits and value for money audits. It noted that a video was available showing the PAC in the United Kingdom in action. It agreed that it would be useful to hold a viewing for States members.

The Committee agreed that the distinction in the roles of Scrutiny Committees and the PAC should be borne in mind as it developed its proposals on the arrangements for scrutiny. The Executive Officer and Ms Burst were requested to liaise in the preparation of a paper in this respect to be considered at a subsequent meeting;

(d) Membership of the Public Accounts Committee

The Committee recalled the view of the Policy and Resources Committee that the Scrutiny Committee Chairmen should form the majority of the membership of PAC. The initial view of the Privileges and Procedures Committee, however, was against this conclusion. It was of the opinion that, while members of the PAC might also serve on Scrutiny Committees, they should not be the Chairmen of those Committees. The clear distinction in roles between the Scrutiny Committees and the PAC should be maintained.

The Committee thanked the delegation for their report and their contribution to the meeting before they withdrew.

Access to
Committee
Minutes by States
members.
1240/1/2(18)

D.G.O.S.

A6. The Committee received a report, dated 14th May 2002, from the Deputy Greffier of the States regarding access to Committee Minutes by members of the States.

The Committee recalled that, in accordance with a ruling in 1987 from H.M. Attorney General of that time, members were entitled to access Committee Minutes and other papers in the custody of the Greffier of the States in connexion with matters connected to their States' duties. The normal practice was for members to inform the relevant Committee President as a matter of courtesy. The Committee was advised that the Greffier of the States, concerned that the above ruling gave members the right to access a wide range of highly confidential private and personal information and that breaches of confidentiality could theoretically arise as a result, had requested clarification from H.M. Attorney General as to whether the 1987 ruling remained valid in light of the changes since that date in relation to matters such as Human Rights, privacy and data protection. The Committee noted the correspondence from H.M. Attorney General, dated 3rd and 15th April 2002, in which he advised that the matter was essentially a political rather than a legal question. He had gone on to express the view that members requesting access to information should be made fully aware of confidentiality and privacy issues.

The Committee agreed that the possible consequences of any breach of confidentiality should be clearly explained to members who should be required to sign some form of declaration of agreement. The Committee also considered whether there was a need to include information in respect of the names of individuals in Committee Minutes. It was mindful in particular of applications made to the Housing and Human Resources Committees where sensitive private details might be the subject of a report to the Committee. It suggested that Committee papers and Minutes might simply use a code known only to the Department rather than the names of individuals. The Committee decided to request all Committees to review their procedures in relation to confidentiality, privacy, Human Rights and data protection issues and to report back to the Committee on their guidelines in this respect. The Deputy Greffier of the States was requested to prepare a letter for the President to send to all Committees giving the full background to the Committee's concerns that lay behind this request.

The Committee, following H.M. Attorney General's advice, approved in principle a procedure for accessing Minutes, as follows -

- i) Member makes request to the Greffier to access Minutes
- ii) Greffier informs relevant Committee President but does not disclose name of member seeking access unless authorised to do so by the member concerned;
- iii) Member is granted access after signing an appropriate declaration on privacy and confidentiality issues.

The Committee requested the Deputy Greffier of the States to finalise guidelines setting out clearly for members the framework for the operation of the policy on access to Committee Minutes. The Committee agreed that, subject to the Bailiff's approval, it would take a proposition to the States to seek approval for these guidelines, after seeking advice from H.M. Attorney General on the appropriate wording of the declaration on privacy and confidentiality issues that members would be required to sign.

Public Finances
(Administration-
istration) (Jersey)
Law 1967, as
amended -
review.
1038(52)

A7. The Committee received a delegation from the Finance and Economics Committee, comprising Deputy D.R. Maltwood, the Treasurer and the Deputy Treasurer of the States, to discuss that Committee's review of the Public Finances (Administration)(Jersey) Law, 1967, in as far as it related to the Privileges and Procedures Committee's responsibility for reviewing Standing Orders.

The Committee was advised that the Finance and Economics Committee wished to comment and put forward proposals in the following areas -

C.I.Aud.
F.E.C.C.
T.O.S.

