

PRIVILEGES AND PROCEDURES COMMITTEE

(3rd Meeting)

22nd March 2004PART A

All members were present.

Deputy R.G. Le Hérisssier
 Senator P.V.F. Le Claire
 Connétable D.F. Gray
 Deputy P.N. Troy
 Deputy C.J. Scott-Warren
 Deputy J-A. Bridge
 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
 D. Woodside, Legal Adviser
 Mrs. S. Stoten, Committee Clerk

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

Machinery of
 Government:
 Votes of No
 Confidence in
 Individual
 Ministers
 P.6/2004
 1240/22/1(34)

A1. The Committee, with reference to Act No. A7 of its meeting held on 5th March 2004, considered a draft comment in response to the Report and Proposition 'Machinery of Government: Votes of No Confidence in Individual Ministers' (P6/2004), lodged 'au Greffe' by Senator S. Syvret on 29th January 2004.

The Committee approved the final draft of the Comment and offered its support of the Senator's proposition which it agreed should be conveyed to Senator Syvret at the earliest opportunity. The Committee also wished to indicate to the Senator that it would give an undertaking to ensure that this facility would be available in the new system even if he decided not to seek a debate on the proposition at the present time.

The Greffier of the States was requested to take the necessary action.

Freedom of
 Information:
 Public Records
 Management.
 308/3(4)

A2. The Committee recalled Act No. A6 of its meeting dated 30th January 2004, and welcomed Deputy C. F. Labey and Ms. L. Myers, Jersey Archive Service, to discuss Freedom of Information and future arrangements for Public Records Management.

Deputy Carolyn Labey, in her capacity as both a Trustee of the Jersey Heritage Trust and a member of the Education, Sport and Culture Committee, expressed her concerns about the role of the Chief Minister's Department in relation to public records policy in the future ministerial system of Government. Deputy Labey drew a draft Memorandum of Understanding drafted by the Policy and Resources Department to the attention of the Committee. The draft Memorandum set out the

basis on which the Chief Minister's Department and the Education, Sport and Culture Department would work together in the ministerial system in relation to records management policy. The Deputy highlighted her strongly held view that Jersey Heritage Trust and not the Executive should be responsible for overseeing public record management to ensure independence.

The Committee agreed that its terms of reference did include the requirement to develop policies on both freedom of information and the provision of information and this issue was closely related to both issues.

The Committee recalled that in July 2002 the States agreed, as part of the decision on the future Departmental structure (P.70/2002), that the Education, Sport and Culture Department would have responsibility for the Jersey Heritage Trust, except in relation to public records management policy where the Trust would report directly to the Chief Executive as this was a corporate responsibility. This decision now seemed to be incompatible with the provisions of the Public Records (Jersey) Law 2002, approved by the States in September 2002, which defined very clearly the role of the Archivist, of the Trust and of the Records Advisory Panel. The Law sets out clearly the relationship between the Panel and the Education, Sport and Culture Committee and this appeared to be contradicted by the decision taken in P.70/2002.

The Committee was of the opinion that the Memorandum of Understanding would achieve nothing as the development of public records policy was covered by the Public Records Law and that its statutory provisions could not be interfered with by a document of this nature. The Committee believed that the Chief Executive, as head of the public sector, would have an important role in ensuring that all States Departments complied with the provisions of the Law and had adequate procedures in place for records management and that the role should not extend to having responsibility for the Trust in relation to public records policy.

The Committee, whilst sympathetic to Deputy Labey's concerns, and in its capacity as overseer of the future Freedom of Information (Jersey) Law, further agreed it should approach the Policy and Resources Committee suggesting that the Chief Executive be responsible for the compliance of public records management policy whilst the Jersey Heritage Trust would manage and carry out the policy itself.

The Greffier was requested to draft a letter to the President of the Policy and Resources Committee outlining Deputy Labey's concerns and the outcome of her meeting with the Committee.

