

PRIVILEGES AND PROCEDURES COMMITTEE

(7th Meeting)

21st March 2003PART A

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

Senator C.G.P. Lakeman
 Connétable D.F. Gray
 Deputy F.J. Hill, B.E.M.
 Deputy C.J. Scott-Warren
 Deputy R.G. Le Hérissier
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 P. Byrne, Executive Officer
 M.P. Haden, Committee Clerk.

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

- Minutes A1. The Minutes of the meeting held on 7th February 2003, having been previously circulated, were taken as read and were confirmed.
- Matters arising. A2. The Committee noted the following matters arising from previous meetings:
- (a) **Act No. A7(b), dated 10th January 2003 - entrance to the Public Gallery in the States Building** - The Committee recalled that it had requested that the possibility of installing an enclosed lobby with a glazed screen on the Halkett Place façade of the States Building. The Committee received correspondence, dated 25th February 2003, from the Assistant Director, Design and Conservation, Planning Department, in which he expressed the view that the proposal would inevitably detract from the appearance of this part of the building. The Committee, however, felt that it was worth pursuing the proposal and requested that a company such as Pallot Glass be approached to see whether they might be able to produce an acceptable suggestion. The Committee also requested the Executive Officer to approach the States Veterinary Officer regarding alternative methods of dealing with bird nuisance in the vicinity of the States Building;
 - (b) **Act No. A6, dated 24th January 2003 - Simultaneous electronic voting** - The Committee requested the Executive Officer to instruct the Environment and Public Services Department to implement the States decision to install a simultaneous electronic voting system in the States Chamber. The Committee requested that it be consulted on the design of the said system;

- (c) **Act No. A1, dated 14th February 2003 - States members' remuneration** - The Committee was advised that the Executive Officer had held initial discussions with Mr. D. O'Callaghan, Operations Director, Employment and Social Security Department on the double tax issue relating to the reimbursement of Class 2 Social Security payments. The Committee was advised that it appeared possible that the current situation might be alleviated by amending the relevant legislation so that the 'perquisite of employment' rule would not apply to States members who would be treated as a special case in this respect;
- (d) **Act No. A5, dated 7th March 2003 - Machinery of Government Sub-Committee - minutes and related reports** - The Committee noted that the Sub-Committee had agreed to forward its minutes and papers to the Committee. The Committee agreed, in return, that its own relevant papers should be forwarded to the Sub-Committee;
- (e) **Act No. A7, dated 7th March 2003 - Code of Conduct for Elected Members** - Deputy C.J. Scott-Warren agreed to act as rapporteur in the States debate on 8th April 2003; and
- (f) **Act No. A8, dated 7th March 2003 - States of Jersey Law - drafting instructions and consultation paper** - The Committee received and approved the finalised version of the drafting instructions. It was agreed that the consultation paper should be forwarded to the Bailiff in the first instance and the President undertook to write to him in this regard. The Committee wished to record its thanks to Mr. M. Entwistle, Principal Legal Instruction officer, Machinery of Government Reforms, for his work in the preparation of this paper.

Public Accounts Committee and Auditor General Working Party recommendations.

1240/22/1(8)

Ex.Off.

A3. The Committee, with reference to its Act No. A4 of 7th March 2003, received an oral report from the President on a meeting, held on 18th March 2003 with the Presidents of the Policy and Resources and Finance and Economics Committees, to clarify the respective roles of the Public Accounts Committee (PAC) and Scrutiny. The meeting was also attended by the Vice President.

The Committee was advised that, following a full discussion of the issues, it had been agreed that a further delegation to the Committee representing the Finance and Economics Committee would not be necessary. The President undertook to prepare a draft position paper, in liaison with Deputy R.G. Le Hérissier, setting out the Committee's views on the relationship between the future PAC and Scrutiny Panels. This paper would be submitted to the Committee for consideration before sending it to the Finance and Economics Committee. It was agreed that the paper would be incorporated in the Committee's forthcoming report and proposition on Scrutiny.

