

PRIVILEGES AND PROCEDURES COMMITTEE

(76th Meeting)

7th May 2008**PART A**

All members were present. Deputy I. Gorst was present for item Nos. A1 - A4 and B1 only. Deputy S.C. Ferguson of St. Brelade withdrew for the duration of item No. B2.

Connétable D.F. Gray of St. Clement - Chairman
 Senator M.E. Vibert
 Connétable K.A. Le Brun of St. Mary
 Deputy G.C.L. Baudains
 Deputy S.C. Ferguson
 Deputy J. Gallichan
 Deputy I.J. Gorst

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. K.M. LARBALÉSTIER, Acting Clerk to the Privileges and Procedures Committee
 N. Guillou, States Greffe

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

Minutes.

A1. The Minutes of the meetings held on 19th March 2008 (Part A and Part B) and 1st April 2008 (Part B only), having been previously circulated, were taken as read and were confirmed.

Mr. N. Guillou,
 Committee Clerk.

A2. The Greffier of the States introduced Mr. N. Guillou who had recently been appointed as a Committee Clerk to replace Miss P. Horton.

States Greffe:
 financial report -
 first quarter.
 422/10/1(80)

A3. The Committee noted a financial report dated 30th April 2008 in respect of the first quarter.

The Committee noted that the projected underspend for the budget of the States Assembly (if no correcting action was taken) for the period was £172,214. The predicted underspend was mainly attributed to Scrutiny Panels showing an under spend for the period in terms of supplies and services and administrative costs.

The Committee noted that, in accordance with the Public Finance (Jersey) Law 2005, the quarterly report would be submitted to the Minister for Treasury and Resources.

Machinery of
 Government
 review:
 implementation
 465/1(91)

A4. The Committee, with reference to its Minute No. A2 of 5th March 2008, resumed consideration of the Machinery of Government Review (P105/2007).

The Committee recalled that it had considered the most urgent recommendations made. In this connexion it noted a law drafting brief dated 20th March 2008, which had been prepared by the Deputy Greffier of the States and which had been forwarded to the Law Draftsman for the preparation of the required amendments to

the Standing Orders of the States of Jersey and the States of Jersey Law 2005.

The Committee considered those recommendations of the Machinery of Government Review sub-committee which required further discussion and agreed the following -

Recommendation No. 4 - the Committee agreed that in any case where a breach of the Ministerial Code (which did not merit dismissal) had occurred a formal written reprimand should be issued and made public by means of presenting a report to the States Assembly for information.

Recommendation No. 7 - the Committee agreed that authority should lie with the questioner in relation to whether a Minister or Assistant Minister answered a question. It was recognised that in some cases Assistant Minister's had been delegated authority in respect of specific areas.

Recommendation No. 10. - the Committee noted that, in accordance with the States of Jersey Law 2005 where a Minister was absent, the Chief Minister or a Minister delegated by the latter assumed responsibility for that Minister's duties during the period of absence. The Committee decided not to change this provision.

Recommendation No. 53 - the Committee agreed that Standing Orders should be amended to restrict the number of written questions that any one member could submit per States meeting to 5 written questions of a maximum length of 200 words each.

On a related matter, Senator M.E. Vibert expressed disappointment with regard to the initial decision of the Economic Affairs and Health, Social Security and Housing Scrutiny Panels not to comment on recommendations 19 and 20 of the MOGR due to their view that the report itself had not been worthy of any consideration. Senator Vibert felt strongly that this stance was most insulting and reflected badly on the aforesaid Panels. Senator Vibert reflected on how the Panels might react if such a view had been taken in response to a report which they had produced. Deputy S.C. Ferguson, in her capacity as the President of the Chairmen's Committee, advised that the initial decision not to comment on the MOGR had been made some time ago and she pointed out that things had moved on considerably since that time. She also stated that the Panels had, in fact, experienced similar responses in relation to reports they had written. However, she acknowledged that the Panels might have at least tried to make constructive comments.

