

PRIVILEGES AND PROCEDURES COMMITTEE

(41st Meeting)

7th April 2005PART A

All members were present, with the exception of Deputy P.N. Troy and 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 C.J. Scott Warren
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States
 P. Baker, Instructing Officer (for a time)
 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 24th January (Part A) and 17th March 2005 (Parts A and B), having been circulated previously, were taken as read and were confirmed.
- Matters arising. A2. The Committee noted the following matters arising from its previous Minutes –
- (a) **Act No. A5 of 17th March 2005 – Public Elections (Jersey) Law 2002** – The Committee was advised that advice had been sought from several sources, including the Secretary, Comité des Connétables, in connexion with the comments received from Mr. J. Gosselin concerning the Committee's proposals. It was clarified that the majority of the concerns expressed by Mr. Gosselin appeared to be based on misunderstandings of the current situation, whilst others were matters which fell squarely within the remit of the former Special Committee on the Composition and Election of the States Assembly. Accordingly the Committee Clerk was instructed to reply to Mr. Gosselin in appropriate terms; and,
 - (b) **Act No. A13 of 17th March 2005 – 'Dean of Jersey: cessation of membership of the States (Projet No. P.49/2005)'** - The Committee recalled that, on 5th April 2005, Senator E.P. Vibert had withdrawn the aforementioned proposition and had explained to the States Assembly his intention to lodge 'au Greffe' in early course a report and proposition to establish a Special Committee to review the position of all non-elected members of the Assembly.
- Ombudsman. A3. The Committee, with reference to its Act No. A6 of 24th February 2005, 1386/4(15) recalled that it wished to discuss with Deputy A. Breckon of St. Saviour the 1386/2(78) advantages and disadvantages of an Ombudsman system prior to taking a decision on whether to proceed with amendments to the Administrative Decisions (Review) Clerk (Jersey) Law 1982.

The Committee welcomed Deputy A. Breckon.

Deputy A. Breckon explained that the Jersey Financial Services Commission had been investigating options for the introduction of a Financial Ombudsman scheme in Jersey. A working group set up by the Commission was understood to have produced a template for an Ombudsman Law and the Committee was invited to review the said proposals.

On the matter of the advantages of an Ombudsman scheme when compared with the existing Administrative Appeals system, Deputy Breckon contended that the Administrative Appeals system was a comparatively cumbersome process for a member of the public to become involved with and was inflexible in that it failed to encourage early resolution of disputes by mediation. Notwithstanding the foregoing, Deputy Breckon acknowledged that the Committee's forthcoming proposals for reform of the Administrative Appeals system, which included new powers for the Chairman of the Board, would serve to encourage early resolution.

Deputy A. Breckon, having been thanked by the Committee for his attendance, withdrew from the meeting.

The Committee deferred further consideration of the matter to a future meeting.

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

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

A4. The Committee, with reference to its Act No. A3 of 3rd February 2005, recalled that it had received delegations from the Policy and Resources and Finance and Economics Committees concerning proposals for scrutiny of the States Business Plan and Budget. Subsequent to that meeting, a revised report on the matter had been circulated to the Policy and Resources and Finance and Economics Committees for endorsement, pending final approval by the Committee.

The Committee received a revised report, prepared by the Deputy Greffier of the States following receipt of comments from the Policy and Resources Department and the States Treasury, in connexion with scrutiny of the States Business Plan and Budget. It noted that a series of minor changes to the draft report had been made including, but not exclusive to, the following –

- (a) a reference to the fact that a scrutiny review should be concluded at about the same time as the States Business Plan and Budget in order that the Scrutiny Panel's comments could inform and assist States Members;
- (b) clarification that the Scrutiny Panel would be observers only at meetings of politicians related to the States Business Plan that they were invited to attend, and that Panel members would not be able to participate unless invited to comment;
- (c) clarification that scrutiny of the States Business Plan could be held in public after the plan had been lodged, although Budget hearings would be closed due to the commercially sensitive nature of the subject matter.

The Committee agreed that the revised report provided a sound basis on which to take the matter of scrutiny of the Business Plan and Budget forward. **Accordingly, and having been advised that officers of the Policy and Resources Department and the States Treasury were in agreement with its contents, the Committee endorsed the report.**

The Greffier of the States was requested to send a copy of this Act to the Policy

and Resources and Finance and Economics Committees.

Shadow Scrutiny:
Duhamel Panel:
draft programme
of work.

