

PRIVILEGES AND PROCEDURES COMMITTEE

(15th Meeting)

11th July 2003PART A

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

Senator C.G.P. Lakeman
 Connétable D.F. Gray
 Deputy F.J. Hill, B.E.M.
 Deputy C.J. Scott-Warren
 Deputy R.G. Le Hérisssier
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 R.W. Whitehead, Principal Legal Adviser, Law Officers' Department
 D. Woodside, Legal Adviser (for a time)
 Mrs J. Marshall, Senior Executive Officer
 Miss F. Agnès, Executive Officer
 M.P. Haden, Committee Clerk
 R. Halsey, Research Assistant

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

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| Minutes | A1. The Minutes of the meeting held on 30th May 2003, having been previously circulated, were taken as read and were confirmed. |
| Reports presented to the States.
465/1(36) | A2. The Committee, having noted the recent public announcement by Senator E.P. Vibert regarding a 'Waste Watch' Campaign, which included criticism of departmental reports produced in glossy formats, recalled that it had considered this matter at its previous meeting (reference Act No A5). The Executive Officer was requested to forward a copy of the President's memorandum on this subject to Senator Vibert. |
| Machinery of Government:
Establishment of Scrutiny Panels and Public Accounts Committee (P.79/2003) - Proposed amendments.
502/1(7)
502/1(9) | A3. The Committee, with reference to its Act No. A3 of 30th May 2003, received a report, dated 7th July 2003, from the Senior Executive Officer, regarding the amendments to its Report and Proposition (P.79/2003) on the establishment of Scrutiny Panels and Public Accounts Committee, proposed by Senator S. Syvret and Deputy J.L. Dorey.

The President apprised the Committee of an informal meeting, held on 27th June 2003, with Deputy Dorey, with the Vice President in attendance, to discuss the Deputy's amendments. The Committee agreed that it was minded to maintain its position on the main points of Deputy Dorey's amendments, namely -

(a) The creation of a dedicated legislation Scrutiny Panel - The |

Committee was opposed to this amendment on the basis that scrutiny of legislation would be more meaningful if there was a connexion between consideration of policy and relevant legislation. It felt that a panel dealing solely with legislation would have a very narrow legal/technical role;

- (b) **Areas of Scrutiny Panel responsibility** - The Committee rejected Deputy Dorey's suggestion that its designation of Scrutiny Panel responsibilities was '*an approach rooted in the old silo mentality*'. In its view, its own proposed division between the four Panels would give Panels a remit which would enable them to cross the boundaries of various Ministries, and, at the same time, would allow members to develop an expertise and knowledge of broad policy areas;
- (c) **The role of the Public Accounts Committee (PAC)** - The Committee believed that, although there was some overlap in the proposed membership of the PAC and the Chairmen's Committee, each body had a distinctive role to play. The PAC would be considering matters relating to financial control, value for money and corporate governance, and would receive reports from the Comptroller and Auditor General (CAG). The Chairmen's Committee, on the other hand, would be responsible for co-ordinating the operation of the scrutiny function and would ensure that the work of the PAC and Scrutiny Panels complemented rather than duplicated each other. The Chairmen's Committee would contain two additional members to make clear it was not the PAC.

The Committee considered a further amendment proposed by Deputy Dorey to delete paragraph d(v) of the proposition (regarding the power of the PAC to hold hearings, send for persons, papers and records and report to the States on the outcome of such hearings) on the grounds that it was a duplication of paragraph (f) which referred to the power of both the Scrutiny Panels and the PAC to call for relevant papers or records and to require people to attend before them. The Committee agreed that there was some duplication but decided that d(v) was required to balance b(i) which gave Scrutiny Panels the power to report to the States with appropriate recommendations. The Committee decided to reject the amendment accordingly.

The Committee noted the amendment of Senator S. Syvret which sought to introduce a 'call-in' mechanism with the initial establishment of the scrutiny function. The Committee recalled that it had given extensive reasons why 'call-in' should not be introduced straightaway and saw no reason to change its mind. The Committee also noted the comments of the Policy and Resources Committee on the proposed amendments and agreed that they were very helpful.

