

PRIVILEGES AND PROCEDURES COMMITTEE

(92nd Meeting)

8th February 2011

PART A

All members were present.

Connétable J. Gallichan of St. Mary, Chairman
Senator B.I. Le Marquand
Connétable P.F.M. Hanning of St. Saviour
(not present for item No. A1)
Deputy J.B. Fox
Deputy J.A. Martin
(not present for item No. B3)
Deputy M.R. Higgins
Deputy T.M. Pitman
(not present for item Nos. A1 and A2)

In attendance -

Deputy D.J.A. Wimberley of St. Mary (item No. A3 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 meetings of 18th January 2011 (Part A only) and 25th January 2011 (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)

A2. The Committee, with reference to its Minute No. A11 of 10th January 2011 received an oral update from the Deputy Greffier of the States in connexion with the draft Freedom of Information (Jersey) Law 201-.

The Committee recalled that it had agreed a series of amendments to the draft legislation at its meeting on 10th January 2011 and noted that an additional Article had since been drafted for inclusion in the Law. It was noted that Article 54 'Rules of Court' would allow Rules of Court to be made so as to regulate the practice and procedure of matters relating to the Royal Court under the draft Freedom of Information (Jersey) Law 201-. The Article was accordingly **approved** by the Committee. The Deputy Greffier advised that the report accompanying the draft legislation had been updated so as to account for the amendments that had been made to the Law since the withdrawal of P.101/2010 'Draft Freedom of Information (Jersey) Law 201-'. Some confusion had arisen in respect of P.101/2010 due to the inclusion, as an appendix, of the proposition 'Freedom of Information – proposed legislation' (P.72/2005 refers), and it was therefore agreed that this appendix should be omitted from the revised report.

The Deputy Greffier of the States was requested to circulate the draft Law and accompanying report to members upon the completion of any outstanding details, at which stage, it was **agreed** that the Committee would lodge the draft Freedom of Information (Jersey) Law 201- *au Greffe* for debate by the States.

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

Public Elections
(Expenditure and
Donations)
(Jersey) Law
201-
459(1)

A3. The Committee, with reference to its Minute No. A3 of 16th March 2010 received the draft Public Elections (Expenditure and Donations) (Jersey) Law 201- and a report prepared by the Greffier of the States in this regard, dated 3rd February 2011.

The Committee noted that the triennial Public Elections (Expenditure and Donations) (Jersey) Regulations 2008 would expire in July 2011 and, if adopted, the proposed Public Elections (Expenditure and Donations) (Jersey) Law 201- would put permanent provisions in place. The draft Law proposed to re-enact, with minor amendments, the provisions of the 2008 Regulations. It was noted that the draft Law covered 4 main areas, namely the imposition of a limit on expenditure; the requirement for a declaration of the amounts spent and the source of the funding; rules on the receipt of gifts and donations and the regulation of third party expenditure during election campaigns. In addition, provisions had been included which would allow for the disqualification from office of candidates who were found to have breached the provisions.

The Committee, having considered the draft Law, discussed certain areas which gave cause for concern. The Committee queried whether ancillary costs incurred by volunteers whose services had been provided to a candidate free of charge should be counted as an election expense. The Committee had particular regard for Article 3(1)(a) of the draft Law, which defined election expenses as those incurred with the candidate's express or implied consent, however, clarification was sought in respect of the candidate's position should a volunteer incur expenditure without prior consent, resulting in the candidate having spent more than the permitted sum. The Committee wished to determine whether it would be permissible under the legislation for candidates to re-use pre-existing material, such as previously printed election posters, without declaring such items as expenses and considered that it may be appropriate for provision to be included in the Law to state that election expenses need only be declared once. The Committee wished to know whether the legislation would apply if a person who was employed in a separate capacity by an election candidate then assisted with the candidate's election campaign during the course of their employment. Also, should organisations take independent action to promote one or more candidates, the Committee questioned whether the legislation as drafted would require the costs of that promotion to be shared between the election expenses of the members concerned. It was **agreed** that research should be carried out into how the United Kingdom dealt with expenses arising from websites that were run on a permanent basis by election candidates, members, and political parties, and were used for election purposes in the run-up to an election.

Clarification was sought in respect of the definition of "person" within the draft Law in relation to third party expenditure and whether this covered bodies corporate or organisations. With regard to the disqualification provisions under Article 17 of the draft Law, assurance was sought in respect of the means by which a decision would be taken as to whether to institute proceedings against a candidate. It was noted that advice had been received in respect of human rights compliance and the draft Law was considered to be proportionate. With regard to the level of expenditure permitted by candidates, the Committee **agreed** that the monetary amounts in the 2008 Regulations should be increased in line with inflation. The view was expressed that it may not be possible for all candidates to canvass the electorate on foot, and that sufficient provision should be made available through expenses so as to enable candidates to post material to voters in their district.

