

PRIVILEGES AND PROCEDURES COMMITTEE

(24th Meeting)

28th November 2003**PART A**

All members were present.

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. Bridge  
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States  
 Mrs. A.H. Harris, Deputy Greffier of the States  
 Mrs. J. Marshall, Senior Executive Officer  
 Miss F. Agnès, Executive Officer  
 M.P. Haden, Committee Clerk.

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

Minutes.

A1. The Minutes of the meetings held on 14th, 17th and 24th November 2003, having been previously circulated, were taken as read and were confirmed.

States members  
 parking.  
 1060/181(10)

A2. The Committee, with reference to its Act No. A2(a) of 14th November 2003, gave further consideration to the issue of States members' parking arrangements.

C.E., P&R  
 P.R.E.O.  
 P.R.C.C.  
 E.P.S.C.(2)  
 Ex.Off.  
 H.R.D.

The Committee noted an e-mail, dated 28th November 2003, from the Senior Executive Officer to the Chief Executive Officer, Public Services Department, outlining the background to the proposed trial arrangements whereby States members would receive parking permits enabling them to park in public car parks free of charge.

The Committee recalled that it had made clear in earlier correspondence to the Chief Executive, Public Services Department, that it had neither the expertise nor the resources to determine the various options available. It was concerned only that there should be guaranteed parking space provided to States members.

The Committee, mindful of the recent States decision to abolish means-testing for States members' remuneration, considered the suggestion that States members should pay for their parking permits from their expense allowance. The Committee recalled, with reference to Act No. A9 of 2nd October 2002, of the Committee as previously constituted, that it had surveyed the opinions of all States members on this question of charging States members for parking. Many members at that time had expressed strong opinions against this proposal. It also recalled correspondence, dated 2nd October 2002 from the Deputy R.C. Hacquoil, then President of the Public Services Committee, as previously constituted, in which it was stated that *'if charges were*

*introduced, they would form part of an overall charging policy which applied fairly across the entire community'. The Committee was unaware that any such overall charging policy had been developed and agreed that it could not offer a conclusive view regarding charging States members until this was available.*

**The Committee accordingly agreed to request the Environment and Public Services Committee to bring forward without delay an overall charging policy, in liaison with the States Human Resources Sub-Committee of the Policy and Resources Committee. In addition, the Committee agreed to request the Environment and Public Services Committee to gather information on all parking facilities available to States members in various Departmental locations, in order to ensure that a future policy might be based on equity of treatment.**

The Greffier of the States was directed to send a copy of this Act to the Environment and Public Services and Policy and Resources Committees.

Shadow Public  
Accounts  
Committee -  
proposed terms of  
reference.  
502/1(11)

A3. The Committee, with reference to its Act No. A2 of 31st October 2003, received correspondence, dated 19th November 2003, from Senator P.F.C. Ozouf in relation to the proposed terms of reference of the Shadow Public Accounts Committee (PAC), together with a revised draft Report and Proposition in the name of the Finance and Economics Committee.

Ex.Off.  
T.O.S.  
C.I.Aud.  
F.E.C.C.

The Committee noted that the Finance and Economics Committee had agreed to the points raised by the Committee in its aforementioned Act, and had revised its Report and Proposition accordingly.

The Committee noted the following points regarding the proposed terms of reference for the Shadow PAC -

- (a) **Resources** - that it had been agreed that the Shadow PAC might request additional funds from the Privileges and Procedures Committee's consultancy budget for Shadow Scrutiny. Such a request would have to compete against funding requests from Shadow Scrutiny Panels;
- (b) **Register of Interests of independent members of Shadow PAC** - it as agreed that this should be lodged with the Greffier;
- (c) **Supporting authority** - that reference to the work of the Shadow PAC as falling within the term '*internal audit*' was not considered appropriate. It was agreed that this section should be deleted.

In addition, the Committee noted that it had been requested by the Finance and Economics Committee to agree to the appointment of Mr. Cameron McPhail, recently retired Chief Executive of the Royal Bank of Scotland International, to fill an existing vacancy on the Audit Commission, with effect from 1st January 2004. The Committee endorsed this appointment. It also noted that the Finance and Economics Committee had agreed with its view that the additional States member to be appointed to the Shadow PAC should not be a member of the Finance and Economics Committee.

