

PRIVILEGES AND PROCEDURES COMMITTEE

(87th Meeting)

10th January 2011PART A

All members were present, with the exception of Deputy J.A. Martin and Deputy M.R. Higgins, from whom apologies had been received.

Connétable J. Gallichan of St. Mary, Chairman
 Senator B.I. Le Marquand
 (not present for item No. A1)
 Connétable P.F.M. Hanning of St. Saviour
 Deputy J.B. Fox
 Deputy C.H. Egré

In attendance -

Deputy E.J. Noel of St. Lawrence
 (item No. A5 only)
 Mrs. E. Walsh, Senior Assistant Law Draftsman
 (item No. A11 only)
 M.N. de la Haye, Greffier of the States
 (not present for item Nos. A11 and A12)
 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 only.

Minutes.

A1. The Minutes of the meetings of 29th November 2010 (Part A only), 7th December 2010 (Part A only) and 14th December 2010 (Part A and Part B), having been previously circulated, were taken as read and were confirmed.

Composition of the States: reduction in the number of Senators – Referendum. (P.198/2010) 1240/22/1(56)

A2. The Committee received the proposition ‘Composition of the States: reduction in the number of Senators – Referendum,’ lodged *au Greffe* by Senator F.E. Cohen on 31st December 2010 (P.198/2010 refers), and a report and draft comment prepared by the Greffier of the States in this regard.

Senator Cohen’s proposition asked the States to agree that a referendum should be held to ask members of the public whether they agreed that the number of Senators should be reduced from 12 to 8. It was noted that any decision to hold a referendum would make it impossible for the States to debate the Committee’s proposition, ‘Draft States of Jersey (Miscellaneous Provisions) Law 201-’ (P.176.2010 refers). Accordingly, the number of Senators would remain the same for the 2011 elections, and it would not be possible to reform the election cycle to move to spring elections and a 4 year term of office for all members. The Committee strongly opposed the proposition on this basis.

The Committee, having agreed certain amendments to the draft comment, **approved** the same and requested that it be presented to the States at the earliest opportunity.

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

Composition of the States: reduction in the number of Senators – Referendum (P.198/2010) – Amendment. 1240/22/1(56)

A3. The Committee, with reference to its Minute No. A2 of the present meeting, received an embargoed copy of the proposition ‘Composition of the States: reduction in the number of Senators – Referendum (P.198/2010) – Amendment’ which was scheduled to be lodged *au Greffe* by Senator A. Breckon on 11th January 2011 (P.198/2010 Amd. refers).

The Senator proposed that a further question be added to the proposed referendum to ask whether the 12 parish Connétables should have an automatic seat in the States Assembly by virtue of their office. The Committee, having noted the amendment, agreed to present a comment to the States stating its strong opposition to the proposal for the reasons set out in its comment on the main proposition. It was noted that, should a referendum be held during the spring of 2011, it would not be possible to implement the decision in time for the autumn 2011 elections, should the electorate indicate that they did not wish the Connétables to remain as members of the States by virtue of their office. It was **agreed** that a comment should be drafted and circulated for approval in early course by electronic mail.

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

Composition of the States: reduction in the number of Senators – Referendum (P.198/2010) – Second Amendment. 1240/22/1(56)

A4. The Committee, with reference to its Minute No. A2 and No. A3 of the present meeting, received an embargoed copy of the proposition ‘Composition of the States: reduction in the number of Senators – Referendum (P.198/2010) – Second Amendment,’ which was scheduled to be lodged *au Greffe* by Deputy T.M. Pitman on 11th January 2011 (P.198/2010 Amd.(2) refers).

The Deputy proposed that a further question be added in respect of the referendum which would ask those taking part whether they wished the number of Deputies representing their parish to be reduced. Having noted the amendment, the Committee agreed to present a comment to the States stating its strong opposition for the reasons set out in its comment on the main proposition. It was also noted that, should a referendum be held during the spring of 2011, it would not be possible to implement the decision in time for the autumn 2011 elections, should the electorate indicate that they did wish the number of Deputies in their parish to be reduced. It was also felt that the question suggested by Deputy Pitman could be difficult for electors to answer, as no reform to the number of Deputies in the States, or the way in which they were elected, had been agreed. It was **agreed** that a comment should be drafted and circulated for approval in early course by electronic mail.

