

PRIVILEGES AND PROCEDURES COMMITTEE

(34th Meeting)

13th January 2005PART A

All members were present, with the exception of Deputy J-A. Bridge, from whom apologies had been received.

Deputy R.G. Le Hérisier  
 Senator P.V.F. Le Claire  
 Connétable D.F. Gray  
 Deputy P.N. Troy  
 Deputy C.J. Scott Warren  
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States  
 Mrs. A.H. Harris, Deputy Greffier of the States  
 I. Clarkson, Committee Clerk

Note: The Minutes of this meeting comprise Part A and Part B.

- Minutes. A1. The Minutes of the meetings held on 23rd September (Part A only), 20th October (Parts A and B), 4th November (Parts A and B), 17th November (Part A only), 25th November (Parts A and B), 6th December (Part A only) and 13th December 2004 (Part A only), having been circulated previously, were taken as read and were confirmed.
- Matters arising. A2. The Committee noted the following matters arising from the Minutes of its meetings held on 23rd September (Part A only), 20th October (Parts A and B), 4th November (Parts A and B), 17th November (Part A only), 25th November (Parts A and B), 6th December (Part A only) and 13th December 2004 (Part A only) –
- (a) **Act No. A2 of 25th November 2004** - the Committee noted that the Policy and Resources and Finance and Economics Committees continued to consider their positions regarding the proposed arrangements for Budget Scrutiny in the forthcoming ministerial system of government;
  - (b) **Act No. A7 of 25th November 2004** – the Committee acknowledged that it had received concerns from several members regarding the restricted availability of parking for members in Sand Street Car Park. Deputy C.J. Scott Warren undertook to make enquiries with the President of the Environment and Public Services Committee regarding the anticipated level of demand for such spaces;
  - (c) **Act No. B1 of 25th November 2004** - the Committee recalled that the Code of Conduct Working Party was unable to proceed with an effective review of the draft Code of Conduct for Elected Members of the States

until such time as the Law Officers' Department had issued advice in respect of the States of Jersey Law 200- and the matter of the disciplinary provisions for members;

(d) **Act No. A8 of 6th December 2004** - it was reported that Deputy J.A. Hilton was due to clarify her position as a member of Shadow Scrutiny once the new Chairmen of the Shadow Scrutiny Panels had been elected; and,

(e) **Act No. B2 of 6th December 2004** – the Committee expressed its thanks to Mr D.C.G. Filipponi, Assistant Greffier of the States, for his efficient handling of transitional arrangements for States members' remuneration.

Simultaneous  
electronic voting.  
1240/22(8)

A3. The Committee, with reference to its Acts No. A4 of 6th December 2004, recalled that it had invited the Bailiff to consider formulating an appropriate policy in connexion with the application of Standing Order 31B (3).

The Committee welcomed Sir Philip Bailhache, Bailiff.

The Bailiff explained that he had met with the Deputy Bailiff, Senator J.A. Le Maistre and the Greffier and Deputy Greffier of the States to discuss the application of Standing Order 31B (3). Those present had agreed that they were minded to continue to give time for those members present on the first floor of the States Building to return to their designated seats. Votes taken after closing speeches were, however, considered to be an exception, as it was thought that members should by then have returned to the Chamber in any event.

**The Committee agreed with the approach suggested by the Bailiff.**

On a related matter, it was clarified that the President of the Assembly would ensure that members, once in the Chamber, were given sufficient time to their seat in a dignified manner.

Propositions for  
closure of debate.  
1240/4(168)

A4. The Committee, with reference to its Act No. A5 of 6th December 2004, recalled that it had referred to the Working Party on the Arrangement of Public Business in the States Assembly the matter of whether the procedure associated with propositions for closure of a debate should be refined.

Bailiff  
Clerk  
G.O.S.

The Committee welcomed Sir Philip Bailhache, Bailiff.

Deputy P.N. Troy advised the Committee that the Working Party had agreed with the view held by the Committee that members should give ten to fifteen minutes notice of their intention to propose the closure motion. Further to the foregoing, it suggested that notice could be given to the President by written note. Finally, and in connexion with complaints received from certain members that the President had, on occasion, failed to notice that they wished to speak during a debate, the Working Party had decided to recommend that consideration be given to the installation of an electronic notification system in front of the Bailiff's seat.

The Bailiff advised that, whilst a number of members waited to be called before proposing that the question be put, others had a tendency to call out across the Chamber without regard for the good order of the Assembly. He suggested that the latter approach should be ignored by the Chair. With regard to the matter of members being seen by the Chair, the Bailiff repeated his previous advice to the Committee that he did not consider that the Royal Mace obstructed his field of vision. Moreover, he informed the Committee that he tended to keep an informal list of those members

who had indicated a desire to speak and that both the Deputy Bailiff and the Greffier of the States did likewise. He invited members to accept that there would inevitably be occasions when they would not be at the top of the relevant list, as others were waiting to speak.