Machinery of
Government
review: proposed
amendments to
States of Jersey
Law.
465/1(91)

A5. The Committee, with reference to its Minute No. A2 of 5th March 2008, considered a report dated 30th April 2008, which had been prepared by the Deputy Greffier of the States in connexion with proposed amendments to the States of Jersey Law arising from the Machinery of Government Review (R105/2007).

The Committee considered draft amendments in relation to the following matters -

procedures pending the debate on a proposition to dismiss a Minister

providing clarity on delegation of functions to Assistant Ministers and other Ministers

The Committee, having considered the proposed amendments agreed the following -

that the dismissal of a Minister should take effect as soon as the decision was made by the Council of Ministers and prior to the Chief Minister lodging "au Greffe" the relevant proposition; and,

that, with regard to responsibilities and delegations, the Committee would wish both paragraphs (2) and (3) to be retained, as shown in the draft amendment.

Machinery of Government review: proposed amendments to States of Jersey Law.
465/1(91)

A6. The Committee, with reference to its Minute No. A2 of 5th March 2008, considered a report dated 30th April 2008, which had been prepared by the Deputy Greffier of the States in connexion with proposed amendments to the Standing Orders of the States of Jersey Law arising from the Machinery of Government Review (R105/2007).

The Committee considered draft amendments in relation to the following matters -

Chief Minister to give advance notice of proposed Ministers

all candidates for ministerial office (even if uncontested) to table written statement of their proposed policy

introducing a pause in the elections of office holders before the appointment of the Chairmen of the Scrutiny Panels

constitution of the Privileges and Procedures Committee

delegation of individual member amendment in the event of unavoidable absence

The Committee, having considered the proposed amendments agreed the following -
having noted the Law Draftsman's comments in relation to the possibility of the Chief Minister changing his mind about nominations, the Committee decided that Standing Orders should remain silent on this matter;

with regard to the requirement for all candidates for ministerial office (even if uncontested) to table a written statement of their proposed policy, the Committee agreed that such statements should be received 3 working days prior to the election and should be published within the official report (Hansard);

the Committee agreed that the words "for a time to be agreed" should be inserted in respect of the proposed amendment in relation to the introduction of a pause in the elections of office holders before the appointment of the Chairmen of the Scrutiny Panels; and,

the Committee agreed that the amendment in relation to the constitution of the Privileges and Procedures Committee should read "one member of the States that is a member of the Chairmen's Committee", as opposed to the President of that Committee as an ex-officio member.

Voter registration/ turnout campaign for the 2008 elections - 2007 year end transfers and carry forwards.

A7. The Committee, with reference to its Minute No. A4 of 12th December 2007, considered correspondence dated 3rd April 2008, addressed to the Chairman from the Minister for Treasury and Resources in connexion with the 2007 year end transfers and carry forwards.

The Committee recalled that it had requested permission to use monies which had not been spent during 2007 for the purpose of a voter registration campaign for the 2008 elections. In this regard the Committee noted that the sum of £30,000 had been

approved.

The Committee agreed that it would like to mount a similar campaign to the one which had been carried out for the 2005 elections. It agreed that the campaign should not only focus on registration but also turnout. In addition, the Committee agreed that the funds allocated could also be utilised for the creation of an election website (as detailed within Act No. B1 of the present meeting). The Committee noted that an advertisement would be placed in the Jersey Evening Post inviting expressions of interest from public relations companies in relation to the management of the campaign. The Committee agreed to delegate authority to the Chairman and Vice Chairman with regard to the selection of an appropriate company and requested that members be kept informed.

On a related matter, it was noted that, in his capacity as Minister for Education, Senator M.E. Vibert would be issuing guidelines on the electoral process to all 16 year olds.

Scrutiny budget:
2009
510/1(15)

A8. The Committee received Deputies D.W. Mezbourian and J.G. Reed, in their capacity as members of the Scrutiny Chairmen's Committee, in connexion with the 2009 Scrutiny budget. The Committee noted that Deputy S.C. Ferguson would be supporting the aforementioned members of the Chairmen's Committee for this item in her capacity as President of the Chairmen's Committee.