Code of Practice
On Public Access
to Official
Information:
Register of
reports
(P.196/2003)
Report and
Proposition of
Deputy P. Troy –
comments
955(32)

A3. The Committee, recalled Act No. A10 of a meeting held by the Committee as previously constituted on 30th January 2004, when it considered the amendment lodged by Deputy P.N. Troy to his report and proposition 'Code of Practice on Public Access to Official Information: Register of Reports' (P.196/2003).

The Committee noted that Deputy Troy needed to reconsider his position with regard to lodging the aforesaid report and proposition as a new member of the Privileges and Procedures Committee in view of the work being undertaken by the Committee on freedom of information, detailed in the Committee's proposition (P.164/2003) and also his position as a member of the Freedom of Information Working Party.

Deputy Troy informed the Committee that his intention had been to get a register of reports up and running and that he hoped his proposition could be absorbed into the Committee's current initiative on freedom of information. It was further noted

however that an amendment to the Deputy's proposition had since fallen away having been tabled on a 'Blue' and was therefore considered withdrawn.

The Committee, whilst accepting the merits of Deputy Troy's original proposition and subsequent amendments, agreed that his objectives would be best met by amalgamating them into its current initiative and the Draft Freedom of Information (Jersey) Law and requested the Deputy Greffier and the Legal Adviser to take the necessary action in this regard.

States Members'
Remuneration:
Class 2 Social
Security
Contributions
1240/3(67)

A4. The Committee, with reference to Act No. A12 of a meeting held by the Committee as previously constituted on 30th January 2004, welcomed Senator P. Routier, President, Employment and Social Security Committee and Mr. D. O'Callaghan, Compliance and Governance Director, to discuss States members' remuneration and Class Two Social Security Contributions.

Emp.SSC(2)

The Committee recalled that the Employment and Social Security Committee had been asked by the previously constituted Committee to consider amending the Social Security (Classification) (Jersey) Order 1975 to enable States members to be treated as 'employed' for social security purposes with the employer's contribution being met by the States. In his correspondence dated 15th January 2004 addressed to the previous Committee, Senator Routier had questioned the basis for the apparent special treatment for States members. Although any amendment to the Law could legally be achieved, the delegation explained that it could not justify the treatment of States members differently to any other members of the community currently expected to pay Class Two social security contributions. In the absence of a compelling reason or business case to make such a controversial change the delegation stressed that States members did not hold a contract of employment with the States of Jersey and could therefore clearly be identified as self employed and subsequently liable for Class Two social security contributions.

The delegation was of the opinion that if the only reason for change would be the financial gain of States members, that in the current political climate it would be impossible to sanction any change combined with the reluctance of the Comptroller of Income Tax to make any legislative concessions. Senator Routier and Mr. O'Callaghan, withdrew from the meeting.

Those members who had been on the previously constituted Committee recalled that this issue had been of particular interest to Deputy F. J. Hill, B.E.M. and was of the opinion that it would be embarrassing for the Committee to pursue such a politically sensitive issue when given such clear arguments against any further action.

The Committee agreed it would not pursue a change to the legislation related to States members' social security contribution and to inform the President of Employment and Social Security accordingly. The Committee further agreed to notify Deputy Hill of its decision in order that he could pursue the matter independently if necessary.

States Members'
Remuneration:
increases for
2004 -
rescindment
(P.11/2004) -
comment.
1240/3(74)

A5. The Committee, with reference to its Act No. A11 of 30th January 2004, considered its position with regard to the Report and Proposition of Deputy T.J. Le Main, 'States Members' Remuneration: increases for 2004 - rescindment (P.11/2004) and Amendment of Senator J.A. Le Maistre dated 24th February 2004.

The Committee agreed with the previous decision to oppose the rescindment proposal and considered a final draft of the draft comment in response. The Committee was of the opinion that some members may have made financial commitments based on the rise effective from 1st January 2004 and that it could not impose a rescindment or

ultimate reimbursement of the rise at such short notice.

