

PRIVILEGES AND PROCEDURES COMMITTEE

(86th Meeting)

14th December 2010PART A

All members were present, with the exception of Deputy C.H. Egré, from whom apologies had been received.

Connétable J. Gallichan of St. Mary, Chairman
 Senator B.I. Le Marquand
 (not present for Item No. A1; Item Nos. A3 to A12 inclusive; and item Nos. B2 and B3)
 Connétable P.F.M. Hanning of St. Saviour
 Deputy J.B. Fox
 Deputy J.A. Martin
 Deputy M.R. Higgins
 (not present for Item Nos. A1 to A3 inclusive; and item No. B1)

In attendance -

Mrs. L. Walsh, Senior Assistant Law Draftsman
 (Item A2 only)
 Mr. R.W. Whitehead, Director of Civil Division, Law Officers' Department
 (Item No. B1 only)
 Mr. S. Meiklejohn, Assistant Legal Adviser, Law Officers' Department
 (Item No. B1 only)
 M.N. de la Haye, Greffier of the States
 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 and Part B.

Minutes. A1. The Minutes of the meeting of 23rd November 2010 (Part A and Part B) having been previously circulated, were taken as read and were confirmed.

Draft Freedom of Information (Jersey) Law 201-670/1(21)
 L.D. A2. The Committee, with reference to its Minute No. A3 of 23rd November 2010, received a revised draft of the draft Freedom of Information (Jersey) Law 201- (Draft 22, dated 3rd December 201-) and welcomed Senior Assistant Law Draftsman, Mrs. E. Walsh in connexion with the same.

The Committee recalled that it had agreed at its previous meeting to withdraw its proposition P.100/2010 'Draft Freedom of Information (Jersey) Law 201-' in order to enable certain amendments to be made to the draft. The Committee considered the revised draft of the Law, and received a report in this regard which had been prepared by the Deputy Greffier of the States. The Committee had regard to the following matters:

Article 1 (h)(A) – Interpretation

The Committee **approved** the revised definition of 'public authority', with a minor amendment in respect of paragraph (h)(A) to read as follows: "...which is in receipt of funding at least half of which is from the States in any year".

Article 6 – Parts and Schedules may be amended by Regulations

It was noted that the Article 6 of the draft legislation had been revised to further

clarify how Parts 4 and 5 of the legislation could be amended by Regulation. The legislation now allowed that the States could, by Regulation, add further descriptions of absolutely exempt information or qualified exempt information.

Article 7 – Scheduled public authorities to prepare information index

It was noted that the requirement for all public authorities to prepare and maintain an index of information held in accordance with Article 19 of the legislation proposed in P.101/2010 had been replaced by Article 7 of the present draft. The indexing requirement would now only cover those in the schedule to which the Law would apply. This would simplify the Law and the definitions in the Law. The Committee **endorsed** the amendment.

Part 4, Articles 23 to 29 – Absolutely Exempt Information

Part 5, Articles 30 to 42 – Qualified Exempt Information

The Committee noted that the Law had been revised for purposes of clarity to establish categories of exemption entitled: ‘absolutely exempt information’ and ‘qualified exempt information’ in line with the United Kingdom Freedom of Information Act 2000. These replaced the terms ‘information otherwise available’; ‘restricted information’ and ‘qualified information’ which had been used in previous drafts. It was noted that some information formerly categorised as ‘information otherwise available’ was not able to be released by the Courts, accordingly, Court information was now categorised as absolutely exempt information. The Committee **agreed** that it was content with the amendments, and additionally **agreed** that Article 24 of the draft legislation (relating to court information) should also cover tribunals, such as the Employment Tribunal.

Article 24 – Court Information

It was **noted** that there was no requirement to include provision within the draft Law to deal with the *vires* for rules of court relating to the circumstances in which court information regarding Royal Court proceedings may be disclosed. Article 13 of the Royal Court (Jersey) Law 1948 provided sufficient *vires* to deal with Royal Court rules; and, similarly, Article 19 of the Court of Appeal (Jersey) Law 1961 was expected to provide sufficient *vires* in relation to the Court of Appeal.

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

It was noted that the Regulation making powers under Article 46(2) of the previous draft of the legislation proposed in P.101/2010 had been removed, and had been replaced by the powers of entry detailed under Article 45 of the current draft of the Law. This amendment was accordingly **approved**.

Article 46 – Appeals to the Information Commission

The Committee noted that there was no provision for internal review built into the Law in respect of appeals in advance of that to the Information Commissioner. It was **agreed** that this was correct for a number of reasons, including that public authorities such as parishes would not have the same appeals process as a States department, for example, which would refer any appeal to the relevant Minister. It was noted that an internal appeals procedure would nevertheless be expected to apply, as Article 46(1)(a) of the present draft (Appeals to the Information Commissioner) provided that the Commissioner may decide not to decide an appeal if the applicant had not exhausted the complaints procedure provided by the scheduled public authority.

