

PRIVILEGES AND PROCEDURES COMMITTEE

(67th Meeting)

20th October 2005PART A

All members were present, with the exception of Senator P.V.F. Le Claire and Deputy J-A. Bridge.

Deputy R.G. Le Hérissier
 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 and Part B.

Minutes

A1. The Minutes of the meetings held on 21st July (Part A), 1st August (Part A), 5th August (Part B) and 1st September 2005 (Parts A and B), having been circulated previously, were taken as read and were confirmed.

Standing Orders
 of the States of
 Jersey: Draft
 Amendment
 (No.2)
 450/2(1)

A2. The Committee recalled that on 6th October 2005 the new Standing Orders of the States of Jersey (P.162/2005 refers) had been approved, as amended. It further recalled that Senator S. Syvret had elected not to propose certain of his amendments to the Standing Orders on account of the volume of work and time pressures affecting the States Assembly on that date.

Clerk
 G.O.S.
 Pub.Ed.
 States (2)

The Committee considered the Draft Amendment (No.2) of the Standing Orders of the States of Jersey, as lodged 'au Greffe' by Senator S. Syvret on 18th October 2005 (P.244/2005 refers). It noted that the purpose of the Amendment was to allow those amendments which had not been debated on 6th October 2005 to be considered by the States, although the third amendment contained within the proposition had been altered in an apparent attempt to limit the administrative impact on States members while still revealing details of all organisations which they belonged to. The Committee decided that it should comment on the Amendment in the following terms

-

'Amendment 1

The Committee accepts this amendment which would ensure that an accurate description of land owned is given and would also ensure that land jointly owned by a member with someone other than his or her spouse/cohabitee would need to be declared (The Committee would remind members that 'land' includes houses and other buildings under the Interpretation (Jersey) Law 1954).

Amendment 2

Although PPC supports the principle behind this amendment it does not accept it as it considers that it is too far-reaching as put forward. It could be very difficult for members to comply with the requirement to declare 'prospective' ownership of land. Although members may know with some certainty that land belonging to, for example, their parents is due to be left to them they may not be aware whether land might be left to them at a later date by other relatives and it could be almost impossible to comply with the requirement.

Amendment 3

PPC supports the underlying principle referred to in this amendment but, even though it has been changed since the version presented as an amendment to P.162/2005, PPC remains concerned that the requirement is very widely drawn. The requirement as proposed would force members to declare membership of any organisations whether or not that membership could have any influence on a member's conduct as a States member. In addition, it would require a declaration in relation to organisations where membership would normally remain confidential such as Alcoholics Anonymous or the Samaritans. PPC consider that the amendment will require further refinement before it could be accepted.'

The Committee agreed that the comment should be presented to the States on 25th October 2005.

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

Standing Orders
of the States of
Jersey: Draft
Amendment
(No.1):
Amendment of
the Policy and
Resources
Committee.
450/2(1)

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

A3. The Committee, with reference to its Act No. A1 of 10th October 2005, recalled that it had lodged 'au Greffe' the Draft Amendment (No.1) of the Standing Orders of the States of Jersey (P.225/2005 refers), the primary purpose of which was to insert certain conduct related and disciplinary measures into the new Standing Orders following the decision of the States not to bring Article 51 of the States of Jersey Law 2005 into force.

The Committee considered the Draft Amendment (No.1) of the Standing Orders of the States of Jersey: Amendment, as lodged 'au Greffe' by the Policy and Resources Committee (P.225/2005/Amd. refers). It noted that the purpose of the Amendment was to insert a procedure for managing complaints by members regarding the conduct or concerns regarding the capability of, a States employee or officer.

The Committee received a delegation from the Policy and Resources Committee consisting of Deputy M.F. Dubras and Mr. P. Nicolle, Corporate HR Director - Policy and Employee Development.

Deputy M.F. Dubras explained that, following a previous discussion held on 28th April 2005, a series of amendments had been made to what had previously been referred to as a draft protocol for relations between States members and States employees,. He clarified that the Amendment was designed to operate in conjunction with new disciplinary procedures for Civil Servants and that adoption of the Amendment would reflect positively on the States as an employer. It was requested that the Committee consider accepting the Amendment.