**The Committee noted the comments made by the Bailiff and deferred further consideration of the matter to a subsequent meeting.**

Standing Orders:  
proposed  
amendment:  
question time.  
1240/4(170)

A5. The Committee, with reference to its Act No. A1 of 18th October 2004, recalled that amendments had been made to the Standing Orders of the States of Jersey in respect of question time.

The Committee received a report and proposition, brought by Deputy G.P. Southern of St. Helier, entitled 'Amendment (No. 28) of the Standing Orders of the States of Jersey (Projet No. P.5/2005 refers). It noted that the purpose of the said report and proposition was –

Bailiff  
Clerk  
G.O.S.

- (a) to increase the number of oral questions that a member was permitted to submit per sitting from two to three, and
- (b) to increase the duration of question time from 60 to 90 minutes.

The Committee welcomed Sir Philip Bailhache, Bailiff.

The Bailiff observed that, under the existing system, the total number of oral questions submitted for an individual sitting had yet to exceed 12. He further observed that there had yet to be an occasion where an approved question had not been put due to a lack of available time. However, the Bailiff acknowledged that the Assembly might, on occasion, have preferred to explore certain topical and important questions in greater detail. Having recalled that the order in which questions were asked was determined by ballot, the Bailiff invited the Committee to consider whether it might be preferable for the Chair to allow one or more questions further down the list to fall away so that the Assembly was able to explore a matter of particular importance or interest in greater detail. The Working Party had expressed the view that in the interests of covering individual questions properly, some questions should fall from the bottom of the list if they could not be reached.

The Committee expressed reservations in connexion with the proposal to increase the permitted number of oral questions per member. **It agreed to formulate a suitable comment at a subsequent meeting.**

Absence from the  
States Assembly.  
1240/9/1(132)

A6. The Committee was advised that the Working Party on the Arrangement of Public Business in the States Assembly had met on 11th January 2005 and that the issue of members' absence from the Assembly had been raised at that meeting.

Bailiff  
Clerk  
G.O.S.

The Committee welcomed Sir Philip Bailhache, Bailiff.

Deputy P.N. Troy advised that the Working Party was of the view that the existing system of recording absence from the States Assembly was inequitable and outdated and that, in particular, the excuse of being out of the Island was no longer appropriate. It was further reported that the Working Party was keen to establish whether the Bailiff was prepared to exercise discretion on the matter of whether an individual member could be declared as legitimately absent on States business. In addition, the views of the Bailiff were sought on the matter of whether a member should be declared 'en défaut' for having left the Island to take a family holiday.

The Bailiff advised that he would be prepared to exercise discretion on the understanding that the necessary parameters were defined clearly. With regard to the matter of members taking a family holiday, the Bailiff considered that it might be appropriate to amend the relevant provision so that a member would be declared 'en défaut' in such circumstances.

The Committee deferred further consideration of the matter to a subsequent meeting.

A People's  
Advocate:  
comments.  
1240(175)

A7. The Committee, with reference to its Act No. A6 of 25th November 2004, recalled that it had planned to comment upon the report and proposition brought by Senator S. Syvret, entitled 'A People's Advocate' (Projet No. P.202/2004 refers).

A.G.  
Clerk  
G.O.S.

The Committee received the comments of H.M. Attorney General in connexion with Projet No. P.202/2004.

The Committee welcomed H.M. Attorney General.

H.M. Attorney General advised that, in his opinion, the States Assembly was ill-suited to a debate on legal opinion, a situation that might well become a comparatively regular occurrence in the event that a People's Advocate was appointed. He reminded the Committee that the advice which emanated from his department should be treated as impartial and objective, and that such advice was intended to be for the benefit of the Assembly, its Committees and Scrutiny Panels, and for individual members.

The Committee reiterated its view that there was a need for an inquiry into the rôle of the unelected members of the Assembly, including that of H.M. Attorney General and H.M. Solicitor General.

A discussion ensued regarding the practicality of electing an Attorney General. The Committee considered that the Assembly would inevitably seek to appoint a lawyer of considerable experience. It was acknowledged that potential candidates would probably have established themselves as partners in the private sector and that the financial insecurity of a relatively short term elected position might prove to be less than attractive. The Committee further acknowledged that an elected Attorney General might be expected to benefit from voting rights in the Assembly.

Other matters considered by the Committee included allegations of bias in recent contributions made by H.M. Attorney General to the Assembly and the question of whether the funding required for a People's Advocate might actually be better spent within the Law Officers Department.

H.M. Attorney General, having been thanked by the Committee for his attendance, withdrew from the meeting.