The Committee **agreed** that a time limit of 6 weeks should be incorporated into the legislation, within which period applicants who wished to appeal would be able to do so.

Article 47 – Appeals to the Royal Court

It was **agreed** that the modified Royal Court procedures should apply, and that these should be detailed within the Law. The Committee discussed pre-emptive costs

orders and **agreed** that the normal court procedures should apply. It was also **agreed** that the appeals route should reflect, where possible, that established under the Planning and Building (Jersey) Law 2002.

Article 54 – Public Records (Jersey) Law 2002 amended

Discussions were ongoing with the Data Protection Commissioner in respect Article 54(7) of the draft which would result in the repeal of Article 39(4) of the Public Records (Jersey) Law 2002. It was noted that Article 39(4) provided for the Data Protection (Jersey) Law 2005 to prevail over any inconsistency with the Public Records (Jersey) Law 2002.

Data Protection (Jersey) Law 2005

It was **noted** that the Law Draftsman had provided copies of the revised draft of the legislation to the Head of Archives and Collections at Jersey Archive, Mrs. L. Romeril, and to the Data Protection Commissioner, Mrs. E. Martins, and would liaise with the aforementioned with regard to its relationship with the Data Protection (Jersey) Law 2005.

The Committee requested the Law Draftsman to make any further necessary amendments to the draft Freedom of Information (Jersey) Law 201- for consideration by the Committee in early course. The Deputy Greffier of the States was requested to revise the report which had accompanied P.101/2010 and to prepare a comparative draft which would show amendments made to the draft Law set out in the original proposition.

The Deputy Greffier of the States and the Senior Assistant Law Draftsman were requested to take the necessary action.

Draft
Employment
(Amendment No.
6) (Jersey) Law
201-
426(7)

A3. The Committee received a copy of a statement made in the Assembly on Monday 6th December 2010 by Deputy G.P. Southern of St. Helier in connexion with the ‘calling in’ by the Chairman of the Health, Social Security and Housing Scrutiny Panel of the Draft Employment (Amendment No. 6) (Jersey) Law 201-.

Deputy Southern had invited the Committee to investigate the process followed in respect of the bringing into force of amendments to the Employment (Jersey) Law 2003 and to clarify the role of Ministers with respect to States decisions. The Deputy had expressed concern that, following the adoption by the States of an amendment to P.27/2009 ‘Draft Employment (Amendment No. 5) (Jersey) Law 200-’, the Appointed Day Act that was subsequently lodged by the Minister (P.142/2010) did not include the relevant Article in respect of collective consultation procedures. A proposition had then been brought which was at variance with the earlier decision of the States in that it set out an alternative approach to collective consultation (P.143/2010 refers).

The Committee discussed the Deputy’s concerns and noted certain comments made by the Minister during the debate of P.27/2009 on 1st April 2009 to the effect that, should the States adopt the amendment in respect of collective consultation, he ‘may be forced to re-consult with the Employment Forum with a view to possibly amending the law before it comes into force’. It was noted that, when P.142/2010 had been lodged ‘*au Greffe*’ by the Minister, a member could have lodged an amendment to propose that the omitted Article be included, as amended, within the Appointed Day Act. The Law, as amended, had been sanctioned by the Privy Council and registered in the Royal Court, and the Assembly had been made aware from the outset of the Minister’s intention to carry out further consultation in respect of collective consultation requirements. The Committee considered that it was not therefore unreasonable for the Minister to lodge P.143/2010 asking members to agree to alter the Article that had been omitted from the Appointed Day Act. The Committee saw no difference in the Minister’s approach from the approach taken in other circumstances where the States were asked to amend or revisit an earlier decision. The Committee accordingly **agreed** that it could see no

reason to investigate the matter further or to carry out a wider review of the States of Jersey Law or Standing Orders in order to clarify the role of Ministers with respect to States decisions. The Chairman was requested to write to Deputy Southern to advise him accordingly.

The Committee Clerk was requested to take the necessary action.

Review of the
Roles of the
Crown Officers.
499/3(22)

A4. The Committee, with reference to its Minute No. A8 of 27th April 2010, received a copy of the report of Lord R.J. Carswell, Chairman, Review of the Roles of the Crown Officers (R.143/2010 refers).

The Committee noted the recommendations contained therein, including that the Bailiff and Deputy Bailiff should continue to carry out judicial work in the Royal Court; that the Bailiff should cease to act as President of the States and the States should elect their own President; and that the Bailiff should continue to act and be recognised as the civic head of Jersey. The Committee considered whether the removal of the Bailiff as President of the States would result in a separation which would limit the Bailiff's ability to continue to be recognised as the civic head of Jersey. The Committee also noted that the review had not addressed the question of a Deputy Speaker, and it was considered that this would be necessary, should the Bailiff cease to act as President of the States. The Chairman advised that views had been expressed by members of the public that any firm proposal arising from the recommendations should be put to a referendum.