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

Composition of the States: reduction in number of Deputies. (P.2/2011) 1240/22/1(57)

A5. The Committee received the proposition ‘Composition of the States: reduction in number of Deputies,’ lodged *au Greffe* by Deputy E.J. Noel on 4th January 2011 (P.2/2011 refers) and a report and draft comment prepared by the Greffier of the States in this regard.

The Chairman welcomed Deputy Noel and noted that the proposition asked the States to agree that the number of Deputies should be reduced from 29 to 21 from the autumn 2011 elections. Deputy Noel had also lodged draft amendments to the ‘Draft States of Jersey (Miscellaneous Provisions) Law 201- ’ (P.176.2010 Amd. refers) to give effect to his proposals should P.2/2011 be adopted by the States. Deputy Noel enquired whether, as a result of the lodging of his proposition, the Committee would consider delaying the debate of P.176/2010, which was scheduled to be held on 18th January 2011. The Chairman advised Deputy Noel that the Committee was unable to delay the debate as this would leave insufficient time to implement any changes adopted by the States in advance of the autumn 2011 elections.

It was noted that Deputy Noel's proposition suggested a move to large constituencies and that, when the Committee had previously proposed such a move, one of the overriding objectives had been to attempt to create constituencies of a similar size so that electors across the Island would be able to elect a similar number of representatives. Deputy Noel's proposition did not achieve this, and had also been based on out-of-date census data which had been compiled in 2001. The Committee considered that far more detailed work would be required in advance of such a debate in order to obtain a fair representation across the Island, and that it would be preferable to use up-to-date statistics. The Committee advised Deputy Noel that it would be content to consider reform of the role of Deputy as part of its ongoing work programme, and the Chairman invited the Deputy to consider withdrawing his proposition. Deputy Noel stated that the proposition had been informally supported by 7 other States members, and that consultation would need to take place with those members prior to a decision being made in this respect.

Having been thanked for his attendance by the Chairman, Deputy Noel withdrew from the meeting.

The Committee gave consideration to a draft comment in respect of the proposition and agreed certain amendments. It was **agreed** that, should Deputy Noel decline to withdraw P.2/2011, it would wish to present the aforementioned comment to the States. Meanwhile, it would await advice from the Deputy regarding his intention in respect of the proposition.

Composition of
the States:
reduction in
number of
Deputies –
Amendment.
(P.2/2011 Amd.)
1240/22/1(57)

A6. The Committee, with reference to its Minute No. A5 of the present meeting, received the proposition 'Composition of the States: reduction in number of Deputies – Amendment,' lodged *au Greffe* by Deputy A.E. Jeune on 10th January 2011 (P.2/2011 Amd. refers).

The Greffier of the States advised that 2 further amendments to the main proposition were scheduled to be lodged on 11th January 2011 by Deputy M. Tadier and Deputy T.M. Pitman.

The Committee **agreed** that, should Deputy E.J. Noel decline to withdraw the main proposition (P.2/2011 refers), it would wish to present comments to the States outlining its opposition to the proposed amendments and asking members to limit the amount of debating time given over to the matter.

Draft States of
Jersey
(Miscellaneous
Provisions) Law
201- Second
Amendment.
(P.176/2010
Amd. (2))
450/12(1)

A7. The Committee received the 'Draft States of Jersey (Miscellaneous Provisions) Law 201- Second Amendment' (P.176/2010 Amd. (2) refers), lodged *au Greffe* on 4th January 2011 by Senator F. du H. Le Gresley, M.B.E., and a report and draft comment prepared by the Greffier of the States in this regard.

The Committee recalled that the proposals agreed by the States in October 2010 provided for a move to a Spring election in May 2015 for the majority of members; however, because 6 Senators' terms of office would expire in October 2014, there would be a need for a transitional election for 4 Senators in October 2014. Under the Committee's proposals the 4 Senators elected in October 2014 would serve for 4½ years until the second spring election in May 2019 when the first general election for all members on one day would take place. Senator Le Gresley had proposed that the Senators elected in October 2014 should only serve for 6 months until May 2015 at which stage a full general election for all members could be held. The Committee **agreed** that such an approach would be likely to restrict the field of candidates, and considered that its own transitional arrangements would be preferable to Senator Le Gresley's proposal. While it was accepted as unfortunate that a transitional Senatorial election would have to be held in October 2014, the Committee recalled that it had received clear legal advice that it was not possible to extend the term of office of an elected member after the election.