(a) **Propositions and draft legislation going to the States which have financial consequences**

The Committee was advised that, in line with best practice in financial management, it was proposed that, following sound strategic planning procedures, States funding should be allocated through an annual prioritisation process, which would only be amended in an emergency situation. This proposal would have implications for the traditional right for States members to introduce propositions to the States, as a proposal involving additional expenditure could only be approved 'in principle' pending the next annual resource allocation process. It was the view of the Finance and Economics Committee that it should not then be possible to bring a proposition with wording requesting the Finance and Economics Committee (or Minister) to identify a source of funding. Similarly, amendments to propositions, which required additional funds, would only be permitted 'in principle'. In the current situation, it was possible for members to bring forward propositions or amendments with considerable financial significance for the States, which fell outside the normal resource allocation procedure. The Committee was advised that this proposal reflected the position in many other administrations. It was based on sound financial discipline which meant that the States could not approve a proposal which was recognised as 'a good thing' without identifying clearly where the funding was to be found.

The Committee considered the example of the proposed new Race Relations Law, put forward recently by the Legislation Committee. This

proposal was part of a strategic plan approved by the States and would take its due place in the resource allocation process, having now been approved 'in principle' by the States.

The Committee was mindful of the sensitive political nature of the above proposal, which would constrain the rights currently members possessed to bring forward proposals which they considered to be of pressing importance. Members would need to understand how they could still, press their case. In the first instance, they would need to convince the appropriate Minister. If that course of action failed, they could proceed through an approach to a Scrutiny Committee or through a public campaign to apply the pressure of public opinion.

The Committee agreed that this proposal needed further careful consideration and agreed to address the matter at a subsequent meeting.

(b) Financial Information included in reports accompanying propositions and legislation going to the States.

The Committee noted that the Finance and Economics Committee's view was that the Public Finances Law, rather than States Standing Orders should provide for the requirement for the inclusion of consistent financial information in reports accompanying propositions and proposed legislation to going the States (including amendments thereto). It was further proposed that the current requirement for the Finance and Economics Committee to comment in every case should be optional and/or delegated to the Treasurer.

In this connexion, the Committee recalled, with reference to Act No. B1, dated 5th November 2001 of the former House Committee that that Committee had considered a draft Code of Direction setting out a minimum standard requirement for financial information to be provided to States Members when proposals and amendments were to be debated. The House Committee had argued that individual members could not be expected to provide this information without assistance. They had argued that neither the administering Department nor the Treasury were considered to be impartial and that there should be some form of independent assistance, though this would be difficult to provide in some circumstances in a small jurisdiction such as Jersey.

The Committee agreed to give this matter further consideration at a subsequent meeting, having reviewed the previous draft Code.

(c) Propositions regarding building plans

The Committee endorsed the recommendation that the requirement for building plans to be debated in the States should not be included in revised Public Finances legislation.

(d) Tenders

The Committee endorsed the recommendation that the Public Finances legislation would not in future provide for tenders to be noted by the States.

(e) Land Transactions

The Committee endorsed the recommendation that the Minister responsible for property transactions should produce a Direction for other Ministers and officers to follow. This should replace the Standing Orders relating to Certain Transactions in Land.

The Delegation from the Finance and Economics Committee agreed to provide a flowchart illustrating how the proposed new system of financial discipline would work in comparison to the current situation.

The Committee requested clarification on the relative position of Standing Orders and Codes of Direction with regard to their binding power on States members.

The Committee mindful that the review of the States of Jersey Law 1966 and Standing Orders was part of the second tranche of tasks assigned to it by the States, agreed to give further detailed consideration to the recommendations in (a) and (b) above once its Executive team was in place.

The delegation was thanked for its submission before it withdrew from the meeting.

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

Date of next meetings.

A8. The Committee confirmed the date of its next meeting which was to be held on 7th June 2002, commencing at 9.30 a. m. in the Halkett Room, Morier House.

The President agreed to circulate members with a list of proposed dates for future meetings in the rest of June 2002.

Matters for information

A9. The Committee noted the following matters for information -

- (a) that the President would issue a press release on the work of the Committee to date;
- (b) that the Minutes of the Committee would henceforth be made available on the States Assembly website rather than being e-mailed directly to all States members. Those members of the States who did not have access to e-mail would be offered the opportunity of receiving hard copies of the Minutes.