502/1(13)
502/5/12(1)
502/5/13(1)

Clerk
D.G.O.S.
Scrutiny

A5. The Committee, with reference to its Act No. A16 of 24th February 2005, recalled that it had requested details of the proposed programme of work to be undertaken by the two Shadow Scrutiny Panels during the course of 2005.

Accordingly the Committee received a draft project plan and timetable, prepared by Mr. C. Ahier, Scrutiny Officer on behalf of the Shadow Scrutiny Panel chaired by Deputy R.C. Duhamel, in connexion with a review of proposals for a goods and services tax.

The Committee agreed that the proposed programme of work for the review of the proposals for a goods and services tax was both realistic and achievable with the resources available. Accordingly the Committee confirmed that it was minded to support the review. However, and with reference to its Act No. B1 of 7th April 2005, it noted that the Panel proposed to set aside a sum of £8,000 for the provision of legal advice. **Having recalled that it was due, at its next meeting, to discuss with the Chairmen of the Shadow Scrutiny Panels the existing guidelines on the provision of legal advice, the Committee elected to defer the matter of formal endorsement until such time as those discussions had concluded.**

The Committee Clerk was instructed to take the necessary action.

Public Elections
(Jersey) Law
2002:
amendments
regarding
proposals for
change and ballot
papers/political
parties.

424/2(13)
424/2(27)

Clerk
L.D.

A6. The Committee, with reference to its Act No. B1 of 17th March 2005, recalled that it had requested the Law Draftsman to prepare an amendment to the Public Elections (Jersey) Law 2002 so as to allow the printing of political party names on ballot papers.

The Committee received a memorandum, dated 1st April 2005, from the Deputy Greffier of the States, in connexion with the matter of modifications to ballot papers.

The Committee was advised that the inclusion of party names on ballot papers in the absence of an approved system of political party registration might lead to a range of administrative and legal difficulties. For example, there was a risk that an electoral result might be challenged in the Royal Court on the basis that a member of one party had been narrowly defeated by another candidate, having lost a small number of votes to a third candidate who had chosen to use an almost identical party name to that of the narrowly beaten candidate. It was also explained that the timescale for the introduction of a modified ballot paper in isolation was particularly tight and that no law drafting time would be available to facilitate the introduction of a political party registration system in time for the 2005 elections. Further to the foregoing, the Committee recalled that it had received correspondence from Senator P.F.C. Ozouf, which tended to suggest that he might consider bringing forward a proposition in connexion with the regulation of political parties, albeit with the primary aim of controlling electoral expenses, in the event that a political party emerged.

The Committee maintained its support for the principle of amending ballot papers so as to allow for the inclusion of political party names. Nevertheless, and having regard to officer advice, the Committee requested that a report be prepared for its meeting on 28th April 2005 outlining how the matter of political party registration was managed in other comparable jurisdictions.

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

Freedom of
Information: law
drafting

A7. The Committee, with reference to its Act No. A10 of 24th February 2005, recalled that, having approved at its last meeting a further series of key policy principles, work on a draft report and proposition seeking an in principle decision in

instructions.
955(36)

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

favour of a proposed law on freedom of information was nearing completion.

The Committee received a draft report and proposition, dated 30th March 2005, prepared by the Instructing Officer, entitled 'Freedom of Information: proposed legislation.'

The Committee welcomed Deputy A. Breckon of St. Saviour and H.M. Attorney General.

H.M. Attorney General advised the Committee that he held reservations regarding the draft report and proposition. Although he was clear that the principle of proceeding with a law on freedom of information was entirely a matter for the Committee, he felt obliged to draw attention to several apparent inaccuracies within the body of the accompanying report.

H.M. Attorney General contended that it was illogical to state that on the one hand the proposed law was necessary and on the other hand to say that because it merely replicated the Code, it would not be resource intensive. If the existence of a law would make a difference, then there would be additional resources needed to implement that law and make that difference. It was suggested that, in addition to the requirement to appoint an Information Commissioner, there would be resource implications for every department of the States. The proposed law would create a series of criminal offences in connexion with matters including destruction of information and failure to disclose. The implications for those persons charged with determining whether the circulation of certain information should be restricted were, therefore, grave. As challenges from a variety of sources, including the media and from the Scrutiny function, were considered inevitable, it followed that a careful assessment of each application would have to be made by a senior civil servant. Moreover, it was considered realistic to expect senior civil servants to request legal advice in more difficult cases. H.M. Attorney General envisaged a requirement within his department for two additional lawyers and one secretary in order to ensure that timely advice on individual cases could be provided and also that a consistent approach to applications was followed across all departments of the States. The likely cost to the Law Officers' Department was therefore estimated to be in excess of £200,000.

