

PRIVILEGES AND PROCEDURES COMMITTEE

(36th Meeting)

3rd February 2005PART A

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

Deputy R.G. Le Hérisier
 Senator P.V.F. Le Claire
 Connétable D.F. Gray
 Deputy P.N. Troy
 Deputy C.J. Scott Warren
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 I. Clarkson, Committee Clerk

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

- Minutes A1. The Minutes of the meetings held on 5th January (Part A) and 13th January 2005 (Parts A and B) were taken as read and were confirmed.
- Standing Orders: A2. The Committee received correspondence, dated 14th February 2005, from Mr. Register of B. Querée on behalf of the Jersey Evening Post, requesting permission to publish the Members' Register of Members' Interests.
- Interests: The Committee recalled that the rules governing the operation of the Register were publication. contained in Standing Order No. 44A, which stipulated that, in order to view the 1240/4/2(1) Register, a member of the public was required to attend the States Bookshop and to furnish the Greffier of the States with their correct name and address. Publication in a newspaper was, therefore, effectively prohibited by the existing rules. Clerk G.O.S. L.D. Notwithstanding the foregoing, the Committee discussed whether the existing rules concerning the administration of the Register and the categories of registrable interest recorded within it should be reviewed.

On the matter of accessibility, some support was expressed for the principle of publishing the Register on the States Assembly Web site. Moreover, it noted that the respective registers for members of the United Kingdom House of Commons and the Scottish Parliament were now freely available on the Internet. Nevertheless, it was also acknowledged that the existing arrangements in Jersey were a relatively cost effective way of making the necessary information available to the vast majority of the electorate. In addition, some concern was expressed at the prospect of publication on a medium that was accessible worldwide. It was reported that several Members had previously expressed concerns to the Greffier of the States at the prospect of personal information being made more easily available to persons involved in criminal activities.

The Committee was advised that a discussion paper on possible reform of the existing rules on declaration and registration of Members' interest would be presented to the Committee prior to the end of February 2005. **Accordingly the Committee deferred further consideration of the matter pending receipt of the aforementioned discussion paper.**

In the intervening period, the Committee agreed to write to all Members advising that the issue of the accessibility of the Register of Members' Interests was being addressed by the Committee as part of its ongoing review of the Standing Orders of the States of Jersey.

The Committee Clerk was instructed to take the necessary action.

Scrutiny of States
Business Plan
and Budget.
502/5/5(1)

A3. The Committee, with reference to its Act No. A2 of 25th November 2004, recalled that it had agreed to consult the Policy and Resources and Finance and Economics Committees on arrangements for scrutiny of the States Business Plan and Budget during 2005.

Clerk
D.G.O.S.
P.R.C.C.
P.R.E.O.
T.O.S.
C.I.Aud.
F.E.C.C.
Scrutiny

The Committee received a revised report, prepared by the Deputy Greffier of the States, in connexion with scrutiny of the States Business Plan and Budget during 2005.

The Committee welcomed a delegation consisting of Senator F.H. Walker, President of the Policy and Resources Committee, and Mr. J.M.E. Harris, Business Manager, Policy and Resources Department.

The Committee welcomed a delegation from the Finance and Economics Committee consisting of: Senator T.A. Le Sueur, President; Senator P.F.C. Ozouf, Vice President; Mr. I. Black, Treasurer of the States; Mr. K. Hemmings, Head of Performance and Review, States Treasury; and, Mrs. M. Washington, Corporate Financial Strategy Consultant, States Treasury.

It was noted that the Business Plan and Budget needed to be treated separately as they were quite separate processes.

Business Plan

It was agreed that scrutiny of the Business Plan could be conducted in public. Scrutiny of the Business Plan would be a six month process. Senator Le Sueur recalled that the processes leading to the production of the Business Plan had already begun at departmental level and he acknowledged that the Resource Allocation Meeting of Committee Presidents on 7th February 2005, at which 3 year cash limits for individual Committees were due to be set, was a crucial date for the new system, and members of scrutiny would be present. The purpose of scrutiny of the Business Plan was to provide a critique, and to validate what had been done. It was not intended that this should generate amendments, but rather to carry out an assessment within the necessary timeframe and inform members. The meeting noted the need for impartiality, and this would be underlined by ensuring that comment was based on evidence.