The Committee noted that the Finance and Economics Committee had now decided to disband the States Audit Commission. The Committee welcomed this development as it had considered that there had been potential for confusion under the previously proposed arrangement, whereby the Audit Commission continued with certain separate functions. The Committee was supportive of the proposal that Mr. T. Dunningham, current Chairman of the States Audit Commission should be appointed

Chairman of the Shadow PAC during the interim period before the establishment of the full PAC function. The Committee approved the consequential amendment to its draft report and proposition on the arrangements and approval of the Chairmen and members of Shadow Scrutiny Panels and the shadow PAC.

The Committee noted that it was intended to lodge the Finance and Economics Committee's projet at the same time as its own projet on Shadow Scrutiny, with a view to a States debate on the same day, namely 20th January 2004.

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

Code of Practice  
on Public Access  
to Official  
Information:  
Measures to  
improve  
Implement-ation  
(P.164/2003) -  
comments of  
Finance and  
Economics  
Committee.  
955(32)

A4. The Committee, with reference to its Act No. A9 of 14th November 2003, received correspondence, dated 7th November 2003, from the President, Finance and Economics Committee relating to that Committee's comments on the Report and Proposition on the Code of Practice on Public access to Official Information: Measures to improve Implementation (P.164/2003).

The Committee noted the concern expressed by the Finance and Economics Committee that the proposal to make non-exempt support papers publicly available might render the written advice received from officers more circumspect, leading to a less comprehensive understanding of the agenda items by politicians in advance of the meeting and therefore resulting in protracted and less efficient decision-making at Committee meetings.

Ex.Off.  
T.O.S.  
C.I.Aud.  
F.E.C.C.

The Committee disagreed with the views of the Finance and Economics Committee in this respect. It was mindful that in other jurisdictions, such as the Scottish Parliament, the Executive was prepared to make support papers publicly available, including on the Internet. The Committee recognised that this would mean a change of culture in Jersey's government and was confident that it would be helpful to the public's understanding of political issues, if Committee papers were more openly available.

The Committee requested the Executive Officer to write to all Chief Officers regarding the proposals to improve the implementation of the Code of Practice.

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

Freedom of  
Information -  
proposed  
legislation -  
update.  
955(30)

A5. The Committee, with reference to its Act No. A6 of 3rd October 2003, received an update report, dated 20th November 2003, from the Executive Officer, in connexion with the Joint Working Party on Freedom of Information.

The Committee, having noted that the Legislation Committee had endorsed the request to the Working Party to consider and prepare briefing instructions for the Law Draftsman for new legislation based on the model Freedom of Information Law from the Commonwealth, approved the same.

Ex.Off.

States of Jersey  
Law - pre-  
consultation  
draft: comments  
of Attorney  
General  
450/1(1)

A6. The Committee, with reference to its Act No. A4 of 3rd October 2003, and with Ms. P. Staley, Law Draftsman in attendance, received H.M. Attorney General in connexion with his comments, contained in his Memorandum of 24th November 2003, on the pre-consultation draft of the new States of Jersey Law.

The Committee was mindful that a meeting had been arranged with the Presidents of the Policy and Resources and Finance and Economics Committees on 8th December 2003 at which the pre-consultation draft would be further considered by the three

A.G.  
Ex.Off.  
C.E., P&R  
P.R.E.O.  
P.R.C.C.  
L.D.

Presidents and requested that a paper be prepared, following its deliberations at this meeting, setting out the significant issues in the Law which remained to be finalised to assist the Presidents in understanding the context of those issues.

The Committee considered the following key points of the above Memorandum -

- (a) **Preamble** - The Committee agreed that it was appropriate to pursue the concept of a preamble, provided that this did not lead to a delay in the Law. This was a rare opportunity to make a constitutional statement on the relationship between the States and the United Kingdom. The Committee considered that it should be possible to create a preamble which reflected the reality of the constitutional arrangements and which would be acceptable to the United Kingdom authorities. **It considered three models, prepared by the Attorney General and agreed that the 'Constitutional' model appeared to provide a sound basis to which the Department of Constitutional Affairs could not legitimately take exception;**
- (b) **Orders in Council** - The Committee was advised that there was a democratic deficit in the current process for the registration of Orders in Council which might be addressed in the new States of Jersey Law through the inclusion of an article stating that, as a matter of process, applications for the registration of an Order in Council in the Royal Court should be made by the Attorney General duly authorised by the States. The result of this would be that the proposed piece of legislation, arising from the Order, would be considered by the States before registration - the States, in effect, would consider a draft Order. If an amendment was considered desirable, it would be sent back to the United Kingdom where the Order would ultimately be made. It was recognised that certain Orders, as in the case of United Nations sanctions, would need a special procedure because of their urgency and so might be exempted from the requirement for States by the States.