The President also undertook to speak to Mr. T. Dunningham, Chairman of the States of Jersey Audit Commission, to discuss further the role of Audit in the new system of government.

The Committee noted the views of Mr. W. Ogley, Chief Executive Designate of the Policy and Resources Committee, expressed as part of correspondence, dated 14th March 2003, with Deputy Le Hérissier. Mr. Ogley suggested that, as audit reports would often signal matters which Scrutiny Panels might want to pursue, it would be reasonable for reports which related to the Panels' sphere of influence to be shared. A Scrutiny Panel might as a result decide to pursue a policy or operational matter. The advantage of a Scrutiny Panel pursuing such a matter rather than the PAC was the

opportunity to involve the public and other interested parties in a way that the PAC could not.

The Committee also agreed to revise its views on the membership of the PAC. It agreed that, for an interim period, it would be appropriate for Chairmen of Scrutiny Panels to be members of the PAC in order foster good co-ordination between the two functions. However, the Committee did not believe that this position would be sustainable in the long term for Chairmen of Scrutiny Panels who were likely to have an increasingly significant workload as the new system of government became established.

Scrutiny Function
-
Proposed 'call-in'
mechanism.
502/1(3)

A4. The Committee, with reference to its Act No. A6 of 14th February 2003, received a paper, prepared by the Greffier of the States, setting out the perceived advantages and disadvantages of a 'call-in' mechanism as part of the proposed system of scrutiny in Jersey.

Ex.Off.

The Committee recognised that there was a clear difference of view on the appropriateness of 'call-in' to the Jersey system, both within the Committee and among States members in general. On the one hand, there was the view, put forward by Professor Jowell and echoed by the Attorney General, that there was no place in a sovereign legislature such as Jersey for 'call-in'. The Scottish Parliament, which was seen by many as a good model for Jersey's Scrutiny arrangements, did not operate a 'call-in' mechanism. It was suggested that States members would have, under the new system, and in fact already had under the current system, alternative, more effective means at their disposal to hold the Executive to account. Debates in the States Chamber, for example, could be more challenging and searching in their nature. It would be important, if 'call-in' was not to be pursued, to identify clearly the range of possibilities of real scrutiny under the new arrangements.

On the other hand, many current States members, who foresaw their role in the new system of government as 'non-Executive' scrutineers, regarded 'call-in' as an important element in their ability to hold the Executive to account, notwithstanding the fact that 'call-in' was essentially a means of delaying Executive decisions to request re-consideration or further consultation and would not give 'backbench' members the power to alter Executive decisions. It was suggested that members might become disillusioned with the whole new system if they found that a system of 'call-in' in which they had placed high hopes was in fact rather toothless.

Another view of 'call-in' was that expressed by Maidstone Borough Council in its Scrutiny Handbook, which stated that *'it will often be more profitable to scrutinise decisions in advance ...Advance scrutiny, through judicious use of the Forward Plan allows Committees to examine an issue in depth, taking oral and written evidence on the subject and to make recommendations to the cabinet or cabinet Ministers in parallel to the recommendations made by Officers'*.

It was suggested that a closer examination of the actual practice of scrutiny arrangements and, in particular, the operation of the 'call-in' mechanism in local government authorities in the United Kingdom, should be made before a final decision was taken on whether or not to introduce 'call-in' in Jersey.

The Committee noted the views of Mr. W. Ogley, Chief Executive Designate of the Policy and Resources Committee, expressed as part of correspondence, dated 14th March 2003, with Deputy Le Hérissier. In his view, 'call-in' was an important mechanism to adopt. However, there were important differences between Jersey and local government in the United Kingdom. The States, in its functioning and range of responsibilities, was more akin to Parliament, where 'call-in' was about exercising

proper scrutiny of decisions rather than delaying them. If this view held, then it would be significant policy decisions that would be subject to such immediate call-in scrutiny. Other matters would be picked up through the more regular and planned scrutiny.