The Committee agreed that in light of the establishment of the Remuneration Review Board, it could not take on the responsibility of a matter that would inevitably be considered by the newly established body but that in its comment opposing the rescindment proposal it would highlight that –

- (a) members' remuneration should not preclude them from serving as a member of the States;
- (b) expenses should not be classed as remuneration and once deducted from any analysis, made the disparity between the private sector more visible; and
- (c) the line graph attached to its comment would further illustrate how States members pay awards had been consistently lower than RPI and those made to public sector employees.

The Greffier of the States was requested to make the necessary amendments to the comment and attached graph in readiness for presentation at the earliest opportunity.

States members' remuneration: establishment of an independent review board.
1240/3(73)

A6. The Committee, with reference to Act No. A1 of its meetings held on 9th March 2004, recalled that the positions of Chairman and members of the Remuneration Review Board had been re-advertised due to the small numbers of applicants in the first recruitment round.

The Committee was informed that as a result of the advertisement being placed in the Jersey Evening Post on 12th March 2004, several new applicants had come forward and that the calibre was very high with suitable candidates already visible.

The Committee noted that the establishment of the Review Body was paramount to resolving the issue of States members pay and that the newly elected Senator Shenton was due to bring further propositions on the matter at the next States sitting. The newly established body would make recommendations on the appropriate level of remuneration for 2005 and beyond and it was anticipated that the involvement of an independent arbiter would permanently resolve the issue once its recommendations were accepted. The Committee agreed that the appointment of the body's members should be approved by the States as soon as possible.

The Committee agreed that the Remuneration Working Party should review the list of all applicants and recommend a shortlist for approval by the Committee and arrange interviews or informal meetings thereafter.

Proposed meeting with Shadow Scrutiny and PAC Chairmen
502/1(15)

A7. The Committee recalled Act No. A9 of its meeting held on 5th March 2004 when it agreed a meeting between the President, Vice President and the Shadow Scrutiny Chairmen together with the Shadow Public Accounts Committee Chairwoman to receive an update on work carried out to date.

The Committee noted that this meeting would take place on 23rd March 2004 and looked forward to receiving feedback at its next meeting.

Working Party on the Organisation of States Business.
1240/7/1(78)

A8. The Committee, with reference to Act No. A9 of its meeting dated 30th January 2004, recalled that it had previously noted the inaugural meeting of the Working Party on the Organisation of States Business held on 17th December 2003 and that it had considered how it should take forward the suggestion it had made.

The Committee was encouraged to learn that a second meeting of the Working Party had been arranged for the 29th March 2004 and agreed that a statement should be made by the President to assure States members that work was progressing on reform of the Assembly and States business.

The Committee requested the Greffier of the States to draft a statement for the President that would be made in the Chamber on 30th March 2004.

Code of conduct
for States
Members and
declarations of
outside
Directorships and
occupations –
letter from Mr. R.
Syvret.
1240/9/1(110)
1240/9/1(118)

A9. The Committee noted a letter addressed to the President dated 2nd March 2004, from Mr. R.C.A. Syvret, in connexion with the code of conduct for States members and declaring or relinquishing outside Directorships and occupations.

The Committee recognised that in a relatively small constituency, conflicts of interest would be inevitable and that whilst States members remuneration was comparatively low, income would often be supplemented by other means including, in some cases directorships outside of the States. The Committee was also aware that it was responsible for the establishment of a code of conduct for States members, however, this did not stretch to that of Ministers as part of the new Ministerial Government reforms under the remit of the Policy and Resources Committee and the Council of Ministers. The Committee was concerned that the introduction of such rigid rules represented in the United Kingdom set out in the Ministerial Code, referenced by Mr. Syvret, might prevent some people from standing as States members and ultimately leading to the loss of potentially high calibre candidates.