The Committee agreed, in principle, with the revised process proposed by the Attorney General, but requested further information on the number and impact of Orders in Council applying to the Island in any one year. It also wished to know whether the Island had any real democratic control over such Orders. It was advised that there might typically be approximately ten Orders annually. Many applied to international treaties which the United Kingdom ratified on behalf of the Island. The Attorney General's routine advice to the Policy and Resources Committee was that international treaties should not be ratified on the Island's behalf until legislation was in place in the Island to give effect to the treaties. It was agreed that such treaties deserved better scrutiny by the States;

- (c) **'precincts of the States'** (article 1) - It was recognised that, as the States Building was also occupied by the Royal Court, it was difficult to define the 'precincts of the States' without giving rise to some possible conflict between the States and the Court. The matter was delegated to the Law Draftsman;
- (d) **Connétables** - The Committee agreed that the words '*who are members of the States by virtue of their office*' (article 2(1)) should be retained. It agreed, however, that this should not, in any way, imply that there was something different about the Connétables as an elected member of the

States in comparison with the Senators and Deputies. It was recognised, however, that, until such time as the Connétables relinquished their role as head of the honorary police in each Parish, there were policing functions over which the Court would continue to have some jurisdiction. This would extend to disqualification of the Connétable from office in the event, say, of a proven drink driving offence;

- (e) **Disqualification for office as Senator or Deputy** (article 8)- The Committee agreed that the word '*ordinarily*' should be omitted in reference to the residency qualification for being a States member, on the basis that the electorate were entitled to expect a member to be resident in the Island. It was sufficient, however, for a candidate to have been '*ordinarily resident*' prior to standing for election (article 7);
- (f) **Casual vacancy in the office of Senator or Deputy** (article 13) - The Committee noted that the draft law required the Bailiff to inform the Attorney General '*forthwith*' of any such vacancy. It was advised that this appeared to remove any flexibility as to practical issues in setting a date for an election to fill vacancy. Alternative forms of words were suggested, including '*as soon as practicable*' or '*as soon as convenient*'. It was agreed that further consideration should be given to this matter prior to the aforementioned meeting with the Presidents of the Policy and Resources and Finance and Economics Committees.

On a related matter, the question of the role of the Royal Court in making the Order for an election of a States member was raised by Connétable D.F. Gray;

- (g) **Council of Ministers** (article 18) - The Committee agreed that the draft Law appeared to give the Chief Minister sole responsibility for the conduct of external relations, whereas it should be clearly stated that the discussion and agreement of policy in such a potentially important part of Jersey's political business should be carried out in the context of the Council of Ministers. It was recognised that the conduct of external relations in practice would rightly devolve upon the Chief Minister; however, it should be an explicit function of the Council of Ministers to set the policy direction in this regard. The Committee rejected the proposal that the Chief Minister be entitled Chief Minister and Minister for External Relations.

The Committee also considered the Council's role as regards the Budget. It was agreed that the Budget should be considered the Finance Minister's budget, thus enabling the Minister to exercise actual control over the cash limits available to the different departments;

- (h) **Selection, appointment, dismissal and votes of no confidence in Council of Ministers** (articles 19, 20 and 22) - The Committee agreed that the provisions of these articles appeared to constrain unnecessarily the Chief Minister in the ability to reshuffle his Ministers and the States to express lack of confidence in individual Ministers. It was recognised that the above articles reflected the decision of the States in adopting P.191/2002. The Committee noted that the Policy and Resources Committee, in its Act No.A1 of 20th November 2003, appeared to support changes to the provisions in this respect. It was agreed that further consideration should be given to this matter at the aforementioned meeting of the three Presidents; and

- (i) **Minutes of the States as evidence** (article 34) - It was noted that the procedures for recording the decisions of the Council of Ministers and of individual Ministers had not yet been determined. This would be the subject of a forthcoming report being prepared by the Senior Executive Officer and the Manager, Machinery of Government Reforms.

The Committee, having considered further minor points raised by the Attorney General, also took note of the following matters raised in the aforementioned Act of the Policy and Resources Committee -

- (j) **Power to change ministerial office** (article 29) - the Committee agreed with the proposal that the Chief Minister should have to take a draft Transfer of Functions Act to the States in order to modify or transfer ministerial responsibilities; and
- (k) **Employing Authority** - The Committee requested an update report from the States Human Resources Department on this issue, which had immediate relevance to the Scrutiny function. The Committee felt that it should be clear that there was a unified Civil Service providing an impartial service to the States. The Executive should not be seen as having its own dedicated set of officers whose role was restricted to advising the Executive.

