

PRIVILEGES AND PROCEDURES COMMITTEE

(61st Meeting)

1st September 2005PART A

All members were present, with the exception of Deputy P.N. Troy, Deputy C.J. Scott Warren, Deputy J-A. Bridge, from whom apologies had been received.

Deputy R.G. Le Hérisier
 Senator P.V.F. Le Claire
 Connétable D.F. Gray
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States
 I. Clarkson, Committee Clerk

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

Minutes.

A1. The Minutes of the following meetings, having been circulated previously, were taken as read and were confirmed –

9th June (Parts A and B),
 15th June (Part A),
 17th June (Part A),
 21st June (Part B),
 27th June (Part A),
 29th June (Part A),
 5th July (Part A), and
 20th July (Parts A and B).

Draft
 Administrative
 Decisions
 (Review)
 (Amendment
 No.2) (Jersey)
 Law 200-
 1386/2(71)
 465/1(30)

A2. The Committee, with reference to its Act No. A2 of 20th July 2005, recalled that it was due to take a decision on whether to proceed with amendments to the Administrative Decisions (Review) (Jersey) Law 1982, as amended.

The Committee received the draft Administrative Decisions (Review) (Amendment No.2) (Jersey) Law 200- and the accompanying report.

The Committee approved the draft Administrative Decisions (Review) (Amendment No.2) (Jersey) Law 200- and agreed that it should be lodged ‘au Greffe’ at the next available opportunity with a view to securing a date for debate prior to the commencement of the ministerial system of government.

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

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

Draft
 Amendment (No.
 28) of the
 Standing Orders
 of the States of
 Jersey.

A3. The Committee considered the Draft Amendment (No. 28) of the Standing Orders of the States of Jersey, as lodged ‘au Greffe’ by Deputy G.P. Southern of St. Helier (Projet No. P.122/2005 refers).

The Committee noted that the proposition, if adopted, would remove the existing time limit on the period set aside for oral questions. Instead, a maximum of 15 oral

450/2(1)

questions would be allowed per sitting.

Clerk
G.O.S.
L.D.

The Committee was of the view that a debate on the proposition would not be a productive use of States' time. Even if the Assembly adopted the proposition, the Committee observed that it was likely to affect no more than 3 meetings of the States on account of the fact that the forthcoming introduction of ministerial government required new Standing Orders to be adopted (P.162/2005 refers). Nevertheless, the Committee accepted that the amendment proposed by Deputy G.P. Southern had raised a valid political issue that could be considered by the Assembly as part of the debate on the new Standing Orders.

The Committee agreed that Deputy G.P. Southern should be invited to withdraw Projet No. P.122/2005 and to lodge an amendment to Projet No. P.162/2005 in similar terms.

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

Draft
Amendment (No.
29) of the
Standing Orders
of the States of
Jersey.
450/2(1)

A4. The Committee considered the Draft Amendment (No. 29) of the Standing Orders of the States of Jersey, as lodged 'au Greffe' by Deputy G.P. Southern of St. Helier (Projet No. P.152/2005 refers).

The Committee noted that the purpose of the amendment was to ensure that a proposition for closure of a debate could not be brought on a matter which had been the subject of an inquiry and report by a Scrutiny Panel.

Clerk
G.O.S.
L.D.

The Committee was of the view that a debate on the proposition would not be a productive use of States' time. Even if the Assembly adopted the proposition, the Committee observed that it was likely to affect no more than 3 meetings of the States on account of the fact that the forthcoming introduction of ministerial government required new Standing Orders to be adopted (P.162/2005 refers). Nevertheless, the Committee accepted that the amendment proposed by Deputy G.P. Southern had raised a valid political issue that could be considered by the Assembly as part of the debate on the new Standing Orders.

The Committee agreed that Deputy G.P. Southern should be invited to withdraw Projet No. P.152/2005 and to lodge an amendment to Projet No. P.162/2005 in similar terms.