The Committee, having considered the draft comment on the second amendment to the proposition, and having agreed certain amendments, accordingly **approved** that same and requested that it be presented to the States in early course.

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

Draft States of Jersey (Miscellaneous Provisions) Law 201- Third Amendment (P.176/2010 Amd. (3)) 450/12(1)

A8. The Committee received the 'Draft States of Jersey (Miscellaneous Provisions) Law 201- Third Amendment' (P.176/2010 Amd. (3) refers), lodged *au Greffe* on 4th January 2011 by Senator F.C. Ferguson, and a report and draft comment prepared by the Greffier of the States in connexion with the same.

The Committee noted that the Senator had lodged amendments to retain 12 Senators indefinitely and to maintain the proposed cycle of elections. Accordingly, if adopted in isolation, the amendments would mean the election of 6 Senators for 3½ years in October 2011, 6 Senators elected for 4½ years in October 2014 and, from May 2019, a total of 12 Senators elected on one day every 4 years. The Committee recalled that the States had taken the decision in October 2010 to reduce the number of Senators from 12 to 8 and that the Senator's proposition sought to reopen that debate. Concern was also raised that the Senator's proposal, if adopted, could cast doubts on the legitimacy of the poll as the electorate would be expected to cast 12 votes on a single day, and would be likely to cast significantly less, with some candidates being elected on a very small percentage of the votes.

The Committee, having considered the draft comment on the 'Draft States of Jersey (Miscellaneous Provisions) Law 201- Third Amendment,' **approved** the same and requested that it be presented to the States in early course.

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

Draft States of Jersey (Miscellaneous Provisions) Law 201-: Fourth Amendment (P.176/2010 Amd. (4)) 450/12(1)

A9. The Committee received the 'Draft States of Jersey (Miscellaneous Provisions) Law 201- Fourth Amendment' (P.176/2010 Amd. (4) refers), lodged *au Greffe* on 4th January 2011 by Senator P.F.C. Ozouf, and a report and draft comment prepared by the Greffier of the States in connexion with the same.

It was noted that Senator Ozouf's amendment would alter the proposed transitional cycle of elections without changing other provisions relating to the number of elected members. Senator Ozouf proposed that the move to a 4 year term of office and a spring election should be deferred so that all members elected in October 2011 would only serve for a 3 year term until October 2014. At that stage a general election could take place for all 49 members who would then serve a 3½ year term until May 2018 when the first spring election would take place and all members would be elected on a 4 year term. The Committee agreed that the decision on whether or not to support Senator Ozouf was a political one as it would result in the deferment of spring elections for 3 years simply to avoid a one-off transitional Senatorial election for 4 members.

Having agreed certain amendments to the draft comment on the 'Draft States of Jersey (Miscellaneous Provisions) Law 201-: Fourth Amendment,' the Committee **approved** the same and requested that it be presented to the States in early course.

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

Draft Amendment (No. 14) of the Standing Orders

A10. The Committee received an embargoed copy of the proposition 'Draft Amendment (No. 14) of the Standing Orders of the States of Jersey (P.169/2010) - Amendment' (P.169/2010 Amd. refers), which was scheduled to be lodged *au Greffe* on 11th January 2010 by the Deputy of St. John.

of the States of
Jersey
(P.169/2010) –
Amendment.
450/2(15)

The Committee recalled that it had lodged the ‘Draft Amendment (No. 14) of the Standing Orders of the States’ on 10th November 2010 and that the proposition was scheduled to be debated by the States on 18th January 2011. The Deputy of St. John had proposed that it be amended to remove the provision which allowed Assistant Ministers the power to propose a proposition. The Committee noted that, under current practice, an Assistant Minister would often be invited by a Minister to act as Rapporteur on his or her behalf. The proposed new Standing Order 68A would codify this procedure by detailing who may act as Rapporteur for propositions, setting out in Standing Orders conventions that had been followed to date, but had yet to be formalised.