The Committee recalled that it had expressed a number of reservations regarding the proposal. These had included the implications for members' right of free speech and the matter of when parliamentary privilege would take precedence. It discussed with

the delegation procedures for appealing against a decision made by a future Minister regarding the conduct of an employee and whether the Amendment would inhibit justifiable criticism of officers within the Civil Service. Consideration was also given to the matter of whether adequate safeguards existed to ensure that officers charged with investigating complaints made in accordance with the Amendment would complete their investigations and report in a timely manner. Deputy M.F. Dubras responded to the latter point by reminding members that any delays in completion of such an investigation could, if necessary, be highlighted by way of a question in the States.

The Committee had some difficulty with the inclusion of the words 'rather than raising the matter in public' within the first paragraph of the proposed Paragraph 5A. It expressed concern that any limitation on members right to speak freely on behalf of his or her constituents should not be implemented without detailed consideration of the democratic implications arising.

Deputy M.F. Dubras and Mr. P. Nicolle, having been thanked by the Committee for their attendance, withdrew from the meeting.

The Committee acknowledged that the intention of the Policy and Resources Committee in bringing such an Amendment was to preserve the status of the States as a highly respectable and caring employer. It further agreed that criticism levelled by members in the States regarding policy implementation and related matters should ordinarily be directed at the relevant Committee or Ministry, rather than at individual officers. Notwithstanding the foregoing, it noted that other parliamentary democracies did not consider it necessary to limit the freedom of speech of its elected representatives in the manner proposed. Moreover, the Committee remained satisfied that any instances of truly inappropriate conduct by members towards States employees could be dealt with under the Code of Conduct arrangements as proposed by the Committee in the Draft Standing Orders (Amendment No.1) of the States of Jersey.

The Committee declined to issue a formal comment on the Amendment of the Policy and Resources Committee to the Draft Standing Orders (Amendment No.1) of the States of Jersey.

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

Standing Orders
of the States of
Jersey: Draft
Amendment
(No.3).
450/2(1)

A4. The Committee considered the Draft Amendment (No.3) of the Standing Orders of the States of Jersey, as lodged 'au Greffe' on 18th October 2005 by Deputy G.C. L. Baudains of St. Clement.

The Committee noted that the purpose of the Amendment was to reinstate in the new Standing Orders the existing arrangements regarding the number of votes necessary to move on to the next item.

Clerk.
G.O.S.

The Committee recalled that it regarded the procedure in the existing Standing Orders for moving onto the next item as an anomaly. It was the only matter in the old Standing Orders that could not be decided by a simple majority of those present and voting. Other procedural propositions, such as references back or closures, were decided by simple majority.

The Greffier of the States advised that he had conducted further research on the matter and had established that the requirement for at least 20 votes in favour had been introduced into early versions of the then draft Standing Orders as part of a new

closure motion being considered by the Legislation Committee as then constituted. The draftsman's note to the Committee in the early 1960s stated that because of the nature of the closure motion being proposed it would be wise to include a requirement that at least 20 members should vote in favour before it could be adopted. The Legislation Committee had subsequently decided not to proceed with the suggested closure motion and the procedure was superseded by that which allowed for moving onto the next item, although the requirement of 20 votes in favour was retained.

The Committee remained of the view that the requirement for 20 votes in favour of moving onto the next item constituted an anomaly, particularly as a proposition on a major item of policy could, in theory, be carried by a lesser number of votes. It nevertheless conceded that a proposition to move onto the next item often acted to curtail debate on the matter under consideration for at least the duration of the relevant session, whereas a proposition for a reference back at least allowed for the matter to be brought back to the Assembly within a reasonably short period of time. Having regard to the arguments put forward by Deputy G.C.L. Baudains, the Committee concluded that the appropriate way forward would in fact be to conduct a wholesale review of voting procedures with a view to determining whether a system of qualified majority voting should be implemented in certain instances. It nevertheless remained opposed to the Amendment as proposed by Deputy G.C.L. Baudains.