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

Standing Orders
of the States of
Jersey: revision:
disciplinary
procedures.
450/2(1)

A5. The Committee, with reference to its Acts Nos. A10 of 19th May 2005 and A1 of 1st August 2005 recalled that it had been unable to include its proposals concerning the Code of Conduct for elected members, and associated disciplinary procedures, within the new draft Standing Orders of the States of Jersey (Projet No. P.162/2005 refers) on account of the fact that the States had yet to debate the Draft States of Jersey (Amendment No.2) Law 200- (P.98/2005 refers). It further recalled that Senator S. Syvret had requested the Committee to inform the Assembly of its proposals for addressing disciplinary issues in the event that the Assembly agreed to repeal Article 51 of the States of Jersey Law 2005. In addition, the Committee acknowledged that it had received a number of complaints against members of the States in recent months. The relatively varied nature of the complaints had allowed the Committee to conduct a thorough evaluation of the existing draft Code of Conduct for Elected Members (P.32/2003 refers). This process had revealed a need for supplementary guidance notes on procedures for managing complaints.

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

The Committee considered a draft report, produced by the Greffier of the States and the Committee Clerk, in connexion with members' conduct and disciplinary procedures. It noted that the report distinguished between disciplinary issues that

might arise in the States Assembly and those that might arise under the code of conduct.

On the matter of issues arising in the Assembly, the Committee noted that the report effectively summarized the proposals it had agreed previously. Nevertheless, certain changes, both to P.162/2005 and to those proposals which would form part of an amendment to be lodged following the decision of the Assembly regarding P.98/2005, had been provisionally included following consultation with the Bailiff. For example, the Bailiff had invited the Committee to consider whether a presiding officer should be given the ability to 'require' a member to withdraw for the remainder of the day, or for a lesser period, in case of disorderly conduct. The Committee agreed that a presiding officer should be so empowered.

With regard to code of conduct matters, the Committee, with reference to its Act No. B5 of 9th June 2005, recalled that it had endeavoured to provide supplementary guidance notes by endorsing a new draft complaints procedure, based on that which was operated by the United Kingdom Parliamentary Commissioner for Standards. A revised version of the draft procedure had been produced following an evaluation of the work of successive Sub-Committees on Standards and advice received from H.M. Attorney General. The Committee noted that a copy of the revised procedure had been included in the draft report. In addition, the Committee recalled that it had been particularly keen to introduce an element of external scrutiny in disciplinary matters, and that Senator S. Syvret had expressed similar views. With that in mind, the Committee agreed that the report should include a proposal that future Sub-Committees on Standards should be comprised of two members of the Assembly and one lay member.

The Committee considered the range of sanctions that might be available to the Assembly and, in particular, whether the Assembly should be empowered to expel a member in cases where a particularly serious breach of the code of conduct had occurred. While the Committee acknowledged that such a move would allow the electorate to act as the final arbiter in such cases, it concluded that it would be inappropriate for the States to grant itself the power to exclude an elected member permanently.

The Committee agreed that the report reflected the Committee's desire to strike an appropriate balance between the preservation of the right of the Assembly to regulate its own affairs without external interference and the safeguarding of the rights of individual members. **Accordingly it approved the report and agreed that it should be presented to the States as an R.C. prior to 13th September 2005.**

On the matter of a way forward, the Committee agreed that, subject to the adoption of P.98/2005, it would aim to bring an amendment to the new draft Standing Orders of the States of Jersey, inserting the necessary disciplinary procedures, in early course.

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

Draft Standing
Orders of the
States of Jersey
(P.162/2005)
450/2(1)

A6. The Committee, with reference to its Act No. A1 of 1st August 2005, recalled that it had agreed to lodge 'au Greffe' the draft Standing Orders of the States of Jersey (P.162/2005 refers), albeit minus those provisions which were affected by the decision of the States to adopt Article No.51 of the States of Jersey Law 2005.

A.G.
Clerk
G.O.S.
L.D.

The Committee considered correspondence, dated 17th August 2005, from Deputy J.L. Dorey in connexion with Projet No. P.162/2005. In particular it noted that Deputy J.L. Dorey harboured concerns in respect of draft Standing Orders Nos. 72 and 79, which concerned the referral of draft legislation to Scrutiny Panels and the suspension of a debate for the purposes of Scrutiny respectively. He considered that

the two provisions should empower the chairman of a relevant Scrutiny Panel, or, in his or her absence, a member nominated by him or her, to move a proposition inviting the Assembly to refer a particular Projet to a Scrutiny Panel.