Consideration was given to the matter of whether a Scrutiny Panel should be entitled to investigate whether the budget planning process within a particular department was flawed or ineffective. Generally, scrutiny should operate at a more strategic level, but business plans of individual departments could be released for scrutiny

once the Business Plan had been completed. Senator Le Sueur agreed that it was, however, appropriate for scrutiny to assess the impact of proposals on stated strategic aims, e.g. impact of the Agri-environment Scheme on environmental aims.

Budget

Senator F.H. Walker and Senator T.A. Le Sueur confirmed that they were committed to defining the best way in which Scrutiny could assist with the budget process.

It was agreed that the purpose of Budget Scrutiny should be to look at the Budget processes, suggest improvements to the processes and to evaluate whether the outcomes were a fair reflection of the processes. The reviews would concentrate on how the proposals were arrived at, and decide whether the proposals were consistent with strategy, and if not, then why not.

In terms of process, it was confirmed that in accordance with the new Public Finances Law, individual members could lodge amendments to the Budget with a minimum of 2 weeks notice (rather than the previous practice of being able to present amendments with no notice at all), but it was not intended that Scrutiny Panels would bring amendments to the Budget.

All parties agreed that, in view of the economic and social sensitivity of Budget proposals, it was vital that confidentiality was maintained during the Budget Scrutiny process. To that end, it was agreed that, whilst the Scrutiny Panels would be entitled to shadow the Budget and Business Plan process, any Budget Scrutiny hearings would operate in closed session.

Senator F.H. Walker advised the Committee that he saw nothing inherently wrong with an examination by a Scrutiny Panel of the strategy underpinning the budgetary planning of a particular department, although he cautioned that Panels would need to exercise careful judgement in selecting such topics for review. The budgetary impact of the draft Regulation of Investigatory Powers (Jersey) Law (Projet No. P.196/2004 refers), which was due for debate on 15th March 2005, was cited as one example of where such a review could have been of significant benefit to the States Assembly.

The delegates, having been thanked by the Committee for their attendance, withdrew from the meeting.

The Committee requested the Deputy Greffier of the States to circulate a revised report, incorporating the aforementioned decisions, to the Policy and Resources and Finance and Economics Committees for formal endorsement.

The Greffier of the States was requested to send a copy of this Act to the Policy and Resources and Finance and Economics Committees for information.

Public Finances
(Jersey) Law
200-: expenditure
and taxation
controls.
447(1)

A4. The Committee, with reference to its Act No. A1 of 13th December 2004, recalled that the draft Public Finances (Jersey) Law 200- had been adopted by the States on 19th January 2005. However, the Assembly had given leave to the Finance and Economics Committee to withdraw Articles 14 and 19 of the said Law, which concerned restrictions on amending or proposing expenditure controls and on lodging taxation drafts. Both Articles were considered to have been unduly restrictive to individual Members.

Clerk
G.O.S.
T.O.S.

The Committee received a report, dated 28th January 2005, prepared by Mrs. M. Washington, Corporate Financial Strategy Consultant, States Treasury, in connexion

C.I.Aud.
F.E.C.C.

with the former Articles 14 and 19 of the Public Finances (Jersey) Law 200-

The Committee received a delegation from the Finance and Economics Committee consisting of: Senator T.A. Le Sueur, President; Senator P.F.C. Ozouf, Vice President; Mr. I. Black, Treasurer of the States; and, Mrs. M. Washington, Corporate Financial Strategy Consultant.

The Committee was advised that, having reconsidered the purpose and wording of the former Articles 14 and 19, the Finance and Economics Committee remained satisfied that the Articles were necessary to ensure good governance and that they represented worldwide best practice. It was explained that any attempt to ease restrictions on amending or proposing expenditure controls and on lodging taxation drafts would inevitably increase the risk that control over public spending might be lost.

