

PRIVILEGES AND PROCEDURES COMMITTEE

(44th Meeting)

3rd May 2005PART A

All members were present, with the exception of Senator P.V.F. Le Claire, Deputy C.J. Scott Warren and Deputy J-A. Bridge, from whom apologies had been received.

Deputy R.G. Le Hérisssier
 Connétable D.F. Gray
 Deputy P.N. Troy
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States
 I. Clarkson, Committee Clerk

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

Standing Orders
 of the States of
 Jersey:
 declaration and
 registration of
 Members'
 interests.
 1240/4(171)
 1240/4/2(2)
 424/2(13)
 Clerk
 G.O.S.
 L.D.

A1. The Committee, with reference to its Act No. A6 of 28th April 2005, continued to consider the recommendations of the Code of Conduct Working Party in connexion with reform of the existing rules on declaration and registration of Members' interests.

The Committee was of the view that the Register of Members' Interests should serve not only to inform the electorate of any pecuniary interest or benefit held or received by a Member which might reasonably be thought by others to influence decisions or other significant actions taken by that Member in the course of his or her duties, but also to inform it of positions held by Members which might be perceived to give rise to a conflict of interest, irrespective of the actual existence of a conflict. It acknowledged that the Register in its current form was less than comprehensive in this regard. A series of possible additions and modifications to the list of registrable pecuniary interests were therefore considered.

Remuneration

The Committee noted that the existing requirement to register paid employment was relatively narrow in that it was silent on the matter of whether the self employed or partners in a firm should declare receipt of income. **It decided that there should be a requirement to register any remuneration received by virtue of –**

- (a) **being employed,**
- (b) **being self-employed,**
- (c) **being the holder of an office,**
- (d) **being a director of an undertaking,**
- (e) **being a partner in a firm, or**

- (f) undertaking a trade, profession or vocation or any other work.

Directorships

The Committee agreed that, although the existing rule was broadly effective, it should be modified so as to require that directorships in public and private companies, including those which were individually unremunerated, but where remuneration was paid through another company in the same group, were registered.

Shareholdings

The Committee was concerned to note that, under the existing Standing Order No. 44A, there was no specific requirement to register a shareholding in a major Island based company, or indeed a multinational company, unless the number of shares held exceeded 10 per cent of the issued capital. **It formed the view that there should be a requirement to register shareholdings in any company, whether registered in Jersey or elsewhere, in which the Member or the Member's spouse, or cohabitee, or both persons jointly, held either 1 per cent or more of the issued share capital of the company or issued share capital valued at over £25,000 (whichever was the lower).**

Clients and Consultancies

The Committee was advised that the United Kingdom House of Commons required registration of any provision to clients of services which depended essentially upon, or arose out of, the member's position as a Member of Parliament. Relevant services included the provision of information to private companies and trades unions, concerning such matters as parliamentary proceedings and forthcoming items of legislation, in return for payment.

The Committee considered that the likelihood of States Members obtaining remuneration in such circumstances was remote. It nevertheless formed the view that the integrity of the decision making process could be affected in the event that Members were providing such services to private companies, trades unions and other formal organizations, irrespective of whether any financial reward was offered or received.

The Committee therefore agreed that it wished to require registration of any provision to clients, of services which depended essentially upon, or arose out of, a Member's position as a Member of the Assembly, whether remunerated or unremunerated.

Election Expenses

The Committee, with reference to its Act No. A2 of 12th April 2005, recalled that it had received submissions from several Members in support of the introduction of electoral expense regulation. It nevertheless noted that inclusion of electoral expenses within the Register would only be relevant in the event that material assistance with a Member's election campaign had been provided by another person, company or other organization.

In the interests of striking an appropriate balance between transparency and administrative cost, the Committee decided that it should require successful candidates to file, for publication, a declaration of expenses incurred or a

reasonable estimate of the value of benefits in kind received in connexion with their electoral campaign. It further agreed, in light of the formation of political parties, to monitor developments in patterns of election expenditure with the intention of bringing forward additional regulations where necessary.

Sponsorship

The Committee recalled that Standing Order No. 44A did not require registration of incidences of sponsorship. A rule on sponsorship had, however, been introduced in other jurisdictions so as to ensure that a member in receipt of financial assistance from an individual, a company or other organization, perhaps in the form of the provision of a constituency office for a nominal rent or receipt of a financial sum for the express purpose of paying the salary of a secretary, was required to register that assistance.

The Committee agreed that Members should be required to register any provision of financial or material support on a continuing basis from a source other than the States of Jersey which was given with the intention of assisting that Member in carrying out his or her duties.

Gifts, Benefits and Hospitality

The Committee acknowledged that the existing rules and guidance on acceptance of gifts, benefits and hospitality was limited to a short entry in the Members' Handbook. **So as to reflect best practice in other jurisdictions, the Committee decided to recommend the introduction of a requirement to register any gift or material benefit or advantage given to a Member, or a Member's spouse or partner, of a value greater than 1 per cent of the current Members' salary (less expense allowances) from any company, organization or person, which in any way related to membership of the States Assembly.**

Overseas Visits

The Committee acknowledged that there was currently no requirement for Members to register overseas visits. Such visits were thought more likely to be an issue for the future Council of Ministers, who might be expected to adhere to additional rules in this regard.