The Committee resolved to consider the matter further following a scheduled presentation to States members on 6th September 2005.

The Committee considered a further point raised by Deputy J.L. Dorey in connexion with Schedule 2 of the Draft Standing Orders of the States of Jersey, which concerned the Register of Members' interests. Deputy J.L. Dorey contended that sub-paragraph (2) of paragraph 8 of Register of Members Interests was excessive and unnecessarily intrusive in that it appeared to require members to disclose certain non-pecuniary interests of their partners or spouses.

The Committee maintained the view that it was important to strike a reasonable balance between the right of individual members and their families to privacy and the right of the electorate to be able to satisfy themselves that decisions made on their behalf were taken in the public interest. It insisted that paragraph 8 of Schedule 2 was a proportionate measure, particularly as the Committee, with reference to its Act No. B2 of this meeting, had now agreed to refrain from proposing that the Register of Members' Interests be published on the Internet. **It therefore agreed not to support an amendment to the provision. The Committee nevertheless noted that the Law Officers' Department had been approached for legal advice concerning the data protection and human rights implications of paragraph 8.**

The Committee subsequently considered a report, dated 30th August 2005, prepared by the Greffier of the States in connexion with further responses from the Bailiff and from States Members concerning P.162/2005. Having reviewed the points made, the Committee made the following decisions on a series of suggested amendments in the following terms –

Standing Order 1(1) - the Committee noted a concern expressed by the Bailiff regarding the definition of "States" and agreed that the definition should be changed to remove the reference to the States of Jersey Law;

Standing Order 17- the Committee agreed that it should bring an amendment to allow any member to make a statement relating to a matter for which that member had an official responsibility;

Standing Order 21(6)(c) – the Committee agreed that a minor amendment should be made clarifying that the Bailiff would ask the Greffier of the States to inform a proposer of the reasons for ruling that a proposition was out of order;

Standing Order 35 – the Committee agreed that it should bring an amendment to allow any member to present a report or comment relating to a matter for which that member had an official responsibility;

Standing Order 51 – the Committee concurred with a suggestion from the Bailiff that it would be inappropriate to make special reference to the roll call being in French as there could be an implication that other proceedings could not be in French. It therefore agreed to bring an amendment to delete the words "in French" from Standing Order 51. In doing so, the Committee was clear that the deletion of the words must not be regarded as a suggestion that the French language would not be used for the roll call.

Standing Order 57 - the Committee declined to support a suggestion made by the Bailiff that paragraph 1 be amended to state that the list would not be read out. It concluded that there could be circumstances when the presiding officer considered

that an item on the list should be read out and that the present wording would allow this.

Standing Order 72 and 79 – the Committee, having received advice from the Scrutiny Office, noted that both Standing Orders referred to the restriction on referring taxation drafts to scrutiny. This was to ensure that taxation drafts could not be referred to scrutiny during the Budget debate as this could lead to undue delay for matters such as imposts increases. The Committee acknowledged that, as drafted, any taxation draft would be caught by the restriction, even drafts brought at times other than the Budget. It therefore agreed that Standing Order 72 and 79 should be amended so that only taxation drafts presented as part of the Budget could not be referred to Scrutiny. On a related matter, the Committee also agreed that members other than those with an Executive rôle should be permitted to serve on up to 2 Scrutiny Panels, on the basis that Panels had struggled to retain members during the Shadow period.

Standing Order 97 – the Committee, having received advice from the Bailiff, concluded that Standing Order 97 in its current form appeared to be ultra vires. Having noted that Article 3 of the States of Jersey Law 2005 allowed the Bailiff to choose an elected member, the Greffier of the States or the Deputy Greffier of the States to preside at a meeting if both he and the Deputy Bailiff were unable to preside, and having acknowledged that the Bailiff had made it clear that he would normally have no wish to preside over the States sitting in Committee, the Committee agreed that Standing Order 97 would not be proposed during the debate.