The Committee welcomed Deputy Dorey to the meeting to discuss his proposed amendments, as follows -

- (i) **The creation of a dedicated Legislation Scrutiny Panel** - Deputy Dorey expressed the view that there were insufficient numbers of members who were interested in real scrutiny of legislation. This had often been handled badly in the States. He felt that there was a need for a consistent approach which would be better encouraged through a dedicated Scrutiny Panel. The Committee, however, maintained that States members did not require technical expertise in law drafting to

properly scrutinise legislation. Their focus, rather, should be on ensuring that the law fulfilled the policy intent;

- (ii) **Areas of Scrutiny Panel responsibility** - Deputy Dorey was concerned that, if the terms of reference of each Scrutiny Panel were closely linked to ministerial portfolios, there was a danger that the relationship with the Executive would become too adversarial and that the concept of 'critical friend' would be diluted. There was also the possibility that some areas of government would be ignored if they fell between the remit of different Panels. Deputy Dorey favoured a more generalist approach whereby Scrutiny Panel would be able to 'troubleshoot' in any areas they chose. The Committee, however, believed that there were, on balance, advantages in enabling members to develop a policy expertise, albeit within a broad area of responsibility;
- (iii) **The role of the Public Accounts Committee (PAC)** - Deputy Dorey was of the view that, as the membership of the PAC and the Chairmen's Committee would be practically identical, there was a risk of confusion and delay. He felt that the Chairmen's Committee was a gratuitous additional layer of bureaucracy. In his view, the Privileges and Procedures Committee should assume responsibility for overseeing the allocation of resources to the Scrutiny function. The Committee, however, did not believe that the PAC should be seen as responsible for co-ordinating the work of Scrutiny Panels. The PAC would have its own audit priorities and should meet entirely separately from the Chairmen's Committee. Scrutiny Panels had to decide their own priorities and not appear to be driven by the audit function. It also believed that it was important for the funding allocation for Scrutiny Panel to be separate from the Privileges and Procedures Committee. This Committee should remain the Committee for the whole Assembly. It would contain both Executive and non-Executive members. There should be no hint of the Executive unduly influencing Scrutiny Panels in their choice of investigations.

Senator P.F.C. Ozouf joined the meeting at this point to discuss this amendment. In his view, it was essential to maintain the distinctive roles of the PAC, who would investigate the implementation of policy, and the Scrutiny Panels, who would focus on the development and relevance of policy. This distinction had been a matter of much discussion between the PAC and Comptroller and Auditor General (CAG) Working Party and the Privileges and Procedures Committee, which had felt initially that the boundaries between the two functions were being drawn too strictly. The Working Party and the Privileges and Procedures Committee had now come to a common understanding of the respective roles. Senator Ozouf, therefore was opposed to Deputy Dorey's amendment which, in his view, blurred the proper distinction.

Deputy Dorey expressed the view that the role of the PAC had been poorly explained to States members. The fact that the final report of the above Working Party had not been published was a significant omission. He went on to express his view that States members had not been given sufficient time properly to study the Scrutiny proposals given the short time between the lodging of P.79/2003 on 10th June 2003 and the States debate to be held on 22nd July 2003. Ironically, he felt, there was little opportunity to scrutinise the Scrutiny proposals.

The Committee, having been advised that the Finance and Economics Committee would have no objection to the release of the Working Party's report, agreed that the report should be circulated to States members as soon as possible, together with a covering note summarising the Committee's own position and decision-making in this regard. As to the timing of the debate on the Scrutiny function, the Committee pointed to the need to comply with a tight timescale for the production of the new States of Jersey Law.

Senator Ozouf suggested that, in order to promote further understanding of the respective roles, it was important that the current Audit Commission should evolve in the short term into a 'shadow' PAC alongside the proposed 'shadow' scrutiny panels. This would entail the appointment of States members to gradually take over the role currently played by external members of the Audit Commission. The Committee was supportive of this proposal.