The Committee agreed that it would be important to meet Mr. Ogley at an early stage to discuss his views, once he had commenced his new position, and requested that an informal meeting be set up. The Committee also noted that the Deputy Greffier of the States had visited Hertfordshire County Council and Mr. Ogley in the course of her recent secondment to Westminster. The Deputy Greffier of the States was requested to circulate her notes of this meeting to the Committee.

The Committee, mindful of its forthcoming Seminar on Scrutiny arrangements in Scotland, agreed to defer further consideration of this matter pending the discussions to be held at that Seminar. In the meantime, the Committee requested that relevant sections of the Report of the Consultative Steering Group on the Scottish Parliament be circulated to the Committee. This report, dated December 1998, had proved to be the foundation for the Scottish system of government.

‘Shadow’
Scrutiny.
465/1(31)

A5. The Committee, with reference to its Act No. A2 of 17th January 2003, gave further consideration to the question of establishing a trial Scrutiny scheme, with two ‘Shadow’ Scrutiny Panels, in advance of the introduction of the new Ministerial system of government.

Ex.Off.

The Committee agreed that the proposal to establish ‘Shadow’ Scrutiny Panels should be included in its forthcoming report and proposition in order to gain States approval for the exercise. It was suggested that one ‘Shadow’ Panel might examine an area of social policy, under the lead of the Vice-President, while another might investigate the issue of international relations, under the lead of Deputy R.G. Le Hérissier.

The Committee was advised by the Executive Officer that, while many Committee Presidents had indicated, at the Committee’s request, that they would be happy to co-operate with a ‘Shadow’ scrutiny exercise, they wished to have more details of the likely extent of the assistance they would be expected to provide and the possible resource implications involved.

The Committee was mindful that it would not be possible to establish formal powers for ‘Shadow’ Scrutiny panels to call for documents and to summon people to attend its enquiries. It considered the possibility that ‘Shadow’ panels might be set up as Committees of Inquiry and so acquire the powers accorded to those Committees. It decided, however, that the threshold of evidence and mode of operation associated with Committees of Inquiry would not be appropriate to a Scrutiny Panel. It favoured, alternatively, the drawing up of a protocol to which participating Committees would be requested to commit. Such a protocol should be included as part of the forthcoming Report and Proposition on Scrutiny so that, with the approval of the States, the voluntary protocol might be seen to have more weight. This protocol should give a right of access to information which went beyond the current Code of Practice. The intention would be to learn lessons from the process. It was not intended that the process would be unduly inquisitorial, although it was recognised that some Departments might well find the experience challenging.

The Committee requested that Mr. S. Sanghera, Head of Scrutiny, Lambeth Borough Council be contacted to request the benefit of lessons learnt through that Borough’s experience of ‘Shadow’ scrutiny. In particular, the Committee wished to know whether the absence of formal powers inhibited scrutineers and what were the

resource implications for Departments participating in the trial exercise.

Scrutiny Seminar
- 28.03.03
502/4(2)

A6. The Committee, with reference to its Act No. A9 of 7th March 2003, discussed the arrangements for the forthcoming Scrutiny Seminar to take place on 28th March 2003.

Ex.Off.

It was noted that it had been decided that it would not be appropriate to include a presentation from a representative of the National Audit Office as part of the programme.

It was agreed that the President would meet the speakers on the previous afternoon to brief them about the Jersey context. This would also afford them the opportunity to visit the States Chamber during the Youth Assembly taking place on that day.

The Committee requested that questions prepared in advance by States members should be forwarded to the speakers so that their presentations might be geared towards addressing the local situation and the concerns of members approaching the new system of government in Jersey.

Machinery of
Government Sub-
Committee -
comments on
Scrutiny
proposals in First
report.
465/1(22)

A7. The Committee, with reference to its Act No. A2 of 10th January 2003, received correspondence, dated 14th March 2003, from Mr. J.M.E. Harris, Manager of Government Reforms, in respect of the comments of the Machinery of Government Sub-Committee on the Committee's draft proposals for the arrangements for scrutiny in the ministerial system, as contained in its First report to the States, published on 22nd October 2002. The Committee also received the Agenda Paper on the draft proposals prepared for the Sub-Committee's meeting of 5th March 2003.