The Committee considered a report prepared for the Chairmen's Committee by the Scrutiny Manager which set out the background to the current financial position and which concluded that the Committee believed that, irrespective of the significant underspends in previous years; the budget must be maintained at the 2008 level.

The Committee discussed the Scrutiny budget with Deputies Ferguson, Mezbourian and Reed. It noted from those members some concern that the Committee might be considering cutting the Scrutiny budget. However, the Committee stated that this was certainly not the case and that it was committed to ensuring the proper funding of the Scrutiny function. The Greffier of the States reminded the meeting that the recommendations arising from a spending review, which was currently being conducted by the Comptroller and Auditor General, would have to be borne in mind. Deputy Ferguson discussed the likely costs of external legal advice and securing the services of expert advisors. Senator M.E. Vibert hoped that external legal advice would only be sought when the Law Officers' Department could not provide the advice. Deputy Ferguson confirmed that this was the case.

The Committee thanked Deputies Mezbourian and Reed for attending and they withdrew from the meeting.

Code of Practice
on Public Access
to Official
Information:
Annual Report
2007.
955(32)

A9. The Committee received and considered a report entitled 'Code of Practice on Public Access to Official Information: Annual Report for 2007'.

The Committee recalled that a report concerning the operation of the Code of Practice on Public Access to Official Information was presented to the States annually. It was noted that a total of 20 applications under the Code had been recorded by individual departments of the States. The Committee was informed that the Health and Social Services Department and the Education, Sport and Culture Department had advised that requests received for personal information were now dealt with under the Data Protection (Jersey) Law 2005.

The Committee approved the Code of Practice on Public Access to Official Information: Annual Report for 2007, subject to an amendment to the last paragraph

which referred to a Corporate Services Panel review. The Committee approved the inclusion of the following paragraph -

“It was clear from the results of the consultation on the revised draft that concerns and uncertainty remained about the potential cost of operation of the law. PPC has therefore referred this matter to the Chief Minister and is currently awaiting information about the effectiveness of the current Code of Practice and any problems with its use. Once this information has been received the Committee will be able to consider the appropriate way forward with the draft Freedom of Information Law.”

The Committee directed that, once amended, the report should be presented to the States.

Scrutiny of
possible
violations of the
Human Rights
(Jersey) Law
2000.
511/1(25)
617/3(5)

A10. The Committee, with reference to its Minute No. A5 of 20th February 2008, welcomed Deputy F.J. Hill, B.E.M. to the meeting in connexion with his report regarding the scrutiny of possible violations of the Human Rights (Jersey) Law 2000.

The Committee recalled that Deputy Hill was of the opinion that, as Jersey now had its own Human Rights legislation, the States should consider whether there was a need to establish a formal body to investigate human rights issues in the Island. Deputy Hill had suggested that either a Panel, Board or Committee could be established for this purpose or each Scrutiny Panel could assume responsibility for any human rights issues of propositions within its remit. Deputy Hill had also expressed concern that Article 16 of the Human Rights (Jersey) Law 2000 did not require the Minister to explain what Convention rights might be affected by the Law being proposed and why, in the Minister’s view, there was no significant risk that Convention rights might be violated.

Deputy Hill advised the Committee that on Thursday 3rd April 2008 he had met with Mr. A. Dismore MP, Chairman of the Joint Committee on Human Rights and Dr. M. Eden, Common’s Clerk. Having outlined the work of the Joint Committee on Human Rights, Deputy Hill informed the Committee of his proposals for scrutinising human rights issues in the Island. One option was that each Scrutiny Panel could consider any human rights issues in connexion with propositions that fell within its remit. However, Deputy Hill indicated that all legislation which included a signed Human Rights statement of compatibility would need to be investigated and such an increase in workload could place a significant burden on the existing Scrutiny Panels. An alternative option was to establish a separate Scrutiny Panel with responsibility for considering all human rights statements of compatibility. This was Deputy Hill’s preferred way forward and he proposed to lodge a proposition requesting the Privileges and Procedures Committee to take the necessary steps to establish an additional Scrutiny Panel for the purpose of scrutinising all legislation with Human Rights compatibility statements.