The Committee thanked Deputy Dorey and Senator Ozouf for their comments on P.79/2003 before they left the meeting.

The Committee requested the Senior Executive Officer to finalise its comments on the amendments proposed by Senator Syvret and Deputy Dorey. It delegated agreement of the final comments to Deputy R.G. Le Hérisier before their presentation to the States on 15th July 2003.

Remuneration
Sub-Committee -
recommendations.
1240/3(70)

Ex.Off.

A4. The Committee, with reference to its Act No. A4 of 30th May 2003, received a report, dated 7th July 2003, from the Greffier of the States regarding the recommendations of the Remuneration Sub-Committee in connexion with the establishment of an independent States Members Remuneration Review Body, together with two draft propositions and a draft advertisement seeking expressions of interest for membership of the Body.

The Committee noted that the Sub-Committee had made the following recommendations -

- (a) **Abolition of the existing means-tested system of remuneration** to be replaced with a standard level of remuneration available to all members irrespective of income from other sources. The Sub-Committee recommended that this should be done before the proposed Review Body began work so that the Body should be aware of the parameters within which it was working.

The Committee was mindful of the current budgetary restraints in States finances and the possible public perception that members were treating themselves as a special case. However, it was also cognisant of the long delays in addressing this matter, which had also been the subject of work undertaken by the House Committee before the establishment of the Privileges and Procedures Committee. **It agreed that it was important, in terms of equity, to pursue the principle of a standard level of remuneration available to all members.**

The Committee was of the opinion that the effective date of this change should be backdated to 1st January 2003. The Executive Officers were requested to enter into a dialogue with the Treasury on this matter. In addition, the Executive Officers were requested to discuss with the Treasury its proposals for changing the system of payment from the

existing system of payment in advance to one of payment in arrears in line with States payroll system.

The Committee requested that the proposition should include a mechanism for regularly updating the agreed level of remuneration in line with the current system of annual increases according to the Jersey Retail Price Index, minus 0.5 per cent.

The Committee, with reference to its Act No. A1 of 14th February 2003, recalled its discussion with the Comptroller of Income Tax regarding the level of expenses allowable against tax without formal documentation. It requested its officers to pursue with the Employment and Social Security Department the matter of double taxation relating to the reimbursement of Class 2 Social Security payments;

- (b) **Same level of remuneration for all members** - the Sub-Committee recommended that all members, irrespective of any positions of responsibility, should receive the same level of remuneration, both in the existing system and under the future ministerial system. **The Committee, however, felt that this matter which should be referred to the proposed Review Body.**
- (c) **Terms of reference and proposed membership of the Review Body** - The Committee noted the draft terms of reference recommended by the Sub-Committee. It was of the opinion, however, that these were too tightly drawn and prescriptive, appearing to dictate the findings of the Review Body. **The Committee decided to refer the matter back to the Sub-Committee.**

It was advised that Senator E.P. Vibert had informally approached a number of people regarding possible membership of this Body. The Committee, however, felt that fresh thinking was requiring regarding the membership of such a Body. It agreed that the States should be requested to approve the principle of a Review Body without specific names being identified in the Proposition.

The Committee requested that the draft Propositions be amended accordingly and that accompanying Reports be prepared for consideration at its next meeting, with a view to the establishment of the Review Body early in the Autumn session.

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

Ex.Off.
A.G.

A5. The Committee, with reference to its Act No. A4 of 10th January 2003, recalled that it had received a request from Deputy T.J. Le Main to consider what arrangements should be put in place to provide indemnity for States members in the event that they should find it necessary to defend themselves in a legal dispute. The Committee received a report, prepared by the former Executive Officer, Mr. P. Byrne, in this connexion.

