

PRIVILEGES AND PROCEDURES COMMITTEE

(4th Meeting)

27th February 2009PART A

All members were present. Deputy J.A. Martin was not present for the conclusion of Item Nos. A3 or B4, and was not present for Item No. A4; Deputy M. Tadier was not present for Item Nos. A2 and A3; and Senator B.I. Le Marquand was not present for Item No. A4.

Connétable J Gallichan of St Mary, Chairman  
 Senator B.I. Le Marquand  
 Deputy J.B. Fox  
 Deputy J.A. Martin  
 Deputy C.H. Egré  
 Deputy M. Tadier  
 Deputy M.R. Higgins

In attendance -

The Bailiff of Jersey (Item Nos. A1, B1 and B4 only)  
 H.M. Attorney General (Item Nos. A1, B2 and B3 only)  
 Assistant Law Draftsman, Mr. C. Borrowman (Item No. A1 only)  
 M.N. de la Haye, Greffier of the States  
 Mrs. A.H. Harris, Deputy Greffier of the States  
 Miss A-C. Heuston, Clerk to the Privileges and Procedures Committee

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

Draft Freedom of  
 Information  
 (Jersey) Law  
 200-  
 670(1)

A1. The Committee, with reference to its Minute No. B5 of 23rd January 2009, considered a bundle of key documents in connexion with the development of draft freedom of information legislation.

The Committee noted that the Committee as previously constituted had been considering whether to channel all appeals through a new Information Tribunal (combined with the existing Data Protection Tribunal) or whether to provide that appeals be dealt with by a section of the Royal Court, comprising local resident office-holders.

The Committee welcomed the Bailiff of Jersey, H.M. Attorney General, and the Assistant Law Draftsman, Mr. C. Borrowman to consider this question.

The Committee heard from the Bailiff regarding the establishment of an appeals system, should freedom of information legislation be introduced. The appeals system would apply both to an applicant wishing to access information, and to the Minister appealing against the release of information by the Information Commissioner. The Bailiff informed the Committee that he had spoken with the Jurats who had agreed that a local tribunal should be established, rather than one made up of persons resident outside the Island, and that the Royal Court was an appropriate place for appeals to be resolved. The Jurats were concerned that steps should be taken to ensure that the Court would not be overwhelmed with appeals under the legislation, and had stated that the Court would not want to be making decisions on appeals *de novo*. This would perhaps suggest a 4-stage process –

- (1) application to a department official;

- (2) internal review process to the Chief Executive of Minister;
- (3) appeal to Information Commissioner;
- (4) right of appeal to the Royal Court.

The draft law should also include wording which invited the Court to consider whether the decision of the Information Commissioner was unreasonable having regard to all the circumstances of the case (Token test).

It was considered that the appeals system could be similar to that currently employed for Planning appeals, with the inclusion of an additional layer of appeal through the Information Commissioner

The Bailiff advised the Committee that, once an appeal had been lodged with the Royal Court it would be dealt with either as a standard appeal, or under the Court's modified procedure if it were a relatively minor matter in which case costs were unlikely to be awarded. It was considered that the Court should balance disclosure and public interest factors when making its decision on an appeal.

With reference to Article 31 of the Draft Freedom of Information (Jersey) Law 200- (Draft 7 – 21st May 2007 refers), which reads: 'Information is qualified exempt information if it relates to the provision of advice by a Law Officer,' the Bailiff requested that the Committee consider adding: 'or advice by the Bailiff'.

The Committee discussed the cost of implementing the legislation, and whether it could be introduced in phases, as well as what exemptions should apply. In relation to the appeals system, the Committee questioned whether members of the public would be put off by the possible cost of an appeal to the Royal Court, and considered that legislation could direct the Court to consider making a pre-emptive cost order where appropriate.