The Committee agreed that whilst it was receptive so some of Mr Syvret’s concerns, it could not fully resolve all the issues. The Committee requested the Greffier of the States to draft a suitable response to Mr Syvret confirming the matter had been considered and its commitment to ensuring the current code placed significant obligations on States members including that of declaring financial interests. The Greffier was also requested to send a copy of any correspondence to the President of the Policy and Resources Committee for his information.

Composition of
the States –
Letter from Mr.
A. Heard.
1240/22/1(13)

A10. The Committee considered a letter addressed to the President from Mr. A.J. Heard dated 26th February 2004 in connexion with the composition of the States.

The Committee agreed the issues in Mr. Heard’s letter would be more relevant and more appropriately addressed if tabled on the agenda at the next meeting of the Special Committee on the Composition and Election of States members and directed the Committee Clerk to take the necessary action.

States
Appointments.

A11. The Committee considered the issue of rules governing States appointments and members’ concerns about the period of ‘sanitisation’ after a member left the States before holding a States appointment. The issue had recently been brought to the attention of the Committee during the lengthy debate relating to the appointment of the former Senator Mr. P. Horsfall, C.B.E., to the Waterfront Enterprise Board and approved in the States on 2nd March 2004.

The Committee recognised that any proposals to regulate States appointments would require a change to the Law governed by each Committee and that as a Committee it had little power to influence such a change. The Committee noted that the Appointments Commission existed as an independent body to ensure fair and appropriate appointment but that it was the responsibility of each Committee to understand the procedures and regulations pertaining to such appointments.

The Committee agreed to gauge the opinion of other Committees and States

members in this regard.

The Greffier of the States was requested to take the necessary.

Draft Code of
Conduct for
Elected Members
of the States.
1240/9/1(110)

A12. The Committee received and considered a draft statement to be made by the President at the next States sitting on the 30th March, in connexion with the Draft Code of Conduct for Elected Members of the States.

The Statement had been prompted by recently submitted complaints against States members who had allegedly breached the Code. The Committee was of the opinion that it must make clear to members of the public and the States Assembly that the code remained an informal one and that the Committee was unable to formally take action in respect of any complaints received. The Committee, whilst unable to make any representations on behalf on complainants, was very much committed to the principles contained in the Code and expected all members to adhere to its principles and abide by the code albeit in draft format.

The Committee approved the draft statement and looked forward to the next States sitting when it would be made by the President. The Greffier of the Sates was requested to make the necessary arrangements for the statement to appear on the order paper.

On a related matter, the Committee considered the way forward in respect of protocols for dealing with complaints and ultimately the Draft Code of Conduct for Elected States (p.32/2003)

The Committee agreed that only the States could deal with procedures relating to States members conduct. The Committee invited Deputy Troy to review the current disciplinarily and investigative process drawing on his own experiences and welcomed suggestions from other members as to improvements. The Committee further agreed to revisit the debate of its proposition (P.32/2003) on 8th April 2003.

Fundamental
Spending Review
– Hansard and
revised priority
savings.
465/2(3)

A13. The Committee received and considered correspondence addressed to the President from the President of the Finance an Economics Committee dated 17th February 2004, in connexion with the Fundamental Spending Review and the revised priority savings.

The Committee noted the savings and growth bids for all Committees and looked forward to the results of the most recent stage of decision conferences held on 18th and 19th March 2004.

On a related matter, the Committee discussed the issue of Hansard and the prospect of the initiative not being considered as a high priority on the growth list. The Committee was of the opinion that Hansard was integral to the scrutiny function and that it was committed to obtaining funding in 2006.

Terms of
reference –
Privileges and
Procedures
Committee.
465/1(2)

A14. The Committee noted its Terms of Reference and a supplemental report prepared by the Greffier of the States dated 15th March 2004.

The Committee was apprised of the progress made to date against each of the items on its Terms of Reference agreed by the States on 26th March 2004. The discreet pieces of work were notably -

Working Party on the Arrangements of Public Business
Scrutiny
States facilities for members and officers if the States Assembly
Remuneration
Draft Code of Conduct
Freedom of information
Hansard.