The Committee recalled the advice given by the Attorney General when consulted in 2000 by the then House Committee on the same matter [Act No. B1, dated 13th November 2000 refers], the key points of which were, as follows -

- (a) legal advice would be provided to members when defending themselves against an action brought by a member of the public when that member was acting in his or her capacity as a States member;

- (b) exceptions to the above would be if there was an allegation of dishonesty or malice such as would give rise to the possibility of action taken by the States thereafter under Standing Orders, or where there was a conflict of interest, such as a dispute between a member and a government department;
- (c) legal assistance would not be provided to enable a member to bring proceedings against an individual in the event of a claim of slander or libel, this being viewed as an individual private matter for members.

On the question of insurance cover, it was noted that the States' insurers currently provided cover for negligent or accidental breaches of duty, with an excess payable of £250,000. The Committee was of the opinion that such an excess rendered the insurance cover largely worthless. It felt that the public purse should provide that cover if it was ever necessary. The Committee noted that it was possible to provide alternative forms of insurance cover on an individual basis but felt that this would relate in reality to a member's private capacity and was therefore unlikely to be supported from public funds.

The Committee recognised the difficulty in determining in individual cases whether legal action was taken as a result of an individual's position as a States member or in their private capacity. However, it expressed the view that it was not always apparent why legal advice was afforded by the Law Officers Department in some cases and not in others. The Committee considered two recent cases involving civil servants who had felt that their professionalism had been defamed. One had received legal assistance and the other had not. **The Committee requested the Law Officer's Department to provide guidance to members and officers on the extent of assistance that might or might not be provided with regard to indemnity, legal advice and defamation.**

The President undertook to write to Deputy Le Main in order to clarify the sort of arrangements he was seeking and advising him of the findings contained in the above report.

Public Right of Access to Information, Financial and other records of the States of Jersey - comments on P.34/2003 of Deputy A. Breckon 1240/1/2(18) 955(29)

A6. The Committee, with reference to its Act No. A6 of 4th April 2003, and with Mr. D. Woodside, Legal Adviser, Law Officers' Department in attendance, considered its revised draft comments on the report and proposition of Deputy A. Breckon on Public Right of Access to Information, Financial and other records of the States of Jersey (P.34/2003).

The Committee approved the draft, subject to certain textual revisions, and requested that they be presented to the States in due course.

The Committee requested that a copy of the finalised comments be sent to Deputy Breckon in advance of their publication.

Ex.Off.
Pub.Ed.
States (2)

States Assembly:
Future Budgetary Arrangements.
465/2(5)

A7. The Committee, with reference to its Act No. A11 of 30th May 2003, considered correspondence, dated 9th June 2003 and 20th June 2003, from the Presidents of the Policy and Resources and Finance and Economics Committees respectively, regarding future budgetary arrangements for the States Assembly.

1240/22(31)

Ex.Off.
T.O.S.
C.I.Aud.
F.E.C.C.
C.E., P&R
P.R.E.O.
P.R.C.C.
A.G.O.S.

The Committee noted that it was proposed that the budget for the States Greffe, together with those for States members' income support and expenses allowances, the Commonwealth Parliamentary Association (CPA) and the Assemblée Parliamantaire de la Francophonie should be transferred to its responsibility. **The Committee agreed that it welcomed the principle of these transfers which would go some way towards achieving the objective of establishing one budget for all costs associated with operating the States Assembly as a legislature.**

The Committee considered a draft letter of response to the President of the Finance and Economics Committee outlining certain matters to be raised with that Committee before giving final approval. The Committee noted, in particular, the matter of the proposed British Islands and Mediterranean Region Conference of the CPA, which was due to be held in the Island in 2005. As the estimated costs of this function were likely to be substantial (in the region of £100,000), the Committee agreed to seek re-assurance from the Finance and Economics Committee that requests to meet these exceptional costs would be considered sympathetically.

The Committee approved the draft letter accordingly. The Greffier of the States was directed to send a copy of this Act to the Finance and Economics and Policy and Resources Committees for information.