The Committee requested the Greffier of the States to consult with the Law Draftsman in respect of the aforementioned matters. It was, however, noted that in the light of any requisite amendments to the draft, it may not be possible to debate the draft Law and to achieve Privy Council sanction before the summer recess and

it may therefore be necessary to renew the Triennial Regulations instead, with a view to debating the permanent legislation after the 2011 elections.

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

Electoral
Commission:
establishment.
P.15/2011
1240/22/1(59)

A4. The Committee received the proposition, 'Electoral Commission: establishment,' lodged *au Greffe* on 31st January 2011 by the Deputy of St. Mary (P.15/2011 refers).

The Committee welcomed the Deputy of St. Mary in this regard. The Deputy advised that the proposition had been expediently drafted following the debate of the 'Draft States of Jersey (Miscellaneous Provisions) Law 201-', (P.176/2010 refers), during which a number of members had called for the establishment of an Electoral Commission. The Committee expressed concern regarding a number of issues of process which had not been properly dealt with in the proposition -

- The main difficulties were with paragraph (e) which appeared to ask the States to bind future Assemblies by dictating a particular course of action. It was also noted that, before holding a referendum, it was necessary for a Referendum Act to be drafted and lodged *au Greffe*, for debate by the States in accordance with the Referendum (Jersey) Law 2002.
- The Committee considered that it may be difficult for a 60% majority to be achieved on one particular approach if 3 different options were proposed under the referendum and the Deputy considered that the use of a single transferable vote may therefore be required.
- It was also noted that paragraph (c) of the proposition provided that 3 independent commissioners from outside the Island should be appointed to the Electoral Commission at an estimated cost of £260,000, but that the Deputy had not identified a budget from which the necessary funds could be allocated.
- With regard to the availability of current statistical information, it was noted that the results of the 2011 census would be likely to be made available in November 2011.
- The Deputy considered that, while paragraph (f) of the proposition proposed that the commission be appointed no later than 30th September 2011, it would be appropriate for it to begin work in January 2012, after the Autumn 2011 elections.

Having been thanked by the Chairman for his attendance, the Deputy of St. Mary accordingly withdrew from the meeting.

The Committee **agreed** that a comment should be drafted in respect of the proposition 'Electoral Commission: establishment,' then circulated to members for approval and subsequent presentation to the States.

The Committee Clerk was requested to take the necessary action.

Standing Orders:
time limits on
speeches during
debates.
P.1/2011
450/2/1(47)

A5. The Committee received the proposition 'Standing Orders: time limits on speeches during debates' lodged *au Greffe* on 4th January 2011 by Senator P.F. Routier (P.1/2011 refers).

The Committee noted that the proposition asked the States to amend the Standing Orders of the States of Jersey in order to introduce maximum time limits for speeches made by members during the debate on a proposition, and that the time limits should range from 30 to 45 minutes. The view was expressed that it should

not be necessary to bring in restrictions to address a matter that only arose on occasion as a result of a limited number of members. Concern was expressed that a time limit on closing speeches could result in difficulties for the proposer in summing up as there may be insufficient time to address all the matters raised during the debate. It was suggested that it would be preferable to simply place another, more visible, clock in the States Chamber. It was noted that speeches made in the States Chamber could have a significant influence upon members' decisions and, while many other jurisdictions employed time limits on speeches, almost all of those jurisdictions also operated under a system of party politics.

Having discussed the content of the proposition 'Standing Orders: time limits on speeches during debates', the Committee **agreed** that it was a matter for individual members to decide. Accordingly it was not minded to present a formal comment to the States in respect of the proposition.

Assistant
Ministers:
appointment by
the States.
P.6/2011
450/2/1(48)

A6. The Committee received the proposition: 'Assistant Ministers: appointment by the States,' lodged *au Greffe* on 19th January 2011 by the Deputy of St. John (P.6/2011 refers).