The Committee agreed that much had been achieved in the two years since the Committee was newly established but that significant items, predominantly the review of the new Standing Orders, remained and made up the work programme for 2004 and beyond. The Committee further agreed that it would need to address a timetable for this work at a subsequent meeting.

2003 Year End
Financial report
and carry
forwards.
422/10/1(66)

A15. The Committee received and considered the 2003 end of year accounts prepared by the Assistant Greffier of the States and supplementary report dated 16th March 2004.

The Committee noted the year end position and associated narratives detailing its major achievements and financial overview in 2003

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

The Committee approved the financial accounts and the information provided in the relevant appendices that were to be included in the States of Jersey Annual Report and accounts of the Finance and Economics Committee. The Committee further approved a request to the Finance and economics Committee to approve the carry forward of its 2003 balances in the sum of £330,298 were broken down as follows;

Scrutiny (unspent 2003 balance)	£239,493
Equipment (reprographic provision)	£30,805
CPA Regional Conference 2005	£60,000

The Committee stressed that its expenditure was increased by over 300% in 2003 compared to 2002 as it had taken on budgetary and financial responsibility of the States Greffe and Scrutiny functions in 2003.

The Greffier of the States was directed to send a copy of this Act to the Finance and Economics Committee to confirm its year end position and its request to carry forward its 2003 year end balances.

Tribunals
Working Group.
1423/2(2)

A16. The Committee received and considered a letter addressed to the President from Senator W. Kinnard, Chairperson, Tribunals Working Group, dated 20th February 2004, inviting the President to become a member of the Tribunals Working Group appointed by the Policy and Resources Committee in February 2003 to examine issues relating to disputes and appeals procedures in the Island, with particular reference to the court and tribunal systems.

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

The Committee noted that the Tribunals Working Group was tasked to consider the feasibility of establishing a centralised tribunals service and a related study commissioned by the Policy and Resources Committee. The Committee further noted that Senator P. Ozouf and the Deputy Bailiff had agreed to join the Working Group which would initially focus its attention on the proposal of the Environment and Public Services Committee for the establishment of a Planning Appeals Commission.

The President invited members of the Committee to join the Working Group on

behalf of the Privileges and Procedures Committee.

The Committee approved Deputy Scott Warren as a member and requested that a copy of this Act be sent to the Policy and Resources to confirm her acceptance.

Scrutiny training
programme.
502/3(9)

A17. The Committee received and considered a report prepared by Mr. M. Haden, Scrutiny Officer, dated 12th March 2004, regarding the Scrutiny training programme requesting the Committee's authorisation to continue development of the training programme for States members and officers.

Scrutiny

The Committee noted the success of the initial training sessions held on 3rd 4th and 5th of March attended by members of the Scrutiny Panels and Public Accounts Committee members and Scrutiny officers. Despite initial scepticism of some members, the Committee was encouraged by the positive feedback received from those who attended and learnt that the event had proved both useful and constructive. The Committee further noted that training session for senior and scrutiny officers had also taken place with approximately 100 senior officers signed up for future courses.

The Deputy Greffier of the States apprised the Committee of her visit to the Scottish Parliament accompanied by Senator E.P. Vibert, Deputy G.P. Southern and Deputy R.C. Duhamel on the 18th and 19th March and informed them a report would be presented in due course.

The Committee agreed that the Scrutiny Officers should continue to develop the training programme for States members in conjunction with the Chairmen of the Shadow Scrutiny Panels and looked forward to receiving an update of progress as a subsequent meeting.

Meeting dates

A18. The Committee considered its annual timetable and meeting dates for 2004 as detailed in the attached schedule.

Bookshop
Encl.

The Committee recalled that the former President had opted for meetings starting at 11.00 a.m. but was of the opinion an earlier start would ensure all items on its agenda would be discussed and given sufficient time for debate.

The Committee agreed the schedule of dates for its annual meetings between times of 09.30 a.m. to 12.30 p.m. in the Halkett Room, Morier House.