The Committee instructed the Greffier of the States to prepare an appropriate comment for approval by way of telephone meeting.

Regulation of
Investigatory
Powers (Jersey)
Law 2005: Draft
Regulation of
Investigatory
Powers (Lawful
Business
Practice) (Jersey)
Order 200-
429/3(1)

A5. The Committee considered correspondence, dated 6th September 2005, from the Chief Officer, Home Affairs Department in connexion with the Draft Regulation of Investigatory Powers (Lawful Business Practice) (Jersey) Order 200-.

The Committee was advised that the Home Affairs Committee proposed to make an Order in pursuance of Article 9(2) of the Regulation of Investigatory Powers (Jersey) Law 2005 authorizing the interception of communications carried out in the course of a business that would otherwise be unlawful.

The Committee noted that the draft Order would authorize the monitoring or recording of communications by businesses or public authorities, without consent, in a number of circumstances including –

Clerk
H.Aff.C.(2)

- (a) to provide evidence of the communications for the purpose of establishing the existence of facts or ascertaining compliance with practices or procedures;
- (b) for the purposes of detecting and preventing crime or detecting the unauthorized use of a telecommunications system;
- (c) in the interests of national security; and,
- (d) to assist in the provision of free, anonymous and confidential counselling and support services (although recording of such communications would be prohibited).

The Committee noted the contents of the draft Regulation of Investigatory Powers (Lawful Business Practice) (Jersey) Order 200-.

The Greffier of the States was instructed to send a copy of this Act to the Home

Affairs Committee.

New States
members:
induction
programme.
1240/9/1(26)

A6. The Committee received an oral update from the Greffier of the States in connexion with plans for an initial induction programme for newly elected members.

It was reported that a welcome meeting for new members had been arranged for 3.00 pm on Friday 25th November 2005 in the States Chamber. The first formal training session for new members would be held prior to the Christmas break and that other sessions would be held early in January 2006. Follow up sessions would then be held in March 2006 with a view to ensuring that new members became well acquainted with procedures early in their term of office. Further to the foregoing, a Scrutiny open day would be held on Monday 28th November 2005 in order to inform and to attract new members. The services of Mr. J. Sturrock, Q.C. had also been secured as part of a training programme for new members of the forthcoming Scrutiny Panels.

Clerk
D.G.O.S.
G.O.S.

A discussion followed concerning arrangements for existing members. The Committee recalled that a substantial number of legislative and procedural changes had occurred in recent months as part of the programme of preparations for ministerial government. It concluded that existing members would derive considerable benefit from organized briefing sessions covering matters such as the changes to the Standing Orders of the States of Jersey, the definition of points of order and the new Public Finances (Jersey) Law 2005. **Accordingly the Committee thanked the Greffier of the States for the arrangements made to date and it requested that include additional briefing sessions for sitting States members be included in the programme of forthcoming training events.**

Dean of Jersey:
further
correspondence450/1
(8)

A7. The Committee, with reference to its Act No. A13 of 9th June 2005, noted correspondence, dated 20th September 2005, from the Bailiff to Canon France concerning church services on public occasions. It was clarified that the President had not received a reply to his letter to Canon France, dated 15th June 2005.

On a related matter, it noted that the new Standing Orders of the States of Jersey allowed for Canon France and equivalent representatives of other denominations to attend the States by invitation and say prayers.

Sub-Committee
on Security:
report.
1060/5(176)

A8. The Committee, with reference to its Act No. A2 of 21st July 2005, recalled that it had deferred presentation of the report of the Sub-Committee on Security until such time as it had received legal advice from the Law Officers' Department concerning the legal liability of members who elected to escort constituents and other guests into the States Building.

A.G.
Clerk
G.O.S.

The Committee was advised that advice had not yet been received from the Law Officers' Department.

The Committee confirmed that it wished to present to the Assembly the report of the Sub-Committee on Security prior to the conclusion of its term of office. **It therefore instructed the Committee Clerk to establish whether the legal advice requested would be made available prior to the end of November 2005.**