Ex.Off.

The Committee noted the comments of the Sub-Committee in respect of access to information, areas of responsibility for Scrutiny Panels and the number of Panel members.

Deputy R.G. Le Hérissier undertook to reply to the points made in the above correspondence.

Machinery of
Government Sub-
Committee -
recording the
decisions of the
Executive/
timetable for
Government
reforms
legislation.
465/1(34)
502/1(2)

A8. The Committee, with reference to its Act No. A2(a) of 17th January 2003, received correspondence, dated 7th March 2003, from the President of the Policy and Resources Committee in connexion with two matters considered by the Machinery of Government Sub-Committee on 5th March 2003, namely -

(a) **Recording and promulgation of the decisions of the Executive**

The Committee received a paper, dated 28th February 2003 and revised on 6th March 2003, setting out an approach which the Sub-Committee felt would meet the requirements of the Executive in the ministerial system, as well as respond to the demands of the scrutiny function as described in the First Report of the Privileges and Procedures Committee.

Ex.Off.
C.E., P&R
P.R.E.O.
P.R.C.C.

The Committee noted the draft template that had been prepared to record the Minutes of the council and Ministerial decisions. The Committee was not certain that this format would be practical in the normal run of a busy programme for a Minister. It was suggested that an officer of the

Policy and Resources Committee should be seconded to the United Kingdom for a period to view the actual practice in place both in Whitehall and in a local government authority such as Birmingham City Council.

The Committee recalled that a delegation from the Committee of the Committee as previously constituted had visited Birmingham in October 2002 and had been impressed by its comprehensive electronic database for recording and promulgating key decisions. This system ensured that the Council's Forward Plan, agendas for meetings and all accessible papers were made readily available to the public.

It was recognised that Jersey as a small jurisdiction might not have the resources available to duplicate the private secretaries who accompanied Ministers in the United Kingdom Government and recorded their decisions. Nor might Jersey be able to afford such a far-reaching electronic system as operated in Birmingham. However, the Committee felt that more work should be done to research practice elsewhere and the possibilities afforded by new technology.

The Committee agreed to forward its views to the Machinery of Government Sub-Committee.

(b) Process for approval of legislation relating to machinery of government reforms

The Committee noted the timetable, proposed by the Machinery of Government Sub-Committee, which envisaged that proposals for scrutiny arrangements would be approved by the States before the end of May 2003, so that they might be incorporated, where necessary, in the draft States of Jersey Law, which was planned to be finalised at the end of June 2003. The Committee referred to its own work-plan which aimed to lodge 'au Greffe' a report and proposition on scrutiny before the Easter break. It noted that work to plan and prepare an initial draft had already been commenced by the Greffier of the States, the Executive Officer and the Committee Clerk. It was envisaged that the forthcoming Seminar on Scrutiny arrangements in the Scottish Parliament would further inform the initial draft.

The Committee agreed to inform the Machinery of Government Sub-Committee of its plans accordingly.

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

States members' remuneration and expenses - revised report and proposition.
1240/3(68)

Ex.Off.
Pub.Ed.
States (2)
T.O.S.

A9. The Committee, with reference to its Act No. A6 of 7th March 2003, received correspondence, dated 14th March 2003, from the President of the Finance and Economics Committee in connexion with the revised draft report and proposition on States members' remuneration and expenses.

The Committee noted that the Finance and Economics Committee was in support of the proposal to replace the current means-tested arrangements with a new remuneration scheme available to all members. However, it had pointed out that the cost of the proposals, which were estimated at £940,000, had not been provided in the 2003 Cash Limits. The Finance and Economics Committee had indicated accordingly that it could not support the implementation of the revised arrangements to

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

commence from 1st January 2003. Nor, in the light of the 2004 Fundamental Spending Review (FSR), could it support the commencement of the new arrangements as from 1st January 2004.