Deputy Hill further proposed to lodge a proposition which would seek to amend Article 16 of the Human Rights (Jersey) Law 2000 requiring the inclusion of information relating to the reasons why the Minister had concluded that the legislation was compatible with Convention rights and, if the Minister was unable to make a Statement of compatibility, to explain which Convention rights might be affected.

The Committee discussed Deputy Hill’s proposals and noted that it was likely that the establishment of a Scrutiny Panel with responsibility for considering all human rights statements of compatibility would require the services of a qualified lawyer.

Reservations were expressed with regard to need for the establishment of such a Panel as it was not clear why it was considered necessary for the legal advice provided by the Law Officers' Department to be scrutinised. Questions were also raised as to what would happen if such a Panel did not agree with a piece of advice provided by the Law Officers' Department. Deputy Hill referred to some independent advice which had been received by a Scrutiny Panel in the recent past. He stated that in rejecting this advice H.M. Attorney General had not justified why he did not accept the advice. At the suggestion of the Chairman Deputy Hill agreed to investigate how the matter was dealt with in smaller jurisdictions like Guernsey and the Isle of Man.

The Committee thanked Deputy Hill for attending and he withdrew from the meeting.

Voter turnout:
letter from
Lieutenant
Governor.
465/1(99)

A10. The Committee considered a letter dated 13th March 2008, addressed to the Chairman from His Excellency Lieutenant General A.P. Ridgway, CB, CBE in connexion with the issue of increasing voter turn-out.

In his letter General Ridgway advised that he had been made aware that the lack of car parking in and around the parish hall at St. Saviour acted as a deterrent to voters. He had suggested that consideration should be given to permitting voters to cast their votes at polling stations in St. Helier. This would mean that those individuals working in the town could cast their votes during the working day, thus increasing voter turn-out.

The Committee recognised the merits of permitting individuals to vote at polling stations in St. Helier and agreed that the proposal was certainly worthy of further consideration in the future. However, it was not technically possible for this to happen at the current time and the Committee agreed that a letter should be drafted for signature by the Chairman to General Ridgway explaining this. In addition the Committee agreed to write to the Connétable of St. Saviour in relation to the issues raised by General Ridgway.

Public Elections
(Jersey) Law
2002: proposed
amendments.
424(7)

A11. The Committee, with reference to its Minute No. A1. of 2nd May 2008, confirmed its decision to request that the draft Public Elections (Jersey) Law 2002 be debated on 3rd June 2008 in accordance with the provisions of Standing Order 26(7).

Guidelines for the
conduct of
elections for
Senator and
Deputy.
424/2(51)

A12. The Committee considered a letter dated 3rd April 2008, addressed to the Chairman from H.M. Attorney Jersey in connexion with joint guidelines for the conduct of elections for Senator and Deputy.

The Committee noted that, as a result of the introduction of human rights legislation in Jersey the above guidelines had been amended. One of the most substantial changes was that there was no restriction on the ability of members of the honorary police to sign nomination papers, wear the colours of or canvass for any particular election candidate. However, there was a requirement that honorary police who had identified themselves with a candidate should not carry out police duties on polling day itself. It would, therefore, be a matter for each parochial honorary force to deploy sufficient officers to carry out policing duties on polling day.

The Committee, having discussed the above matter, agreed that the Comité des Connetables might wish to comment on the practical effects of the changes. It was agreed that a response to H.M. Attorney General's letter should be prepared for the Chairman's signature.

Bailiff's
Consultative
Panel: resignation
of Senator S.
Syvret.
465/1(96)

A13. The Committee considered a letter dated 24th April 2008, addressed to the Chairman from the Bailiff in connexion with the constitution of the Bailiff's Consultative Panel and, in particular, the recent resignation of Senator S. Syvret from the same.

The Committee noted that as the Bailiff had not found it necessary to consult the Panel very frequently, and as it was likely that the entire Panel would be re-constituted following the elections, he did not consider it necessary to take the time of the States in holding an election to replace Senator Syvret. The Committee concurred with this view and requested that a letter be prepared for the Chairman's signature advising the Bailiff of the same.