The Committee considered that the impact upon the Law Officers' Department and other authorities would ultimately be determined by the number of applications received. It noted that the number received since the introduction of the voluntary code of practice had been comparatively low. Although the Committee accepted that, in making information available free of charge where possible, members of the public might be more likely to submit requests, it maintained that the information effectively belonged to the public in any event.

Deputy A. Breckon acknowledged the advice of H.M. Attorney General. Nevertheless, he contended that an effective law on freedom of information could result in significant cost savings in the event that applications exposed maladministration and incidences of poor financial control within the public sector.

The Committee, having recalled that the proposed law contained provisions to guard against frivolous and vexatious applications, considered that its proposals were unlikely to lead to a significant additional administrative burden on departments over and above that which was already incurred in terms of operating the existing Code of Practice on Public Access to Official Information. It recalled that all Committees of the States had been requested to provide comments to the Committee's position paper (R.C. 55/2004 refers). With the exception of the Policy and Resources Committee, none had expressed concerns regarding resourcing implications.

On a matter of detail, H.M. Attorney General advised that a comment under the

section of the report entitled 'Further Consultation' had been attributed to him erroneously.

Deputy A. Breckon and H.M. Attorney General, having been thanked by the Committee for their attendance, withdrew from the meeting.

The Committee agreed that it was minded to lodge 'au Greffe' the draft Proposition. Notwithstanding the foregoing, it considered that the accompanying report should be modified to reflect the fact that the Committee had considered the concerns raised by H.M. Attorney General.

The Instructing Officer was directed to take the necessary action.

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

A8. The Committee, with reference to its Act No. A4 of 3rd February 2005, recalled that it had agreed that there was a case for reinstating Articles similar to the former Articles 14 and 19 within the Public Finances (Jersey) Law 200-.

The Committee welcomed a delegation consisting of Mr. I. Black, Treasurer of the States, and Mrs. M. Washington, Corporate Financial Strategy Consultant.

Clerk
G.O.S.
T.O.S.
C.I.Aud.
F.E.C.C.
Pub.Ed.
States (2)

The Committee received a report, dated 31st March 2005, from the Treasurer of the States, concerning proposed amendments to the Public Finances (Jersey) Law 200-. The Treasurer of the States explained that the Finance and Economics Committee favoured the inclusion of a revised Article 11(8), which would effectively clarify that the States could only agree spending, other than that which constituted urgent and unforeseen expenditure, on one day. An amendment to Article 14(1) was also proposed, so as to clarify that spending, other than that which was approved in an emergency situation, could only be agreed by the States. Finally, an amendment to Article 20 was proposed with the intention of clarifying that taxes could only be agreed by the States.

The Committee was pleased to note that the proposed amendments would provide Members with largely unfettered powers whilst enforcing an appropriate level of financial discipline. Under the revised Law, any Member would be permitted to propose changes to or new expenditure, albeit on one particular day only and on the understanding that any such proposals would be lodged a minimum of 14 days prior to the debate on the Business Plan. Notwithstanding the foregoing, it was acknowledged that there was a corresponding legal requirement to ensure that such changes would not cause the consolidated fund to go into deficit.

The Committee questioned whether it might be expected to utilize the provisions concerning emergency expenditure to provide funds for unforeseen Committees of Inquiry. It was clarified that the emergency expenditure provisions were not intended for this purpose and that the Committee retained the power to set aside a contingency fund in its annual budget to facilitate such inquiries.

The Committee endorsed the proposed amendment and agreed to issue a comment to the draft proposition at the appropriate time and in the following terms –

'The Privileges and Procedures Committee supports the proposition.'

The Committee Clerk was instructed to take the necessary action.

States of Jersey
Law 200-:
disciplinary
process.
450(1)

A9. The Committee, with reference to its Act No. B1 of 25th November 2004, recalled that it awaited advice from H.M. Attorney General on the implications of Article 51 of the States of Jersey Law 200-, which had been proposed by Senator S. Syvret as an amendment and which was adopted by the States during the debate on 16th November 2004.

The Committee welcomed H.M. Attorney General.

H.M. Attorney General informed the Committee that his analysis of the issue was effectively complete and that detailed legal advice would be presented to the Committee in writing later in the month.

H.M. Attorney General, having been thanked by the Committee for his attendance, withdrew from the meeting.

The Committee noted the position.