

STATES OF JERSEY



DRAFT STATES OF JERSEY LAW 200- (P.124/2004): THIRD AMENDMENTS (P.124/2004 AMD.(3))– COMMENTS

**Presented to the States on 9th November 2004
by the Privileges and Procedures Committee**

STATES GREFFE

COMMENTS

Amendment (1)

The effect of this amendment would be to prevent the unelected members of the States (the Bailiff, His Excellency the Lieutenant Governor, the Attorney General, the Solicitor General and the Dean) from speaking in the Assembly except in accordance with rules that would be prescribed in Standing Orders.

The Privileges and Procedures Committee does not support this amendment. The Committee believes that any such restrictions would be unworkable and would, for example, lead to a frequent requirement for the Bailiff to rule on whether comments made by the Dean or the Law Officers breached the rules set out. This would clearly draw the Bailiff into the political arena in a way which would be quite undesirable. In relation to the Bailiff's own position it is not at all clear who would adjudicate if it was alleged that he had spoken in breach of the rules set out in Standing Orders.

The Committee is aware that serious concerns have been voiced concerning the unelected members. The Committee has already announced that it intends to review the position of the unelected members as the next phase of its work on the composition of the Assembly (Act No. A1 of the Privileges and Procedures Committee, dated 28th October 2004, refers) and it considers that will be the appropriate time to assess whether any changes and if so, what changes are necessary. As such, full consideration can then be given to the crucial issue of how the Speakership rôle should be dealt with.

Amendment (2)

The purpose of the amendment is effectively to prevent the introduction of any form of closure motion.

Although the Committee is not unanimous in its support for the closure motion it recognises that on 26th October 2004 the States voted by 29 to 13 to establish the closure motion on a permanent basis and it is likely that the States will take a similar view on this amendment.

Amendment (3)

The Committee supports this amendment even though it considers that it may not be strictly necessary as nothing would currently prevent any member from lodging a proposition.

Amendments (4) and (5)

The effect of amendment (3) would be to lift the current restriction on persons working for the States (other than manual workers) from standing for election as Senator or Deputy. Amendment (4) would lift the restrictions on full-time parish employees.

The Privileges and Procedures Committee agrees that the current blanket restrictions, which are reproduced without amendment from the States of Jersey Law 1966 (the '1966 Law'), could be seen as unduly restrictive.

This is nevertheless a complex area. Although it might be inappropriate to prevent relatively junior officers in some departments from standing for election it would clearly almost impossible to allow chief officers or other very senior officers from standing. In addition there are certain departments, such as the Policy and Resources Department or the States Greffe, where all officers have very direct contact with members and where it might be inappropriate to allow any officer to stand for election. There are undoubtedly a range of issues about the impartiality and neutrality of the civil service that would need to be addressed and any officer permitted to stand would almost certainly need to take a period of unpaid leave prior to the election.

The Privileges and Procedures Committee cannot support these amendments as presented as it considers that there may be contractual and other issues to consider.

Nevertheless it considers that the Policy and Resources Committee, with advice from the Human Resources

Department, should review the issues relating to public servants standing for election and bring forward recommendations after consulting the relevant staff representatives. If necessary amendments to this Law can be brought forward in due course.

Amendment (6)

This amendment is partly consequential on amendments (4) and (5) as it would have the effect of requiring any parish employee to resign from that employment if elected to the States. It can nevertheless be considered in isolation as part-time parish employees will continue to be able to stand for the States even if Senator Syvret's amendment (5) is rejected as Article 8(1)(c) of the Law only prevents full-time parish employees from standing for election. The Privileges and Procedures Committee therefore supports this amendment which would require a part-time employee of a parish to resign that position if they were elected to the States, failing which they would be disqualified from being a Senator or a Deputy.

There is also a related issue – of part-time Parish employees standing and campaigning for election which needs to be addressed by the Working Party on Electoral Procedures.

Amendment (7)

The Privileges and Procedures Committee accepts this amendment which would have the effect of increasing the quorum of the States from 24 to 27, namely half plus one.

In bringing forward the draft Law the Privileges and Procedures Committee worked on the general principle of re-enacting the provisions of the 1966 Law unless there was a decision of the States to make changes or there were other compelling reasons to change the existing provisions. As there has been no 'in principle' decision about the quorum, the Privileges and Procedures Committee retained the quorum of 24 which it is believed dates back to a time when the States had a membership of 48 (12 Jurats, 12 Connétables, 12 Rectors and 12 Deputies). In addition the Committee was aware that the whole matter of the composition of the Assembly was about to be debated and considered that the quorum could be addressed as part of any changes agreed in that process. The Committee is nevertheless content to accept that, if a quorum is considered desirable, it is more logical for it to be 27.

Amendment (8)

The Privileges and Procedures Committee accepts this amendment. Although it is hoped that the draft Strategic Plan of the Council of Ministers will be discussed by the Scrutiny Panels as it is developed, it is appropriate that it should be formally referred to a Panel after it is finalised and lodged 'au Greffe' and before it is debated.