The Committee also noted the request of the Finance and Economics Committee that future pay awards should not be fixed in advance, as proposed in the draft Report and Proposition which asked the States to agree an annual increase on the basis of a figure 0.5 per cent below the percentage increase in the Jersey retail Price Index. The Finance and Economics Committee wished to avoid compromising future pay negotiations with other States bodies.

The Committee agreed that it would be minded to challenge the assumptions of the Finance and Economics Committee that the revised arrangements should not come into effect from 1st January 2003 or 2004. It noted figures received from the States Treasury indicating that, in 2002, the total amount of expenses and income support paid to States members was £1,312,519, which equated to an average figure of £24,764 per member. The Committee was of the view that this figure showed that the number of States members claiming all or part of the income support allowance was actually more than generally perceived. It surmised that, in the new House following the recent elections, the number of members claiming all or part of the income support allowance might have increased. The Committee was of the view that, as all members were entitled to receive the income support allowance, it would be reasonable for the States to budget for the total claimable amount, not just for a reduced amount on the basis that some members might not claim their full allowance. The Committee decided to request further information from the States Treasury on the amount currently budgeted for States members' remuneration and the deficit between the current budget and the amount that would be required to achieve the Committee's current proposal to remove the means-tested element in States members' remuneration.

The President undertook to write to the President of the Finance and Economics Committee setting out the Committee's views.

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

Report and
Proposition of
Senator E.P.
Vibert on States
members'
remuneration:
establishment of
an independent
Review Board
(P.26/2003) -
draft comments.
1240/3(70)

A10. The Committee, with reference to its Act No. A3(iv) of 7th February 2003, considered its position with regard to the Report and Proposition of Senator E.P. Vibert on States members' remuneration: establishment of an independent Review Board (P.26/2003). In this connexion, it received draft comments prepared by the Committee Clerk which referred to the recent example of an independent review Board in Jersey, under the chairmanship of the former Senator J. Averty.

The Committee recalled that it had been minded to support the appointment of a Review Board in the future. However, it could not support the proposal that the recommendations of such a Review Board should be binding on the States. It was firmly of the view that the final decision on members' remuneration should stay in the political domain of the Assembly.

The Committee considered whether to challenge the Senator's Report and Proposition on the grounds that the Committee itself had been charged by the States to bring forward proposals in respect of States members' remuneration. It was cognisant that, under the terms of 'anticipation' the States would in the normal course of events debate its own Report and Proposition first. However, in view of the fact that it intended to withdraw P.238/2002 and to substitute a revised Report and Proposition, it recognised that the States could debate Senator Vibert's proposition in

advance of its own revised proposals. The Committee decided not to object to debate on Senator Vibert's Report and Proposition. It would seek to gain States' approval for its own revised report and proposition once the States had considered Senator Vibert's proposal.

The Committee requested that the above draft comments, prepared by the Committee Clerk, be redrafted into a formal draft comment for consideration at its next meeting.

Official Report of
the States
Assembly and its
Committees
(‘Hansard’) -
draft report and
proposition.
1240/10/1(1)

A11. The Committee, with reference to its Act No. A3 of 14th February 2003, received a revised draft report and proposition (version 4), prepared by the Deputy Greffier of the States, Mr. P. Monamy, Senior Committee Clerk, and the Committee Clerk, on the proposed Official Report of the States Assembly and its Committees (‘Hansard’).

D.G.O.S.
Ex.Off.

The Committee noted that costings had been prepared on an option to outsource the transcription work to locally-based part-time employees or freelance transcribers. The Committee, however, agreed that the quality of a local product was unlikely to match the requirements of the States as it would undoubtedly be difficult to find sufficient expertise on the Island. The Committee accordingly agreed to delete this section of the draft report and proposition.

The Committee requested that any further comments on the above document should be forwarded to the Deputy Greffier of the States, once members had had the opportunity to study the proposals.