The Committee agreed that there were sound financial reasons for reinstating the former Articles 14 and 19 within the Public Finances (Jersey) Law 200- and it acknowledged that, in the forthcoming ministerial system, the States Assembly retained the ultimate power to approve or reject the budget proposals of the Council of Ministers. Nevertheless, the Committee considered that States Members would benefit from a clearer explanation of the purpose of, and the reasoning behind, the two Articles. In addition, the Committee expressed a degree of concern that the wording of the former Article 14(2) may have inadvertently given Members a false impression of the extent of their powers to bring amendments to the expenditure plans of the States.

The Committee noted that the Finance and Economics Committee would re-consider the former Articles 14 and 19, either in an identical or a slightly modified format, at a subsequent meeting. A presentation to all States Members was then to be arranged, following which the Articles would be re-lodged 'au Greffe'.

The members of the delegation, having been thanked by the Committee for their attendance, withdrew from the meeting.

Scrutiny:
evidence given
by Members.
502/1(32)

A5. The Committee received correspondence, dated 18th November 2004, from Senator F.H. Walker, President of the Policy and Resources Committee, concerning evidence given by Members to Scrutiny Panels.

P.R.C.C.
P.R.E.O.
Clerk
G.O.S.

The Committee noted that Senator Walker had expressed concern that a Member could, in theory, lie under Oath to a Scrutiny Panel and yet avoid criminal prosecution.

The Committee acknowledged the point made by Senator Walker. It nevertheless recalled that the forthcoming rules governing the application of Parliamentary Privilege to Members appearing before Panels would mirror those that applied to Committees of Inquiry. Under those rules, a Member who deliberately perjured his or herself would not be protected.

The Greffier of the States was requested to write to the President of the Policy and Resources Committee in an attempt to allay his concerns.

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

Shadow Scrutiny:
complaint against

A6. The Committee recalled that, on 10th January 2005, the Shadow Scrutiny Panel chaired by Senator E.P. Vibert had held a public hearing, and that Deputy M.F.

Deputy M.F.
Dubras.
502/1(39)

Clerk
G.O.S.
Scrutiny

Dubras had been called to give evidence at that hearing. It further recalled that Deputy Dubras had declined to answer questions from Deputy R.C. Duhamel, a member of the aforementioned Panel, citing a potential conflict of interest. Accordingly Deputy P.J. Rondel, in his capacity as Review Chairman of the Shadow Scrutiny Review of the Waste Management Strategy, had written to the Committee to complain about the actions of Deputy Dubras.

The Committee received a report, dated 27th January 2005, prepared by the Committee Clerk, in connexion with the complaint made by the Shadow Scrutiny Panel chaired by Senator E.P. Vibert.

The Committee welcomed Deputy M.F. Dubras, together with a delegation from the Shadow Scrutiny Panels consisting of: Deputy R.C. Duhamel, Panel Chairman; Deputy G.P. Southern, Panel Chairman; Deputy P.J. Rondel, Review Chairman; and, Mr. C. Ahier, Scrutiny Officer.

The President explained that the purpose of the meeting was for the Committee to consider submissions from all relevant parties on an informal basis. Once submissions had been received, the Committee intended to issue appropriate advice to the necessary parties and, if necessary, to the States.

It was clarified that the allegations made by the Shadow Scrutiny Panel were as follows –

- (a) that Deputy M.F. Dubras refused to answer any questions put to him by Deputy R.C. Duhamel, a member of the Panel, during the course of the public hearing on 10th January 2005;
- (b) that Deputy Dubras was incorrect in asserting that the presence of Deputy Duhamel on the Panel had created a genuine conflict of interest;
- (c) that Deputy Dubras was unreasonable in having failed to give the Shadow Scrutiny Panel adequate notice of his intention to refuse to answer questions put by Deputy Duhamel; and,
- (d) that Deputy Dubras' actions at the aforementioned public hearing were intended to act as a hindrance to the work of the Panel.

Deputy P.J. Rondel contended that Deputy M.F. Dubras' evidence was likely to be of particular importance to the success of the inquiry and that there was a need to resolve the matter in short order. He recalled with concern that he had seen Deputy Dubras immediately prior to the commencement of the hearing and that Deputy Dubras had given no indication of his intentions.