Amendment (9)

The Privileges and Procedures Committee accepts this amendment which would mean that a Clerk from the States Greffe would be responsible for taking the Minutes of all Council of Ministers meetings. This proposal has already received the support of the Policy and Resources Committee and will ensure that an accurate and independent record of Council meetings is drawn up.

Amendment (10)

The Privileges and Procedures Committee accepts this amendment which is considered adds clarity to this Article to specify that the election of the Chief Minister will have to take place in accordance with procedures prescribed in Standing Orders.

Amendment (11)

The Privileges and Procedures Committee cannot support this amendment. When the States took a number of 'in principle' decisions about the operation of the future ministerial system the Committee was charged to incorporate the decisions into the draft States of Jersey Law. This amendment, and a number of others referred to below, runs

counter to decisions taken by the States and the Privileges and Procedures Committee does not believe that existing decisions on the operation of the ministerial system should be overturned in this way.

Amendment (12)

The Privileges and Procedures Committee accepts this amendment which would make it clear that any Minister who had lost a vote of no confidence would have to leave office. Although it is almost unthinkable that a Minister would seek to remain in office in these circumstances there is no formal requirement in the draft Law for a Minister to step down and the amendment is therefore a useful addition to the Law. Members may be aware that there is no requirement in the 1966 Law or the present Standing Orders for a Committee to resign after losing a vote of no confidence although, in a similar way, it would be almost unthinkable for a Committee not to do so.

Amendment (13)

The Privileges and Procedures Committee does not support this amendment because, as with amendment (11), it runs contrary to decisions already taken by the States on the appointment and dismissal of Ministers. As drafted, the new Law allows the Chief Minister to dismiss a Minister providing that he or she has obtained the support of a majority of the members of the Council of Ministers for this course of action. In addition, in accordance with the decision of the States of 21st November 2002 when adopting an amendment of Senator Syvret to the proposition on the Structure of the Executive (P.191/2002), the revised Standing Orders will contain provision for any matter relating to the dismissal of the Minister to be discussed by the States when a replacement Minister is appointed.

Amendment (14)

This amendment, relating to the filling of casual ministerial vacancies, is effectively consequential on the alternative method of appointment of Ministers suggested in Amendment (11) and the Privileges and Procedures Committee does not support this amendment for the same reasons as it opposes that amendment.

Amendment (15)

The Privileges and Procedures Committee does not support this amendment which it believes runs counter to existing States' decisions on the role and responsibilities of the Chief Minister in managing the structure of the Executive.

Amendment (16)

The Privileges and Procedures Committee does not support this amendment as it considers that it runs counter to the appropriate relationship that should exist in the future system between a Minister and his or her senior officer. Although there will be a very close working relationship between a Minister and his or her senior officer, that officer will have a contractual reporting line to the Chief Executive of the Council of Ministers. If there was any conflict between instructions given by the Minister and the Chief Executive to a senior officer the matter could be raised with the Council of Ministers for resolution. This is a common issue in many public and private jurisdictions where the working solution lies in negotiation and compromise with only infrequent recourse to higher authority.

Amendment (17)

The Privileges and Procedures Committee opposes this amendment as it feels that it is both unnecessary and potentially damaging to the rights of some members of the States.

There is nothing in this draft Law, and the Privileges and Procedures Committee does not intend to propose anything in the revised Standing Orders, that would prevent a Minister from speaking publicly or bringing forward for debate any matter in the way suggested in this amendment. The Privileges and Procedures Committee considers that if this amendment was adopted there could be an implication that other members, for example Assistant Ministers, were not free to speak publicly or bring forward matters for debate. It is for this reason alone that the Privileges and Procedures Committee does not support this amendment and not because the Committee

supports any form of collective responsibility in the Council of Ministers. The Committee would have considered supporting an amendment if it had, for example, included reference to Assistant Ministers and others but does not accept this amendment as drafted for the reasons given above.

Amendment (18)

This amendment is merely consequential on Amendment (16) above which the Privileges and Procedures Committee does not support.

Amendment (19)

As can be seen paragraph (a) of this amendment repeats the provisions of the draft Law. The Privileges and Procedures Committee does not support the proposal in paragraph (b) as, although it considers that it would be best practice for delegations to be reported to the States, it is concerned that placing this provision on the face of the Law will mean that any inadvertent oversight to report the delegation will, by implication, invalidate the delegation. The Privileges and Procedures Committee nevertheless hopes that, even in the absence of a statutory requirement, permanent delegations will continue to be notified to the States as happens at present with Committee delegations.

Amendment (20)

The Privileges and Procedures Committee does not support this amendment which it believes runs counter to existing States' decisions on the role and responsibilities of the Chief Minister in managing the structure of the Council of Ministers.