States Assembly -
future budgetary
arrangements.
1240/22(31)

A12. The Committee received a discussion paper, dated 17th March 2003, from the Greffier of the States concerning future budgetary arrangements for the States Assembly in the new ministerial system of government. The said report also covered the budgets of future Committees of the States, such as Scrutiny Panels, the Public Accounts Committee (PAC), the Privileges and Procedures Committee and any other Committees of the States that might be established, as well as such matters as the Hansard service and members' facilities.

Ex.Off.
C.E., P&R
P.R.E.O.
P.R.C.C.
G.O.S.
T.O.S.
C.I.Aud.
F.E.C.C.
Encl.

The Committee recognised that the introduction of the new system of government would lead to a clear split for the first time between the States Assembly as a legislature and the Council of Ministers, which, together with the Assistant Ministers, would effectively form the government of the Island. The Assembly, in its own right, and more particularly through the Scrutiny Panels and the PAC, would have a vital role in scrutinising and overseeing the work of the Executive and holding it to account. It was extremely important that the Assembly and its Committees were able to fulfil this function fully and adequately without hindrance from the Executive. It was essential therefore to find an acceptable mechanism to establish some form of budgetary independence for the Assembly. The report suggested two options for which a political decision would be required in order to determine which method would be included in the new Public Finances Law or the new States of Jersey Law.

The Committee was also aware of the more immediate issues of its own budget and that of the States Greffe, currently a department of the Finance and Economics Committee, for the remainder of 2003 and 2004. It was possible that the recent Fundamental Spending Review (FSR) could have a major impact on the States Greffe and its ability to assist the Privileges and Procedures Committee as required. The Committee was also mindful that it had not been able to have any input in the FSR process.

The Committee recognised the need to preserve a balance between ensuring that the States Greffe continued to be seen as an independent department serving all

Committees and members equally and, on the other hand, developing the role of the States Greffe in assisting the Privileges and Procedures Committee in its research promoting and supporting the government reform process. The Committee agreed that it was necessary to address the relationship between its own budget and that of the States Greffe in advance of any more major changes of the type mentioned in the above discussion paper.

The Committee agreed that the discussion paper should be forwarded for comment to the Finance and Economics and Policy and Resources Committees. In addition, the Greffier of the States was directed to request the views of the Bailiff. The Committee suggested that a meeting should be arranged with the Bailiff to discuss this issue, together with the proposal to establish a Parliamentary Bureau tasked with planning the business of the States.

The Greffier of the States was directed to send a copy of this Act, together with the attached discussion paper, to the Finance and Economics and Policy and Resources Committees.

Question Time -
options for
change.
1240/4(55)

A13. The Committee, with reference to its Act No. A10 of 7th March 2003, received a draft discussion paper, dated 21st March 2003, from the Greffier of the States, setting out options for change in respect of Question Time in the States.

Ex.Off.
G.O.S.

The Committee recalled that the issue had been highlighted at the recent States sitting on 18th March 2003, when "question time" had lasted until the lunch adjournment, by the comments of the President who had expressed concern that Question Time was taking up too much 'prime time' in the Assembly. Most of the morning session had been taken up by a large number of questions from members. The Committee was conscious that this would not be sustainable later in the year when States business usually grew in volume.

The Committee was minded to propose that, for a trial period, Question Time should be limited to, say, one hour with unanswered questions receiving only a written answer. It was agreed that the above discussion paper, revised into a more appropriate form, should be circulated, with a letter from the President, to gauge the views of States members for a consultation period of two weeks.

The Committee, conscious that Question Time was an important means by which States members could hold Presidents and their Committees to account, expressed the view that the opportunity might be better used if new (and possibly longer serving) members were given some form of training in effective techniques. The President undertook to investigate the possibility of inviting a certain advocate from the United Kingdom who had led similar training courses for the legal profession.

On a related matter, the Committee noted that the President of the Policy and Resources Committee had not yet responded to the Committee's invitation to discuss his proposal for a regular session for the States to question him on his Committee's business and current policies. The Committee requested that this invitation be renewed.