Deputy M.F. Dubras reminded the Committee that both he and Deputy R.C. Duhamel had served on the Environment and Public Services Committee between December 2002 and March 2004. He further recalled that he and Deputy Duhamel had been members of the Waste Strategy Steering Group, which had effectively been responsible for developing the strategy being reviewed by the Panel. This involvement, coupled with his position as a scrutineer of the said policy had, in the opinion of Deputy Dubras, caused Deputy Duhamel to suffer a conflict of roles, particularly in light of the fact that the review had effectively commenced within three months of Deputy Duhamel's change of rôle. Deputy Dubras also asserted that he had been unaware Deputy R.C. Duhamel would be the lead questioner at the public hearing. Having established that this was indeed the case, he explained that he had only then made the decision to refrain from answering questions. He contended

that the inquiry might well have been better served had Deputy R.C. Duhamel been able to give evidence regarding the operation of the Waste Strategy Steering Group to the Panel as a witness. In addition, Deputy Dubras questioned whether Panels should call previous Committee Presidents (or in the future, Ministers) to answer questions regarding the development of an existing policy. Nevertheless, and with hindsight, Deputy Dubras considered that it might have been more appropriate merely to have responded to the Chair with his reservations regarding the process. Finally, Deputy Dubras clarified that he remained a supporter of the Scrutiny process.

Deputy R.C. Duhamel contended that Deputy Dubras failed to allow him the opportunity to ask his first question. He was therefore unclear as to how Deputy Dubras was in a position to know that his line of questioning would give rise to a conflict of interest. He asserted that his position on the said Panel was not compromised by his previous involvement with the Waste Strategy Steering Group interest and he stated that he was offended by Deputy Dubras' stance on the matter.

Deputy G.P. Southern expressed concern that Deputy M.F. Dubras' actions might set a dangerous precedent for other Members who might wish to frustrate the efforts of a Scrutiny Panel to investigate other serious matters in the future. He contended that the matters of which questions would be asked and by whom were solely for the relevant Panel to determine.

The delegates, having been thanked by the Committee for their attendance, withdrew from the meeting, although both Deputy R.C. Duhamel and Deputy G.P. Southern remained to observe proceedings.

The Committee considered that the transition from being a member of the 'executive' to being a scrutineer (and vice versa) was an inevitable feature of any parliamentary system as individual members moved in and out of executive office. Furthermore, it was of the view that once a member had left executive office in any particular field he or she should not be precluded from participating in a scrutiny review relating to that subject. If this was not the case then the Committee foresaw a situation whereby the number of Members able to take part in the Scrutiny system might be severely restricted following an election or vote of no confidence in the Council of Ministers. On the matter of whether it was appropriate for a person who no longer held a particular office to be called to give evidence, the Committee agreed that there would inevitably be occasions when Panels would need to look back and call witnesses who might wish to justify particular policy decisions.

The Committee therefore concluded that it was inappropriate for Deputy M.F. Dubras to have refused to answer questions put by Deputy R.C. Duhamel on 10th January 2005. Moreover, it concluded that Deputy Dubras was mistaken in believing that Deputy Duhamel had a relevant conflict of interest for the purposes of the review of the Waste Management Strategy.

It was agreed that the President would write to Deputy M.F. Dubras inviting him to accept the Committee's conclusions and to clarify whether he would agree to appear before and answer questions from all members of the Panel, including Deputy R.C. Duhamel, if requested to do so again.

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

Matters for
information.

A7. The Committee noted the following matters for information –

- (a) a list of Committee actions and matters arising from previous meetings;
- (b) the revised legislation timetable in connexion with Machinery of Government Reform;
- (c) Act No. B2 of the Environment and Public Services Committee, dated 4th November 2004, concerning States Members' parking;
- (d) Acts Nos. B5 and B16 of the Environment and Public Services Committee, dated 18th November 2004, concerning States Members' parking; and,
- (e) Act No. B6, dated 16th December 2004, of the Policy and Resources Committee concerning a proposed amendment to the States of Jersey Law 200-.