Amendment (21)

The Privileges and Procedures Committee notes that the amendment adds the word 'publish' to the provision on the draft Law but also removes the requirement for the Chief Minister to take reasonable steps to notify the public where the list of ministerial responsibilities is located. On balance the Privileges and Procedures Committee considers that the provisions of the Law as drafted place a stronger duty on the Chief Minister to bring the list to the public's attention and it does not therefore support the amendment. If the amendment was adopted the Chief Minister could simply 'publish' the list but take no steps to inform the public where it was to be found.

Amendment (22)

The Privileges and Procedures Committee does not accept this amendment as it considers that it extends the immunity given to members too widely. The Committee discussed the amendment with Senator Syvret and accepts that he is attempting to extend to the future system the current immunity that exists in the 1966 Law for communications between members and Committees. The Privileges and Procedures Committee does not believe that it is appropriate to extend what is effectively an extension of parliamentary privilege to the Executive side of government in the way suggested by the amendment. The Committee's research has shown that the immunity proposed by this amendment goes far wider than anything found in other jurisdictions. The amendment amounts effectively to a licence for members to say absolutely anything to the Council of Ministers and Ministers whether they believe the statement to be true or not. This is a protection not afforded to any other person in the community. The Committee would point out that if a member who has a duty to give information to a person who has a duty to receive it does so in good faith and without malice they would be covered by qualified privilege and are protected in that way from legal proceedings.

Amendment (23)

The Committee would point out that it is extremely unlikely that the procedure covered by the amendment would ever be needed as it would be likely that the States or the body concerned would consent to give the evidence requested in the event of criminal proceedings. In addition there would often be other means of obtaining the evidence required. The present provisions of Article 35 as drafted reflect practice in the House of Commons and are designed to protect parliamentary sovereignty in relation to the courts. If adopted the amendment could be

said to undermine the sovereignty of the Assembly but as the amendment is unlikely to seriously damage that the Committee is prepared to support it in the interests of ensuring that the criminal justice system is not impeded from operating correctly.

Amendment (24)

The Privileges and Procedures Committee does not support this amendment as it considers it would unduly restrict the ability of the States to take decisions in the future about members' remuneration. Although the Committee has not yet taken any decision on whether or not any form of graduated remuneration would be appropriate, it believes that this issue needs to be investigated, particularly following the move to ministerial government, and this issue could initially be addressed in conjunction with the independent States Members Remuneration Review Body.

Amendment (25) and (26)

The Privileges and Procedures Committee does not support these amendments as it considers that they could unduly restrict the ability of the Courts to sanction the type of offences referred to.

When preparing the draft Law the Committee took the view that no offences should be included which were unnecessary. The Committee has received advice that any bribery and blackmail as set out in these amendments would be an offence at common law with unlimited potential penalties unlike the maximum penalties set out in these amendments. In a serious case the proposed 5 year penalty may be inadequate.

Amendment (27)

The Committee does not support this amendment although it considers that the whole issue of covert surveillance should be reviewed to assess whether present provisions are adequate and appropriate. The Committee does not believe it is appropriate to treat members any differently than other members of the public as would be the case if the amendment was adopted.

Amendment (28)

The Privileges and Procedures Committee does not accept this amendment which it considers is totally unreasonable and would place public employees into a situation which does not apply in any private sector field of employment. Although the Committee accepts that misleading a Minister would be a very serious matter it believes it should be with as disciplinary matter and not a criminal one.

Amendment (29)

The Privileges and Procedures Committee does not accept this amendment. The Committee does, of course, agree that it would be a serious matter if any member made a false declaration of interests but the Committee does not believe that this should be a criminal offence in the way proposed in the amendment. The Privileges and Procedures Committee believes that, because of the importance of parliamentary autonomy, great care should be taken before taking any steps which allow the courts to interfere in the affairs of the Assembly unless this is absolutely necessary. As part of the revision of Standing Orders the Privileges and Procedures Committee will be proposing much tighter rules on what matters must be declared and there will need to be appropriate parliamentary sanctions for any member who does not comply with the rules set out.

Amendment (30)

The Privileges and Procedures Committee accepts this amendment which specifies that there must be at least 2 Scrutiny Panels at all times in the new system. For the avoidance of doubt the Privileges and Procedures Committee would confirm that it fully intends to propose that there should be at least 4 Panels plus the Public Accounts Committee in the new system as already agreed by the States.

Amendment (31)

The Privileges and Procedures Committee does not accept this amendment as has been advised that, if adopted, it would require all disciplinary proceedings involving members to be undertaken by an independent body with the possibility of legal representatives being involved. The Committee does not believe that this is appropriate for matters such as minor breaches of the Code of Conduct. In order to preserve parliamentary autonomy the Committee believes that, as already agreed by the States, such breaches must be dealt with by members themselves without involving an outside body. If such matters were dealt with by an outside body that body's decisions would almost certainly be open to judicial review which could mean that the courts would become involved on adjudicating on parliamentary matters such as members' conduct. This would clearly be inappropriate.

Amendment (32)

This amendment is consequential on the change proposed in Amendment (1) on the rights of unelected members to speak and the Privileges and Procedures Committee does not therefore accept it for the reasons set out above.