Having given initial consideration to the content of the report, it was **agreed** that the recommendations contained therein were relevant to the Committee and the Chief Minister, and the Chairman was accordingly **requested** to meet with the Chief Minister to discuss a way forward. The Committee **agreed** that, in order to inform its discussions, it would be helpful to know the views of the current Bailiff in respect of the findings and recommendations contained within the report. The Chairman was accordingly **requested** to write to the Bailiff to request his assistance in this respect.

The Committee Clerk was requested to take the necessary action.

Media Working
Party: televising/
web-streaming
States meetings.
1240/10(36)

A5. The Committee, with reference to its Minute No. A4 of 27th September 2010, received reports in connexion with the possible web-streaming and televising of meetings of the States.

Televising States sittings

The Committee recalled that the Greffier had been approached by BBC Parliament and BBC Jersey in relation to the possibility of filming the States Assembly with a view to showing footage on BBC Parliament and the associated BBC Democracy Live website. The Committee noted that a meeting had been held between the Greffier and the Controller of BBC Parliament and that, while the BBC would be interested to receive footage, it had no scope to provide any practical or financial assistance to create that footage and, as a result, the full cost would fall to the States. It was estimated that the cost would be around £50,000 for 4 broadcast quality cameras controlled by one operator as well as ongoing resource implications. It was noted that there was no budget identified for this possible new service. The Committee, having considered the matter, **agreed** that, due to the current budgetary constraints facing the States it would not be appropriate to pursue the televising of the States at the present time. Deputy M.R. Higgins expressed the view that it would be beneficial to facilitate the televising of States sittings and recommended that the matter be reassessed upon the recovery of the current economic situation.

Web-streaming

The Committee recalled that it had agreed at its meeting on 29th June 2010 to undertake further research into the recommendation of the former Media Working Party that meetings of Committees and Scrutiny Panels which were being recorded

should be broadcast live on the internet, and available to listen to on demand until the transcript of that meeting has been uploaded. Further research had been carried out into the cost of supplying and installing equipment in the States Chamber, Blampied Room and Le Capelain Room to enable the broadcast of the audio of meetings via the internet. Installation costs of £5,039 had been quoted, with ongoing charges for live streaming only of £1,964 per annum; or, alternatively, for live streaming and the provision of an on-demand listen again service of £3,314 per annum. The Committee noted that there would also be additional staff costs should a “listen again” service be provided. The Committee noted that Scrutiny hearings were generally recorded for transcription purposes and it was therefore **agreed** that, prior to investing in the necessary equipment to enable live web-streaming, research should be undertaken into the feasibility of uploading the recordings of meetings in order to establish the level of demand for such a service.

The Committee Clerk was requested to take the necessary action.

Media Relations.
1240/10(36)

A6. The Committee, with reference to its Minute No. A8 of 23rd November 2010, gave further consideration to media relations and the draft Code of Conduct prepared by the former Media Working Party.

The Committee recalled that it had agreed at its meeting on 9th November 2010 to withdraw its proposition ‘Media Relations: Code of Conduct,’ lodged ‘*au Greffe*’ on 15th July 2010 (P.100/2010 refers). It had also been agreed that further research should be carried out to identify whether an international media accreditation agency could be used to access accreditation applications. It had not been possible to identify such an organisation, however, the Committee noted that press cards from a national accreditation agency such as the United Kingdom Press Association could be used to perform the same function. The Committee noted the approach of other jurisdictions, including the United Kingdom, the Isle of Man, New Zealand and the European Council. The Committee **agreed** that the draft Media Code of Conduct should be revised to state that media representatives who wished to record meetings should be in possession of a U.K. Press Card. The Committee also **agreed** that a meeting should be arranged between the Chairman and the former members of the Media Working Party, Senator B.E. Shenton and Deputy A.E. Jeune, to discuss the revisions to the draft Code. Deputy M.R. Higgins requested that his dissent from the Committee decision be recorded.

The Committee Clerk was requested to take the necessary action.

Political
Education -
Education, Home
Affairs Scrutiny
Panel.
516/23(6)

A7. The Committee received the findings and recommendations contained within the report of the Education, Home Affairs Scrutiny Panel report entitled ‘Political Education’ (S.R. 14/2010 refers).