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

States Building -  
Request to  
transfer  
Committee Room  
to Jurats.  
1060/5/1(27)

Bailiff  
E.P.S.C.(2)  
Ex.Off.

A7. The Committee, with reference to its Act No. A3 of 14th November 2003, gave further consideration to the matter of relinquishing a room within the Members' Area of the States Building to the Bailiff's Chambers for the Jurats, taking into consideration an exchange of correspondence between the Bailiff and the President, Environment and Public Services Committee, dated 19th and 26th November respectively. The Committee also noted the Vice President's letter, dated 17th November 2003, to the Bailiff setting out the Committee's views following its meeting with Jurat J. de Veulle and the Bailiff's Chief Officer on 14th November 2003.

The Committee confirmed its views as set out in the above letter and re-iterated its support for a comprehensive review in respect of the needs and priorities of all the users of the building instead of seeking to solve the difficulties facing the Jurats by looking solely at the Members' areas. The Committee was conscious that States members occupied only 16 per cent of the building in comparison to 46 per cent occupied currently by the Royal Court and its officers (although it was aware that the latter figure included the office of the Bailiff who held a dual role in the Royal Court and the States Assembly) .

The Committee noted that a revised version of the Environment and Public Services Committee' approved Report and Proposition on the Use and Allocation of Rooms within the Royal Court/States Building had been prepared for that Committee's consideration. In this revised version, the room previously designated as the Members' Quiet Room had been re-assigned to the Jurats. The Committee confirmed that it would oppose this change of designation.

The Greffier of the States was directed to send a copy of this Act to the Environment and Public Services Committee accordingly.

Home Affairs  
Committee:  
request to  
consider the  
establishment of  
a Transport  
Committee.  
561/1(11)

A8. The Committee received Act No A2 dated 21st October 2003, of the Home Affairs Committee in connexion with a proposed increase in taxi fares and noted the request to consider the establishment of a Transport Ministry which would be responsible for developing an overall strategy for transport in the Island.

The Committee considered that it could not support the establishment of a dedicated Transport Ministry which would increase the size of the Council of Ministers from that agreed by the States in adopting P.191/2002.

C.E., P&R  
P.R.E.O.  
P.R.C.C.  
E.P.S.C.(2)  
H.A.C.(2)  
H.Aff.C.(2)  
T.O.S.  
C.I.Aud.  
F.E.C.C.

The Greffier of the States was directed to send a copy of this Act to the Home Affairs, Policy and Resources, Finance and Economics, Environment and Public Services and Harbours and Airport Committees for information.

Acts of other  
Committees.

A9. The Committee noted the following Acts of other Committees -

- (a) Act No A5 dated 5th November 2003 of the Finance and Economics Committee in connexion with proposed amendments to the Code of Practice: Public Access to Official Information.
- (b) Act No A7 dated 12th November 2003 of the Finance and Economics Committee in connexion with Hansard.
- (c) Act No A1 dated 6th November 2003 of the Employment and Social Security Committee in connexion with States Members' Remuneration: abolition of means-testing.
- (d) Act No A8 dated 12th November 2003 of the Finance and Economics Committee in connexion with States Members' Remuneration – report and proposition.
- (e) Act No A9 dated 12th November 2003 of the Finance and Economics Committee in connexion with States Members' Remuneration: establishment of an independent review body.

States Mace:  
proposed  
invitation to the  
House of  
Commons to  
make a gift to the  
States.

A10. The Committee considered a proposal by Connétable D.F. Gray that the House of Commons be invited to make a gift to the States of Jersey of a Mace to mark the forthcoming 1204 - 2004 commemoration of Jersey's unique links with the English Crown.

The Committee noted that the Mace currently used in the States belonged to the Bailiff. It agreed that it would be appropriate for the States to have its own Mace. It understood (from an Article in The Parliamentarian 2003/Issue Three) that a parliamentary Mace was traditionally a gift from fellow Parliaments. It noted that the Mace used in the House of Representatives in Canberra, Australia, for example, had been given to the House in 1951 by the British House of Commons to mark the 50th anniversary of federation.

Ex.Off.

The Committee agreed that the proposal merited further consideration.

Date of next  
meeting.

A9. The Committee confirmed the date of its next meeting to take place on Friday, 12th December 2003, commencing at 10 a.m. in the Halkett Room, Morier House.

