

PRIVILEGES AND PROCEDURES COMMITTEE

(6th Meeting)

2nd July 2002PART A

All members were present, with the exception of Senator C. Stein, from whom apologies had been received.

In attendance -

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

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

Policy and
Resources
Committee: draft
report and
proposition on the
Structure of the
Executive.
1240/22/1(18)

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

A1. The Committee, with reference to its Act No. A8 of 14th June 2002, considered the draft report and proposition of the Policy and Resources Committee on the Structure of the Executive. It noted in this respect the initial comments made by the President together with comments made by Mr R. Whitehead, Principal Legal Adviser, Law Officers' Department.

The Committee discussed the following points -

- (i) **Guidance and Procedure for Ministers** (Proposition: paragraph (c)) - The Committee noted that it was not normally the practice for such a Code to require the approval of the States Assembly as it was not an Assembly document. However, the Policy and Resources Committee had undertaken to do this in its comments on P.175/2001;
- (ii) **The use of the term 'departments'** (Report: paragraph 2.1) - It was noted that there was currently no legal status under the States of Jersey Law 1966 for Departments. There would have to be detailed consideration of whether the new States of Jersey Law should make provision as to the legal status of Departments and Ministers;
- (iii) **Timescale for Budget debate** (2.4) - It was agreed that the timetable envisaged in the report was too tight;
- (iv) **Role of Assistant Ministers in the Council** (2.5) - The Committee questioned whether Assistant Ministers should have the right to vote in the Council when replacing a Minister. The view was expressed that voting in the Council should be kept to a minimum as far as possible.

It was also noted that few other small jurisdictions similar to Jersey had Assistant Ministers. The view was expressed that the number of Assistant Ministers in the Jersey system should be kept as low as possible in order to reduce the size of the Executive relative to the Assembly;

- (v) **Role of H.M. Attorney General in the Council of Ministers** (2.6) - The Committee noted that the draft report stated that H.M. Attorney General

would be entitled to attend all meetings of the Council. The Committee, with reference to its Act No. A2 of 27th June 2002, recalled that it had discussed this matter with H.M. Attorney General and had put forward the view that the position of H.M. Attorney General as an impartial adviser to the States would be compromised by being too closely associated with the Council of ministers. It was suggested that the term 'entitled' should be removed in favour of the term 'invited'. It was felt that H.M. Attorney General, having received the agenda for a meeting, might indicate to the Chief Minister that it would be appropriate for him to attend a particular meeting when legal or constitutional advice was required. However, an alternative view was also expressed, namely that H.M. Attorney General should have the right to address the Council whenever he felt it appropriate to do so. The Committee agreed that it was not possible to resolve this issue at this stage and that it required further careful consideration;

- (vi) **Decision making in the Council of Ministers (2.8)** - The Committee agreed that this paragraph need to be clarified to distinguish between those decisions which were the responsibility of the Council, namely the overall policy of the Executive and matters cutting across ministerial boundaries, and detailed Executive decisions which were the responsibility of Ministers. Furthermore, the new States of Jersey Law would have to make provision for the delegation of statutory or other functions to Assistant Ministers or officers of the Departments;
- (vii) **Draft legislation to be considered by the Council (2.14)** - The Committee wished to clarify that the Council should not be required to consider all items of legislation. The Council might otherwise be overloaded with unnecessary detail. The Council would be concerned with principal legislation;
- (viii) **Subordinate legislation (2.15)** - The Committee noted that there was a question regarding the making of Regulations which might continue to be made by the States.

Order making powers under principal legislation would be conferred on Ministers. The Committee agreed that the review of the parameters within which Orders were made, mentioned in this paragraph, should be conducted by the States as well as the Council.

The introduction of a procedure for affirmative resolution for some sorts of subordinate legislation needed further detailed consideration.

- (ix) **Orders in Council (2.16)** - The Committee expressed the view that the Assembly should be consulted regarding legislation, or proposals for legislation, emanating from the United Kingdom or Europe, particularly where primary legislation resulted. The current situation was felt to be unsatisfactory as there was no clear list available of Orders in Council affecting the Island;
- (x) **Nomination of Ministers (3.4)** - The Committee felt that further thought was required regarding the issue of electing Ministers to the Council. It was suggested that there should be a secret ballot, the results of which would only be disclosed to the Chief Minister. In this way, he/she might discover whether a certain candidate was unacceptable to the majority of members;
- (xi) **Publication of Decisions of the Council of Ministers (3.10)** - The

Committee agreed that this issue required further consideration. It was aware that, in the United Kingdom, Cabinet Minutes were not made public but that most other jurisdictions were much more open in disclosing information to the public. It was felt that decisions of the Council should be made open to public access but there should be various grades of timing.

The Committee also discussed the question of whether States members should have greater access to information about the Council's decisions. It was agreed that this issue should be addressed in the review currently being undertaken by the Committee of the Code of Practice on Public Access to Official Information;

- (xii) **Power of the Chief Executive (3.11)** - The Committee was aware that many members had expressed concern at the extent of the authority over other directors which the Chief Executive seemed to be granted in the report. The Committee wished to make clear that when a Minister's function had been exercised on his/her behalf by an officer, the Minister took responsibility for the officer's actions, not the Chief Executive. The Director was answerable to his Minister in any actions delegated to him/her, not to the Chief Executive;
- (xiii) **Role of Minister in relation to the Council of Ministers (4.4)** - The Committee noted that the paragraph made clear that, while the Council of Ministers would take 'macro' responsibility for policy, which Ministers were obliged to follow or resign (subject to various exemptions), the legal responsibility for each Department or Ministry, would be with the Minister;
- (xiv) **Appointment and Dismissal of Ministers (5)** - The Committee noted that the proposed system was a compromise solution in that while the States was required to approve the appointment of Ministers the Council was empowered to dismiss one of its number;
- (xv) **Appointment of Assistant Ministers (6.1)** - The Committee was of the opinion that the appointment of Assistant Ministers should be subject to approval by the States;
- (xvi) **Areas of delegation (6.2)** - The Committee agreed that a provision similar to Article 36A of the States of Jersey Law 1966 would be required in the new States of Jersey Law to enable a Minister to delegate to assistant ministers and/or officers of the department the exercise of functions prescribed by the Law;
- (xvii) **Assistant Ministers serving more than one Ministry (6.4)** - The Committee expressed the view that it was not feasible for an Assistant Minister to serve more than one Ministry. The Policy and Resources Committee's report mentioned the possibility of conflicts of interest but made no mention of how these might be resolved;
- (xviii) **Consultation with the Privileges and Procedures Committee (9)** - The Committee noted that the current wording of the report could be taken to imply that the Privileges and Procedures Committee agreed with the proposals. It agreed that it should be made clear that the Committee had been consulted in the preparation of the report and proposition and would be producing its own comments in due course;
- (xix) **Appendix One - Summary** - The Committee agreed to defer consideration of Appendix One until such time as its above comments on the report and

proposition had been considered by the Policy and Resources Committee;

(xx) **Appendix Two - Guidance and Procedure for Ministers** - The Committee agreed to defer consideration of this appendix until the issue of collective responsibility had been resolved. It also felt that the term 'public appointments' need further clarification.

The Committee expressed its appreciation of the work done by Messrs R. Whitehead and S. Drew, Law Officers Department, in preparing comments on the above report and proposition. It requested the Executive Officer to submit its comments to the Policy and Resources Committee.

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