Standing Orders 110 and 111 – the Committee, having considered advice from the Bailiff, agreed that it should review the provisions contained in Standing Orders 110 and 111 as part of a further amendment, which would be lodged ‘au Greffe’ during October 2005, to reinstate a series of disciplinary procedures. In the intervening period the Committee agreed that the two Standing Orders should not be proposed during the debate.

Standing Order 118 – the Committee agreed that, following the adoption of an amendment to the States of Jersey Law 2005, it was now possible for alternative nominations for ministerial posts to be made by persons other than the Chief Minister. It therefore agreed that the Standing Order should be amended to enable the Ministerial candidates to address the Assembly, and be questioned, so that the Chief Minister’s nominee can be assessed against alternative nominations.

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

Draft States of
Jersey
(Amendment No.
3) Law 200-
(P.143/2005):
comment.
450(5)

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

A7. The Committee considered a report, dated 24th August 2005 and prepared by the Committee Clerk, in connexion with a draft comment to the Draft States of Jersey (Amendment No. 3) Law 200- (Projet No. P.143/2005 refers), as lodged by Senator S. Syvret on 5th July 2005.

The Committee, with reference to its Act No. A1 of 28th October 2004, recalled that Senator S. Syvret had made similar proposals concerning the right of individual Ministers to speak publicly, and the creation of a criminal offence in respect of false declarations of an interest or failure to declare a relevant interest, as part of his amendment to the original proposition (P.124/2005). On that occasion the Committee had declined to support the proposals and had presented a comment accordingly.

The Committee considered that Senator S. Syvret had failed to produce any significant new arguments in support of his proposition. Furthermore, it noted that the latter proposal would not be supported by an appropriate enforcement mechanism.

The Committee approved the comment to Projet No. P.143/2005 as drafted within the officer report and agreed that it should be presented to the States at the next available opportunity.

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

Public elections:
Electoral
Registration
Steering Group.
465/1(64)

A8. The Committee, with reference to its Act No. A1 of 5th July 2005, recalled that it had authorized the engagement of Image Consulting Limited to produce an voter registration campaign prior to the forthcoming elections, subject to the reaching of a suitable agreement with the Finance and Economics Committee on funding arrangements.

Clerk
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T.O.S.
C.I.Aud.

The Committee considered a financial report, prepared by Mrs. K. Le Quesne, Communications Consultant, Policy and Resources Department, in connexion with the ongoing electoral registration campaign.

It was reported that the campaign was operating firmly to a budget of £35,000, of which £28,255.80 would be payable to Image Consulting Limited directly for its work in designing and producing banners, advertisements, radio scripts, posters, leaflets and other items. A further £4,744.20 would be payable to the Jersey Evening Post and Ross Abacus TIW to cover the cost of placing a series of newspaper advertisements. Delivery and collection of a caravan, belonging to the Public Services Department and used as a focal point for the campaign both in St. Helier town centre and at various events throughout the summer months, would cost a further £500. A sum of £220 had been set aside for translating certain promotional material into Portuguese, so as to ensure that the campaign reached out to a greater proportion of the electorate in Jersey.

With regard to funding arrangements, it was clarified that the Treasurer of the States had been advised that the Committee intended to commit £35,000 of its budget to the campaign and that the Committee expected, on current estimates, to be in surplus at the end of 2005.

The Committee approved the breakdown of expenditure as detailed in the financial report and noted that it would receive statistical information concerning the effectiveness of the campaign prior to the end of September 2005.

Public Elections
(Jersey) Law
2002: election of
honorary police
officers.
424(4)

A9. The Committee recalled that, on 24th May 2002, it had assumed responsibility for the Public Elections (Jersey) Law 2002 (Projet No. P.75/2005 refers).

The Committee considered correspondence, dated 23rd August 2005, from the Senator W. Kinnard, President of the Home Affairs Committee, in connexion with Article 20 (6) (a) of the Public Elections (Jersey) Law 2002.

A.G.
Clerk
H.A.C.(2)
L.D.