**The Committee deferred further consideration of the matter to a subsequent meeting, once members had had the opportunity to consider the comments presented to the States by the Law Officers' Department in more detail.**

Composition and  
election of the  
States Assembly:  
establishment of  
new Special  
Committee.

A8. The Committee recalled that a number of private members' propositions concerning composition and election issues had been lodged 'au Greffe' in recent weeks. In the absence of a Special Committee on the Composition and Election of the States Assembly, several such propositions had already been referred to the Committee for comment. Moreover, it was considered likely that others would be referred in due course.

Clerk  
G.O.S.  
P.R.C.C.  
P.R.E.O.

The Committee considered that some members of the Assembly had become frustrated with the relative lack of progress on certain composition and electoral reform related matters, including –

- (a) the rôle of the unelected members,
- (b) the overall number of members,
- (c) the date and frequency of elections,
- (d) a common election day for Connétables, and
- (e) the term of office of members.

It agreed that the resignation of the Special Committee on the Composition and Election of the States Assembly on 24th November 2004 had left these important issues outstanding. Therefore, the Committee agreed that it would be appropriate to consider whether a new Special Committee should be established.

The Committee received a report, dated 4th January 2005, prepared by the Greffier of the States, in connexion with the possible establishment of either a new Special Committee or an outside body charged with making recommendations to the States.

It was explained that the formation of a new Special Committee might curtail the prevailing tendency of members to bring forward important matters concerning the constitution and election of the Assembly on an ad hoc basis. However, this could not be guaranteed, particularly as States' members were acknowledged to hold a wide range of strong views on the relevant issues. It was acknowledged that terms of reference more precise than those of the previous Special Committee would be required, so as to encourage a more focussed approach to the aforementioned outstanding issues.

On the matter of establishing an outside body, the Committee considered that such an exercise would be perceived by some as a repeat of work carried out four years previously for the Policy and Resources Committee by the panel chaired by Sir Cecil Clothier.

**Ultimately the Committee considered that it would be appropriate to defer further consideration of issues in connexion with the composition and election of the States Assembly until 2006 and after the commencement of ministerial government. Notwithstanding the foregoing, the Committee acknowledged that it was due to receive the final report of the Joint Working Party on Electoral Reform in connexion with a review of the Public Elections (Jersey) Law 2002.**

With regard to the matter of current propositions on composition and election issues which had been referred to the Committee for comment, the Committee agreed that such matters tended to fall outside of its terms of reference. Furthermore, it recalled that the recommendations of the Special Committee on such matters had been firmly rejected by the States in November 2004, which had, in turn, led to the resignation of the Special Committee. The constitution of the Special Committee at the time of its resignation was identical to that of the Committee. **Therefore, the Committee concluded that its mandate to address such matters was clearly compromised and that it should refrain from commenting or making recommendations in connexion with matters directly related to the composition and election of the States Assembly with immediate effect. Further to the foregoing, the Committee**

**agreed that the President should make a Committee Statement explaining its decision to the States.**

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

Shadow Scrutiny  
review:  
Responding to  
Drug Use.  
502/5/6(1)

D.G.O.S.  
Clerk  
Scrutiny  
Encl.

A9. The Committee recalled that the States had adopted Projet No. P.186/2003, entitled 'Shadow Scrutiny: Arrangements and Approval of Chairmen and Members', on 27th January 2004. Draft guidelines for the Shadow Scrutiny Panels had been included as a part of that report and proposition and those guidelines had indicated that each Shadow Scrutiny review should be evaluated objectively by the Panel, the relevant Scrutiny Officers and those departmental officers that had taken an active part in the review.

Accordingly the Committee received a report, prepared by the Committee Clerk, in connexion with a process review of the Shadow Scrutiny report entitled 'Responding to Drug Use'. It noted that the report included an evaluation by the Shadow Scrutiny Panel chaired by Deputy J.L. Dorey, a separate evaluation produced by Deputy G.P. Southern in his capacity as a former member of the Panel, and a record of feedback received from officers involved with the review.

**The Committee noted the contents of the report and acknowledged that the Shadow Scrutiny Panels and their officers would continue to evaluate their operational practices and procedures during the course of 2005.**

**With regard to the matter of publication, the Committee decided as this was the first such report, and as such of public interest, that it would be appropriate to release the officer report on this occasion so as to demonstrate that the Shadow Scrutiny process was being evaluated appropriately. However, and having acknowledged that certain comments included within the appendices to the report contained sensitive information, which had been expressed in confidence, the Committee agreed that the three appendices, together with the corresponding references to the appendices in the officer report, were exempt from disclosure in accordance with exemptions 3.2(a)(i) and 3.2(b) of the Code of Practice on Public Access to Official Information.**

The Greffier of the States was requested to take the necessary action