Finance and
Economics
Committee: Pay
awards
2002/2003
465/3(2)

A8. The Committee received correspondence, dated 12th June 2003, from the Treasurer of the States relating to funding for pay awards for June 2002 and 2003.

The Committee agreed to accept additional funding in the sum of £3,900 for the effect of these pay awards and requested the Executive Officers to take the necessary action.

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

Authorised
signatories.
465/1(3)

A9. The Committee approved the Executive Officers, Mrs Janet Marshall and Miss Fiona Agnès, as authorised signatories for the payment of Committee invoices and accounts.

C.I.Aud.
T.O.S.

The Greffier of the States was directed to send a copy of this Act to the States Treasurer accordingly.

Matters for
information

A10. The Committee noted the following matters for information -

- (a) that the President, with Deputies F.J. Hill and J.A. Bernstein, would meet Senator W. Kinnard and other members of the Working Party on Tribunals on Friday 18th July 2003;
- (b) correspondence with the Office of the Lieutenant Governor regarding a proposal to abolish the Lieutenant Governor's power of veto in the new States of Jersey Law;
- (c) Quarterly Financial Report for the period ending 30th June 2003;
- (d) Notes of the second meeting of the Freedom of Information Working Party, dated 13th June 2003;

- (e) a revised report, prepared by the Deputy Greffier of the States, regarding proposed measures to improve the implementation of the Code of Practice on Public access to Information. In the absence of the Vice President the matter was referred to the Working Party on Freedom of Information for consideration;
- (f) correspondence, dated 16th June 2003, from Deputy J.L. Dorey relating to States members' access to Committee Minutes;
- (g) correspondence, dated 29th May 2003, from the President of the Policy and Resources Committee regarding his Committee's comments on the Consultation Paper on Freedom of Information (R.C. 15/2003);
- (h) report of Chairman of Jersey 1204-2004 Sub-Committee, dated 15th May 2003;
- (i) correspondence, dated 28th May 2003, from the Sales and Marketing Director, Jersey Post, concerning Political Mailing;
- (j) correspondence, dated 10th June 2003, from Deputy G.C.L. Baudains regarding the frequency of meetings called in the lunch hour;
- (k) correspondence, dated 25th June 2003, from the Chief Executive, States Human Resources Department, regarding the accountability of civil servants; and
- (l) the date of the next meeting to take place on Friday 25th July 2003, in the Halkett Room, Morier House, commencing at 9.30 a.m.

Acts of other Committees.

A11. The Committee noted the following Acts of other Committees -

- (a) Act No A11 dated the 1st May 2003, of the Policy and Resources Committee in connexion with the progress of machinery of Government reforms.
- (b) Act No A12 dated the 1st May 2003, of the Policy and Resources Committee in connexion with the review of Tribunals;
- (c) Act No A2 dated the 29th May 2003, of the Policy and Resources Committee in connexion with the future budgetary arrangements for the States Assembly;
- (d) Act No A3 dated the 29th May 2003, of the Policy and Resources Committee in connexion with its comments on the RC.15/2003;
- (e) Act No A4 dated the 29th May 2003, of the Policy and Resources Committee in connexion with the establishment of a Machinery of Government Reforms steering group;
- (f) Act No A5 dated the 29th May 2003, of the Policy and Resources Committee in connexion with Scrutiny arrangements;
- (g) Act No A6 dated the 29th May 2003, of the Policy and Resources Committee in connexion with a proposed 'question time';

- (h) Act No A10 dated 18th June 2003 of the Finance and Economics Committee in connexion with the summary of current manpower policy;
- (i) Act No A26 dated 24th April 2003 of the Home Affairs Committee in connection with the Criminal Injuries Compensation Scheme; maximum level of compensation;
- (j) Act No A4 dated 1st May 2003 of the Employment and Social Security Committee in connexion with their comments on the RC15/2003; and
- (k) Act No 3 dated 10th June 2003 of the Commonwealth Parliamentary Association in connexion with its budget.