The Committee noted that the proposition asked the States to request the Privileges and Procedures Committee to review the current method of appointment and dismissal of Assistant Ministers and to bring forward appropriate amendments to legislation to provide that all Assistant Ministers would be elected to office by the Assembly, rather than being appointed to office by a Minister with the prior consent of the Chief Minister. A variety of views were expressed in respect of the proposition, including that the matter should not be looked at in isolation as it may have arisen as a result of broader issues. One possible area to consider would be the amendment of Standing Order 25(3) of the Standing Orders of the States of Jersey so as to enable a greater number of Assistant Ministers to be appointed. The Committee recalled the work undertaken by the States Business Organisation Sub-Group and it was noted that the Chairman continued to undertake work in this regard, following the States' debate of the proposition of Senator A. Breckon entitled: 'Machinery of Government: establishment of Ministerial boards and revised system of scrutiny' (P.120/2010 refers).

The Committee, having considered the proposition 'Assistant Ministers: appointment by the States,' **agreed** that it was a matter for individual members to decide whether to support the proposal, and accordingly **agreed** that it did not wish to present a comment to the States in respect of the proposition at the present time.

Standing Orders:
oral questions
with notice.
P.18/2011
1240/26(43)

A7. The Committee received the proposition: 'Standing Orders: Oral questions with notice', lodged *au Greffe* by Deputy P.V.F. Le Claire of St. Helier on 1st February 2011.

The Committee noted that the proposition asked the States to agree that the procedures set out in the Standing Orders of the States of Jersey in respect of the asking and answering of oral questions with notice should be amended to provide that oral questions would be asked in turn, with only the questioner permitted to ask up to 2 supplementary questions, and that this should be followed, after all questions listed on the Order Paper had been answered, by supplementary questions from all members until the expiry of the 2-hour period.

Having considered the practicalities of the suggested approach, the Committee expressed wide-ranging reservations in this respect and found the system proposed by Deputy Le Claire to be unworkable. Supplementary questions would be asked so long after the original question had been put that a significant amount of time would be wasted recalling the initial question and answer; the presiding officer would be required to remember the content of all of the questions and answers given during the 2-hour period in order to rule against repetition during the final period of supplementary questions; and, should a new presiding officer take over

during the 2-hour question period, it would be difficult for Standing Orders to be applied thereafter as the presiding officer would have no knowledge of the preceding questions and answers. The Committee considered that the current procedure for oral questions with notice worked well, especially following the introduction of the revised ballot procedures proposed by Deputy M. Tadier in 2009 (P.105/2009 refers). The Committee did not consider that the changes proposed by Deputy Le Claire would result in an improved process and it was therefore opposed to the proposition.

The Committee **agreed** that a comment should be drafted in this respect and circulated for members' approval, prior to being presented to the States.

The Committee Clerk was requested to take the necessary action.

Scrutiny reports.
465/1(156)

A8. The Committee, with reference to its Minute No. A11 of 5th October 2010, received correspondence dated 31st January 2011 from Deputy R.G. Le Hérisier, Vice-President, Chairmen's Committee, in connexion with the debate of scrutiny reports by the States.

The Committee recalled that the Chairmen's Committee had decided to consult with scrutiny members with regard to possible mechanisms for the debate of scrutiny reports. It was noted that no consensus had been reached in this regard. It was therefore proposed that there should be sufficient flexibility for review panels to take the action that they believed was appropriate following the publication of a report. The Committee wished to retain the ability to present the report to the States in accordance with the current procedures, as well as to lodge a proposition; to make comments and to make a statement. It was also agreed that arrangements should be made to permit the presentation of the report with a verbal statement followed by questions; the presentation of the report and the request for debate once the ministerial response had been received; the presentation of the report with a verbal statement followed by questions and a debate the ministerial response had been received. It was suggested that 10 minutes should be permitted for the presentation of the report, 10 minutes for the Minister to respond and 30 minutes for an open debate, with members having the opportunity to address the Assembly more than once. Provision would also need to be made for a review chairman to present the report and answer questions, as opposed to the main scrutiny panel chairman, who may not have been involved in the review.

The Committee noted that clarification would be required in respect of the form of debate that would be proposed to take place. Chairmen's Committee representative, Deputy M.R. Higgins, advised that an 'in committee' style debate had been envisaged. It was **agreed** that the aforementioned options should be considered with regard to the provisions already available under Standing Orders. The matter would then be considered further at the Committee's next meeting.

The Committee Clerk was requested to take the necessary action.

Transfer of
scrutiny
members to
executive
positions.
511/1(41)

A9. The Committee received correspondence dated 31st January 2011 from the Vice-President of the Chairmen's Committee, Deputy R.G. Le Hérisier in connexion with the transfer of scrutiny members to executive positions.