The Committee considered that it would be appropriate to require registration of overseas visits made by Members or their spouses or partners relating to or in any way arising out of membership of the Assembly where the cost of the visit was not wholly borne by the Member or by Jersey public funds.

Notwithstanding the foregoing, the Committee considered that there might be a need to introduce certain specified exemptions for matters such as Commonwealth Parliamentary Association visits, due to the fact that such visits were unlikely to create any material risk to the decision making processes of the States.

Land and Property

The Committee considered that the existing requirement to register land and property, as contained within Standing Order No. 44A, was broadly effective. It nevertheless noted that there was no current requirement to register any land or property in the Island unless an income was derived from it. As land and property development had been a relatively contentious subject in recent years, the Committee concluded that a Member could suffer a potential conflict of interest merely by, for

example, owning several agricultural fields in close proximity to a built up area, irrespective of whether that land was generating income at any particular time. Such an interest might become particularly important during any debates concerning interpretation policies within the Island Plan of the day.

The Committee agreed to propose that Members be required to register any land or property in Jersey, other than a principal place of residence, which was owned by the Member or by the Member's spouse or partner, or both persons jointly, or from which an income was derived.

Other Interests

The Committee recalled that the existing Standing Order No. 44A permitted a Member to register interests of a non-pecuniary nature in the event that the Member considered the existence of the said interest to be of relevance to the electorate. It further recalled that, during the course of the debate on the draft Code of Conduct for Elected Members, several Members had expressed concern as to whether Members with an active rôle in charitable organizations that operated within the Island should be permitted to take decisions concerned with the allocation of government funding to those same organizations. During an extended discussion the Committee acknowledged that such interests, while not of direct financial relevance to the Member, could be perceived by the electorate as having a material influence on certain decisions made.

Turning again to the matter of practice in other jurisdictions, the Committee noted that the legislature in the Isle of Man required those members who were also Freemasons to register their membership of that society. It nevertheless considered that membership of such societies constituted no more of a threat to the integrity of the decision making process in the Assembly than did allegiance to, for example, a particular religion or membership of other societies and associations.

The Committee elected to recommend that there be a requirement to register any pecuniary interest or other material benefit received which a Member considered might be thought by others to influence his or her actions in a similar manner to that of a direct financial interest, even though the Member received no financial benefit. It further agreed that nothing within Standing Orders should preclude a Member from declaring any interest which, in the opinion of the Member, should be disclosed to the public.

Deputy R.G. Le Hérisssier expressed the view that Freemasons should be required to register membership of that society. He therefore requested that his dissent to the foregoing Committee decision be recorded in the Minutes.

On the matter of guidance notes in the Members' Handbook, the Committee considered that the Handbook should include specific guidelines concerning the representation of charitable organizations. It was envisaged that such guidance might cover the use of headed stationery and the matter of when lobbying of Ministers with a view to securing financial assistance for a charitable cause might be regarded as excessive.

Declaration of Financial Value

The Committee recalled that the existing Register of Members' Interests did not include details of the specific or approximate financial value of any particular pecuniary interest. It maintained the view that the introduction of a requirement to include any such information would constitute an excessive breach of Members' right

to privacy. **The Committee therefore agreed to refrain from proposing a requirement to publish actual or approximate financial valuations of interests disclosed.**

Publication

The Committee, with reference to its Act No. A9 of 12th April 2005, recalled that the Jersey Evening Post newspaper had been advised of the relative lack of clarity in Standing Orders on the matter of publication of the existing Register of Members' Interests. Notwithstanding the foregoing, the Committee considered that improving public access to the Register was desirable in the interests of openness and accountability. **It therefore agreed to recommend the removal of any requirement for a member of the public to furnish the Greffier of the States with their full and correct name and address prior to viewing the Register. It also agreed to recommend that the Register of Interests be published in full on the States Assembly website.**

Declaration of Pecuniary Interests

The Committee recalled that there had, in recent years, been numerous debates in the Assembly where questions had been asked as to whether certain Members should have declared a material pecuniary interest and withdrawn. Often the decision in question was expected to have an almost immediate financial effect on the Member or the Member's business interests, although the nature of the interest was such that the Member was only one of a class of persons that stood to be affected. Therefore, and as the interest was not personal, the Member was not required to withdraw.

The Committee considered that there was a need to strike a more appropriate balance between the preservation of the integrity of the decision making process and the right of Members to represent the interests of their constituents in the States. Introducing an additional rule, whereby a Member with a pecuniary interest which was immediate but not personal would declare the nature of the interest prior to taking part in and voting on the matter in question, was thought likely to improve the existing position in that others within the Assembly could counterbalance the presence of the interest by weighting any arguments put forward by the Member in question appropriately, and prior to taking a decision on which way to vote. **The Committee agreed to recommend that the new Standing Orders include the aforementioned provision.**

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

Public Elections
(Jersey) Law
2002: 2005
elections.
424(1)

A2. The Committee, with reference to its Act No. A5 of 28th April 2005, recalled that it had deferred until 2006 a series of recommendations in connexion with reform of the Public Elections (Jersey) Law 2002. Notwithstanding the foregoing, the Committee had requested that several proposals arising from its discussion with Deputy M.F. Dubras be pursued with officers of the Judicial Greffe.