The Committee agreed that, should a Minister be unavailable to present an urgent proposition, it was logical that the relevant Assistant Minister should be able to present that proposition on the Minister’s behalf. Similarly, if the Assistant Minister with responsibility for a particular area wished to present a proposition relevant to that area to the States, it was logical that he or she should be able to do so. Should the duty to propose such propositions always fall to the Chief Minister or to the relevant Minister, it was unlikely that either party would be privy to same level of detailed background information that the Assistant Minister would have been able to provide. Accordingly, the Committee agreed that it was opposed to the proposed amendment of the Deputy of St. John. It was **agreed** that a comment should be prepared in respect of the proposition for approval by electronic mail, and subsequent presentation to the States.

The Committee Clerk was requested to take the necessary action.

Draft Freedom of
Information
(Jersey) Law
201-
670/1(21)

A11. The Committee, with reference to its Minute No. A2 of 14th December 2010, received draft No. 23 of the Draft Freedom of Information (Jersey) Law 201- and a revised accompanying report.

The Chairman welcomed Mrs. E. Walsh, Senior Assistant Law Draftsman, in connexion with the revised legislation. The Committee discussed the amendments to the draft Law as follows:

Article 1 – Interpretation

The Committee noted that paragraph (h)(A), in relation to the definition of ‘public authority’ had been amended to read: “...which is in receipt of funding at least half of which is from the States in one or more years”. Accordingly, a public authority would be permanently defined as such from the point at which it came under Article 1(h)(A) of the Law. It was noted that public authorities were not automatically scheduled under the Law and that public authorities would not have to comply with the Articles of the Law unless they had been listed as a ‘scheduled public authority’ as defined in Schedule 1 to the Law.

Article 2 – Meaning of “request for information”

The Committee was of the understanding that a person who submitted a request for information under the legislation would be required to provide a postal address. It was therefore agreed that Article (1)(c) should be amended to make this explicit.

Article 6 – Parts and Schedule 1 may be amended by Regulations

A query was raised with regard to the method of adding public authorities to Schedule 1 by Regulation. It was suggested that it may be more efficient to enable public authorities to be added to the schedule by the making of an Order. It was **agreed** that research should be carried out into the possibility of adopting such an approach.

Part 4, Articles 23 to 29 – Absolutely Exempt Information

Part 5, Articles 30 to 42 – Qualified Exempt Information

The Committee noted and **approved** amendments made to Article 24(4) in respect of the definition of “arbitration” and “proceedings in a particular cause or matter”. A query was, however, raised with regard to the use of the phrase “the judicial power of the States of Jersey” and the Senior Assistant Law Draftsman agreed to consult with the Law Officers’ Department in this respect.

Article 45 – Powers of Information Commissioner to enter premises, to require the supply of information and to inspect information

The Committee noted that Article 45 had been deleted and replaced with a reference to Schedule 2. The Committee **approved** Schedule 2 to the draft Law.

Article 46 – Appeals to the Information Commissioner

The Committee’s decision of 14th December 2010 to incorporate a time limit of 6 weeks within which to appeal to the Information Commissioner was noted as having been incorporated into Article 46(2) of the Law.

Article 47 – Appeals to the Royal Court

It was noted that additional paragraphs (6) and (7) had been inserted, the content of which was noted and approved.

Article 54 – Public Records (Jersey) Law 2002 amended

It was noted that the amendments related to revised Article numbers.

The Committee considered the revised draft report which would accompany the draft legislation once a decision had been taken to lodge the Draft Freedom of Information (Jersey) Law 201- *au Greffe* for debate by the States. The amendments to the text were noted and **approved**.

The Deputy Greffier of the States and the Senior Assistant Law Draftsman were requested to take the necessary action in respect of the aforementioned decisions. It was agreed that the revised draft Freedom of Information (Jersey) Law 201- and accompanying report could then be circulated to members for approval and subsequently lodged *au Greffe* for debate by the States.

Information
technology
provision for
States members.
1240/9/1(70)

A12. The Privileges and Procedures Committee, with reference to its Minute No. A.12 of 14th December 2010, received an oral report from the Chairman in respect of an inquiry received from a States member in connexion with the provision of laptop computers.

The Chairman advised that the member had requested an upgrade of their current laptop provision, and had been interested to know whether it would be possible to purchase an Apple Macbook rather than a personal computer, and to personally meet any additional costs incurred.

It was noted that Information Services did not currently support Apple technology and the Chairman was **requested** to advise the relevant States member accordingly.