The Chairman's Committee expressed concern that the transfer of scrutiny members to executive positions could be arranged without any notification to the Chairmen's Committee, the relevant Scrutiny panel or the Public Accounts Committee, with almost immediate effect, having significant implications for these functions. The Committee considered it only courteous for members of scrutiny to inform the relevant Panel Chairman if they were looking to take up an appointment to an executive position. In general, the Committee felt that the concerns of the Chairmen's Committee arose out of the current system of ministerial government and should be looked at in the round. It was suggested that a possible way forward

would be to amend paragraph 125(1) of the Standing Orders of the States of Jersey in order to enable Assistant Ministers to be appointed as scrutiny panel members and to allow them to fulfil both roles concurrently. The Committee **agreed** that it would be interested to hear the recommendations of the Chairmen's Committee as to how the matter could be resolved, and how the Committee would propose to encourage non-executive members to serve on scrutiny. The Chairman was **requested** to write to Deputy Le Hérissier in the aforementioned terms in early course.

The Committee Clerk was requested to take the necessary action.

Increase in
minimum
lodging periods.
450/2/1(45)
450/2/1(50)

A10. The Committee, with reference to its Minute No. A1 of 28th January 2011, received a report prepared by the Greffier of the States and dated 3rd February 2011, in connexion with the decision of the States on 2nd February 2011 to adopt the proposition of Senator P. Routier, as amended, to increase certain lodging periods (P.194/2010 refers).

The Committee recalled that the States had agreed to increase certain 2-week lodging periods to 4 weeks, and that this had resulted in associated matters arising which needed to be resolved prior to instructions being given to the Law Draftsman. With regard to the timescale for amendments, the Committee noted that, at present, amendments to propositions with a 6-week lodging period needed to be lodged at least 2 weeks in advance. Having considered the matter, the Committee **agreed** that amendments to propositions with a 4-week lodging period should be lodged for a minimum of one week before the debate. The Committee recalled that the States had also adopted the amendment of the Deputy of St. Martin which had proposed that comments on a proposition should be submitted to the Greffier of the States no later than noon on the Friday of the week preceding the debate. It had, however, been clear from the debate that members should still be able to provide late comments if accompanied by an explanation of the reason for the delay. It was therefore **agreed** that the Law Draftsman should be requested by the Greffier to draft the amendment to Standing Orders so as to enable this approach.

On a related matter, the Committee recalled that it had discussed Standing Order 26 (7) with the Deputy of St. Martin at its meeting on 25th January 2011 (Minute No. A5 of that date refers). It was **agreed** that the States should be able to reduce a minimum lodging period if a proposition related to a matter of particular urgency, and that its early debate was strongly in the public interest.

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

Autumn 2011
elections.
1240/23(11)

A11. The Committee discussed the forthcoming single election day, with regard to the practical arrangements required in advance of the Autumn 2011 elections.

The Committee noted that the single election day would be likely to result in electors being required to spend more time in the polling booth as they would in order to complete a greater number of ballot papers. It was therefore considered that additional polling booths would be required in order to avoid queues. The Committee was aware that some parishes might not have sufficient room available at their usual polling station to be able to install additional polling booths and it was agreed that this matter should be brought to the attention of the Comité des Connétables so that alternative arrangements could be made, where necessary, in conjunction with the relevant Autorisé. The Chairman was **requested** to write to Connétable K.P. Vibert, Chairman, Comité des Connétables in this regard.

On a related matter, the Committee **agreed** that work should begin in early course to raise awareness of the forthcoming election through the establishment of a website, the publication of media releases and relevant advertising.

The Committee Clerk was requested to take the necessary action.

Media Relations.
1240/10(36)

A12. The Committee, with reference to its Minute No. A6 of 14th December 2010, received an oral update from the Chairman in connexion with media relations and the draft Code of Conduct prepared by the former Media Working Party.

The Committee recalled that the Chairman had agreed to meet with the members of the Media Working Party, Senator B.E. Shenton and Deputy A.E. Jeune, to discuss certain revisions to the draft code as proposed by the Committee. It was noted that this meeting had taken place on 4th February 2011 and that the report accompanying the draft code would now be amended in line with those discussions and brought back to the Committee for due consideration in early course.

Ongoing work
programme.

A13. The Committee received and **noted** a document detailing its ongoing work programme.

Matters for
information.

A14. The Committee noted the following matters for information:

- (a) the Chairman advised that notices had been placed in the members facilities to remind them that they should leave the facilities in a suitably tidy condition after use;
- (b) it was **noted** that correspondence had been sent by the Chairman to all States members on 28th January 2011 so as to remind them of the conditions of use of States members' facilities (R.112/2007 refers).