Clerk
G.O.S.
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The Committee was advised that the Committee Clerk had raised suggestions concerning locations for pre-polling stations, accommodation to process postal vote applications and the matter of advance applications for postal votes with the Deputy Judicial Greffier. A preliminary analysis had revealed that the provisions of the Public Elections (Jersey) Law 2002 did not appear to prevent early applications for postal voting. The remaining suggestions were actively being considered.

The Committee noted the position.

Law Drafting
Programme 2006.
422/23/1(17)

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

A3. The Committee, with reference to its Acts Nos. A7 of 24th February 2005 and A2 of 3rd May 2005, recalled that it wished to pursue a series of reforms of the Public Elections (Jersey) Law 2002, so as to comply with Aim No. 8 of the Strategic Plan 2005-2010 and improve the integrity of the election process.

The Committee received a copy of a law drafting questionnaire, which had been provisionally submitted to the Law Drafting Programme for 2006.

The Committee agreed that the law drafting questionnaire reflected the nature of its request for law drafting time accurately. **Accordingly it endorsed the submission to the 2006 programme.**

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

Standing Orders
of the States of
Jersey: revision.
1240/4(171)

Clerk
G.O.S.
L.D.

A4. The Committee, with reference to its Act No. A7 of 12th April 2005, received a draft of the revised Standing Orders of the States of Jersey.

Having acknowledged that the revised Standing Orders would inevitably require considerable analysis and discussion, the Committee agreed that it should set aside an extended period of time during the course of its next scheduled meeting to review the draft. **Accordingly the Committee deferred consideration of the draft to its 19th May meeting.**

Budget 2005:
2004 pay awards.
422/2(349)

A.G.O.S.
T.O.S.
C.I.Aud.
F.E.C.C.
Encl.

A5. The Committee, with reference to its Act No. A1 of 6th December 2004, received a report, dated 7th April 2005, prepared by the Assistant Greffier of the States, in connexion with the full year effect in the current year of the June 2004 pay award.

The Committee recalled that pay negotiations in respect of civil servants concluded in October 2004, when an agreement was reached for a 2.5% increase for the period June 2004 to May 2005. It was explained that an invitation had since been extended for the Committee to formalize its request for additional funds to cover the full year effect for 2005.

The Committee agreed to submit a request to the Finance and Economics Committee that £54,000 be transferred from the General Reserve to the Committee's 2005 staff budget for the purpose of funding the 2004 pay awards for the full year effect for 2005.

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

Shadow Scrutiny:
Agri-environment
Scheme Report.
502/5/3(1)

Clerk
D.G.O.S.
Scrutiny

A6. The Committee, with reference to its Act No. A8 of 12th April 2005, recalled that it was due to receive the findings of the Code of Conduct Working Party concerning the alleged conflict of interest declared by Senator P.F.C. Ozouf during the course of the Shadow Scrutiny review entitled, 'Agri-environment Scheme'.

The Committee received an oral briefing from Deputy P.N. Troy and the Committee Clerk. It was submitted that the primary issue for consideration in connexion with apparent conflicts of interest was the level of risk to the integrity of the decision making process. Scrutiny Panels were not empowered to take decisions concerned directly with the government of the Island. Instead, Panels were charged with conducting an objective evaluation of evidence presented and submitting appropriate recommendations to the Assembly. An objective evaluation process would, by definition, take full account of conflicting factors present within evidence gathered

from witnesses. It followed that witnesses would not ordinarily compromise a review merely by giving evidence as requested. Moreover, and although the Working Party had agreed that a witness should inform a Panel at the first available opportunity of a real or perceived conflict of interest, it was ultimately for the Panel to decide whether a witness should appear and give evidence before it.

With regard to possible exceptions to the foregoing, the Working Party considered that it might, for example, be inappropriate for a Panel to require a Minister to appear before it and give evidence on a particular subject if the Minister had consistently declared a relevant interest and had withdrawn from all relevant proceedings. The Working Party nevertheless acknowledged that a Panel might be unlikely to require such a Minister to attend in any event as the evidence available from such a witness would, in all probability, be limited.

The Committee concluded that Senator P.F.C. Ozouf had misunderstood the rôle of Scrutiny and had misconstrued the threat posed by his appearance before the Panel. It further expressed broad support for the conclusions of the Shadow Scrutiny Panel chaired by Senator E.P. Vibert as recorded in Scrutiny Report S.R.2(a)/2004.

The Greffier of the States was requested to send a copy of this Act to the Shadow Scrutiny Panels for information.

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) Act No. A7, dated 24th March 2005, of the Finance and Economics Committee concerning the draft Public Finances (Amendment) (Jersey) Law 200-; and
- (c) Act No. A6, dated 7th April 2005, of the Policy and Resources Committee concerning the presentation of discussion and draft consultation documents under the ministerial system.