The Committee noted that the Home Affairs Committee wished to consult on the matter of prescribed offences applicable to persons seeking election to a post within the honorary police. It was clarified that H.M. Attorney General had written to the President of the Home Affairs Committee explaining that Article 20, paragraphs (5) to (7) of the Public Elections (Jersey) Law 2002, which concerned the election of honorary police officers, had not yet been brought into force. The delay was attributable to the fact that a list of offences for the purposes of Article 20 (6) (a) had not yet been prescribed. H.M. Attorney General had suggested that it might be appropriate to replicate the list of relevant offences set out in Article 9 (1) (c) of the States of Jersey Law 2005.

The Committee agreed that it would be appropriate for the Home Affairs

Committee to promote Regulations to prescribe relevant offences for the purposes of Article 20 (6) (a).

The Greffier of the States was requested to send a copy of this Act to the Home Affairs Committee.

States Assembly:
meeting dates for
2006.
1240/2(66)

A10. The Committee received a report, dated 25th August 2005 and prepared by the Committee Clerk, in connexion with States meeting dates for 2006.

Clerk
G.O.S.

The Committee further considered that there was a need to clarify its proposals in respect of the first 3 meetings of the new States. Accordingly it requested that the relevant report and proposition include a reference to the proposed procedure, as outlined in the new draft Standing Orders of the States of Jersey (P.162/2005 refers).

In considering the matter of the dates for States meetings in 2006 the Committee reflected upon the success of the arrangements put in place for the current year following suggestions made by Deputy M.F. Dubras of St. Lawrence and the subsequent adoption of P.181/2004. It concluded that the current system had allowed Committees, individual members and Departments to plan with a greater degree of certainty and that a majority of members were broadly supportive of the current arrangements. Notwithstanding the foregoing, the Committee acknowledged that 2006 would bring with it a period of unprecedented change with the introduction of the ministerial system of government. There was broad agreement that the demands of the new system might create a need for a new system of meeting dates in the medium to longer term, particularly as the dates on, and the frequency with which, the future Council of Ministers would meet had yet to be finalized. In the short term, however, the Committee considered that it would be appropriate to continue with an established, successful system of meeting and continuation days.

The Committee instructed the Committee Clerk to prepare a suitable draft report and proposition in early course for approval by way of telephone meeting.

On a related matter, the Committee noted that Deputy F.J. Hill of St. Martin was preparing an amendment to the Committee's forthcoming proposition which, if adopted, would change the second continuation day from Tuesday of the following week to the Thursday immediately following the first continuation day.

Matters for
information.

A11. The Committee noted the following matters for information –

- (a) correspondence, dated 1st August 2005, from Mr. B.R. Cooper in connexion with Projet No. P.117/2003, and
- (b) Act No. A1, dated 20th July 2005, of the Policy and Resources Committee in connexion with the draft Standing Orders of the States of Jersey.

Draft Standing
Orders of the
States of Jersey
(P.162/2005)
450/2(1)

A12. The Committee, with reference to its Act No. A8 of this meeting, considered an oral report from Senator P.V.F. Le Claire in connexion with the procedure for the appointment of a Chief Minister under the draft new Standing Orders of the States of Jersey (P.162/2005 refers).

A.G.
Clerk
G.O.S.
L.D.

Senator P.V.F. Le Claire explained that he had reviewed the Committee's proposals concerning the appointment of a Chief Minister and, on reflection, considered that they were flawed. He suggested that the public had a right to know which of their elected representatives had voted for a particular Chief Minister and he invited the Committee to consider bringing an amendment to P.162/2005 which would cause

the vote to be recorded by way of an 'appel nominal'.

The Committee had some sympathy with the view expressed by Senator P.V.F. Le Claire. It nevertheless considered that the secret ballot was a more practical option and one which reflected the previous decisions of the States during relevant debates on machinery of government reform. Concern was also expressed at the prospect of those further down the roll being in a position to cast a tactical vote. Moreover, the Committee maintained the view that a secret ballot was vital as an added safeguard against a Chief Minister who might be tempted to propose only those candidates who had voted for him or her.

The Committee agreed to maintain its existing position.