The Committee agreed that pre-emptive cost orders might be helpful to mitigate against the fear of high costs being awarded. This might state that the Minister's costs would not be charged to the appellant, or that, if the appeal were successful, the appellant's costs would be charged to the Minister. The Committee agreed to give further consideration to pre-emptive cost orders and public interest tests at a future meeting and give its view.

The Committee discussed the ability of individual States Members to gain access to information. The Attorney General advised that any current rules governing what individual Members had access to would be superseded by freedom of information legislation.

It was agreed that the Committee would be provided with a copy of the annotated version of the initial draft of the law (Draft 1 – 21st September 2005 refers), which had been more closely based on the United Kingdom's freedom of information legislation and give consideration to the above points. The Deputy Greffier was directed to take the necessary action.

The Committee agreed to undertake a review of the most recent draft of the law (Draft 7 refers) and to consider each Article separately at a two-day meeting to be held on 12th and 13th March 2009.

The Committee noted that the Corporate Services Scrutiny Panel, as previously constituted, had considered examining the draft law and investigating the cost of its implementation. It was agreed that the Committee would write to the current Corporate Services Scrutiny Panel to request that it consider undertaking such a review.

The Committee Clerk was directed to take the necessary action.

States Members' remuneration for 2009.  
1240/3 (73)

A2. The Committee discussed the proposition entitled, 'States Members' remuneration for 2009,' lodged 'au Greffe' on 19th February 2009 by the Connétable of St. Peter (P.24/2009 refers).

The Committee considered that it would have been preferable for the Connétable to contact the States Members' Remuneration Review Body in the first instance as it had been established to make an objective assessment with regard to Members' pay and to allow the public to have an input. Concerns were raised that it could become increasingly difficult to find members of the public willing to give their time on an honorary basis for bodies such as the Review Body if their work was disrupted in such a way.

It was agreed that the Chairman would telephone the Connétable to request that he withdraw the proposition. It was noted that the Connétable would still be able to make a recommendation to the Review Body, should he so wish. If the Connétable was not willing to withdraw the proposition the Committee agreed that it should present a comment to the States stating that it opposed the proposition.

Filming of scrutiny meetings by members of the public.  
510/1 (42)

A3. The Committee considered correspondence from the President of the Chairmen's Committee dated 23rd February 2009 regarding the taking of video footage of Scrutiny hearings/meetings by members of the public.

The Committee noted that an amendment had been made to the 'Members of Public in Hearings Protocol' to explain that the taking of personal video footage would not be permitted unless a request had been to, and authorisation given by, the relevant Chairman at least 3 working days in advance of the hearing/meeting. The Committee acknowledged that witnesses were allowed factual correction of transcripts prior to publication, and had a route for redress with legitimate, authorised, media, but recognised that this would not be the case when members of the public were permitted to video proceedings.

The Committee considered that the relevant Panel Chairman was not the only interested party, and felt that, as witnesses could be issued with a summons requiring them to appear before a Scrutiny Panel, they should have some say in the decision to allow members of the public to video. The Committee considered that there should be a presumption against allowing members of the public to video Scrutiny hearings/meetings, and questioned whether, under the revised protocol, a witness would have the right to –

- (a) decline to appear if the Panel had agreed that the proceedings could be videoed by a member of the public;
- (b) demand that the video be stopped; or
- (c) request that their evidence be heard *in camera*.

The Committee considered that the protocol should be further amended to read: 'and subject to the agreement of any witnesses that could be called upon to attend,' and agreed that its concerns should be raised with the President of the Chairmen's Committee.

The Committee Clerk was directed to take the necessary action.

Facilities for

A4. The Committee, with reference to its Minute No. A8 of 6th February 2009,

States Members.  
1240/9/1(70)

received a request from Deputy M.R. Higgins to purchase a book entitled: 'Human Rights Practice,' by Jessica Simor and Ben Emmerson Q.C. which he had ordered on a 30 day trial.

It was agreed that the Committee would wish to further consider the possible provision of a library facility for States Members prior to agreeing the purchase of any texts.