The Committee had particular regard to recommendation 11, which proposed that it oversee the setting up of States sites on both Facebook and Twitter. The Committee received a list of links to various States of Jersey pages available on the social networking sites Twitter, Linked in, Youtube, Flickr and Facebook. The Communications Unit had advised that it was in the process of producing a social media policy for the States of Jersey and that training was being undertaken in the use of social media for public engagement and consultation. The Committee **agreed** that it wished to know whether, in making the recommendation, the Panel proposed the use of such sites for a specific purpose, such as to raise awareness in the run-up to elections, or for use on a permanent basis. The Committee **requested** the Chairman to write to Deputy Le Hérissier to request his views in a number of areas prior to providing a response, including:

- (a) the purpose of establishing a social media presence;
- (b) the type of content the Panel would like to see uploaded;

- (c) how social media content should differ from that on the States Assembly website;
- (d) who should upload content.

The Committee Clerk was requested to take the necessary action.

Deposits for election candidates - Standing Conference of Women's Organisations of Jersey.
424/2(70)

A8. The Committee received correspondence dated 6th December 2010 from Mrs. E. Wood, Secretary, Standing Conference of Women's Organisations of Jersey, in connexion with the possible introduction of deposits for election candidates.

The Committee recalled that it intended to propose a number of amendments to the Public Elections (Jersey) Law 2002 in advance of the 2011 single election day, among those, the introduction of deposits for election candidates. The Chairman was therefore **requested** to write to Mrs. Wood to advise the Conference accordingly.

The Committee Clerk was requested to take the necessary action.

Members' Code of Conduct.
1240/4(166)

A9. The Committee received a memorandum from the Chief Minister, Senator T.A. Le Sueur, dated 29th November 2010 in connexion with States members' codes of conduct.

The Committee noted that the Chief Minister was currently carrying out a review of the content of the Ministerial Code of Conduct, and, having recognised that the Committee was in the process of undertaking a review of the Code of Conduct for Elected Members, had requested a meeting with the Chairman in this regard. The Committee, with reference to its Minute No. A5 of 9th November 2010 recalled that, upon receipt of information pertaining to the complaints process followed in Guernsey and the Isle of Man, it intended to present a consultation report to the States in respect of possible amendments to the current Code of Conduct.

It was accordingly **agreed** that a meeting should take place between the Chairman and the Chief Minister, as proposed, and the Chairman was requested to make the necessary arrangements.

Safety in the States Building.
1060/5(249)

A10. The Committee received an oral report from the Greffier of the States in connexion with members' safety when using the facilities in the States Building.

The Committee noted that the fire alarm had recently been activated in the States Building and a member of the States had failed to vacate the building. It was **agreed** that it was not possible for the Chief Usher, or any other person, to account for all of the occupants in the building at all times when members had 24-hour access. The Committee expressed the view that members should be responsible for their own safety and agreed that members' access to the building should not be restricted. It therefore undertook to remind members that, should an alarm sound, they, and any guests they had introduced, should vacate the building immediately. The Chairman was requested to write to all members to remind them of their responsibilities and it was **agreed** that signage should be placed around the building to remind occupants to exit should the alarm sound.

The Committee Clerk was requested to take the necessary action.

States members' facilities.
1240/9/1(137)

A11. The Committee, with reference to its Minute No. A12 of 9th November 2010, received a report in connexion with the possible provision of online research facilities for States members.

The Committee recalled that at that Deputy M.R. Higgins had requested that research be carried out into the cost of obtaining access to online research facilities Questia and JSTOR. Both organisations had been contacted, and a response had

been received from JSTOR, which provided an online archive of academic journals. The cost of providing members with access to JSTOR would be a one-off fee of US\$1,500, plus an additional annual subscription to each collection required. Deputy Higgins **agreed** to contact Questia to obtain details regarding costings and to report back to the Committee in early course.

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

A12. The Committee, with reference to its Minute No. A4 of 15th June 2010, received reports prepared by the Information Services Department in connexion with the use of mobile devices, as well as a schedule of support presently provided to States Members by the Department.

The Committee recalled that it had held discussions in this regard with the Director of Information Services, Mr. N. Wells, at its meeting in June and had requested that it be provided with the aforementioned list of facilities currently available to members. The documentation was **noted**.

Correspon-dence

A13. The Committee noted correspondence sent by the Chairman following its meeting on 23rd November 2010, as follows:

- (i) to Deputy P.J. Rondel dated 26th November 2010, in connexion with the Deputy's request that the Committee invite an outside body to review the Island's system of government;
- (ii) to Deputy T.A. Vallois, dated 26th November 2010, in connexion with the Deputy's request that Standing Order 21(2) of the Standing Orders of the States of Jersey be reviewed to require draft propositions to include economic, environmental and social impact statements;
- (iii) to H.M. Attorney General, dated 30th November 2010, in connexion with parliamentary access to information.

Work
programme.

A12. The Committee noted its ongoing work programme.