

PRIVILEGES AND PROCEDURES COMMITTEE

(26th Meeting)

20th September 2006PART A

All members were present. Deputy G.C.L. Baudains was not present for Items Nos. A7, B2 to B5.

Connétable D.F. Gray of St. Clement - Chairman
 Senator S. Syvret
 Senator M.E. Vibert
 Connétable K.A. Le Brun of St. Mary
 Deputy G.C.L. Baudains
 Deputy C.H. Egré
 Deputy J. Gallichan

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 D.C.G. Filipponi, Assistant Greffier of the States (for a time)
 Miss P. Horton, 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 held on 26th July 2006 (Parts A and B) and 9th August 2006 (Part A only), having been previously circulated, were taken as read and were confirmed.

States members' remuneration - Social Security contribution payments. 1240/3(82)
Encl.

A2. The Committee, with reference to its Minute No. A5(h) of 9th August 2006, received and considered a report prepared by the Assistant Greffier of the States in connexion with States members' social security contribution payments.

The Committee recalled that it had agreed to lodge an amendment to provide that States members could be treated as 'employees' for Social Security purposes and also to rectify the current situation which allowed members who were unwell to receive Short Term Incapacity Allowance (STIA) and remuneration at the same time. Prior to the proposition being lodged 'au Greffe' it had been referred to the States Treasury and the Social Security Department and in this regard the Committee was advised that an officer meeting had been held on 8th August 2006, the purpose of which was to address issues arising from the draft report and proposition.

The Committee was informed that under the Social Security (Classification) (Jersey) Order 1974, members were classified as self-employed with no contract of employment. Members were not, therefore, deemed to be employees of the States and were legally liable for the payment of their own Class 2 contributions. The meeting had concluded that there were three main disadvantages to the proposal contained in the draft proposition which were as follows -

- (a) the additional cost to the States of paying employer contributions for all members which would increase current costs by approximately £35,000 per annum;

- (b) for those members who were currently paying as Class 1 contributors there could be potential confusion regarding who the employer would be; and,
- (c) setting a precedent by which other groups might seek to follow.

The Committee was advised that consideration had been given to the present arrangements and the following proposals for all States members who wished to reclaim the employer contribution had been put forward -

- (a) maximum contributions would be deducted from members' remuneration through payroll on a monthly basis;
- (b) Treasury would pay the contributions due directly to the Social Security Department;
- (c) Social Security would send quarterly Class 2 statements directly to the Treasury indicating the amount due. If there was any overpayment Treasury would make any amendments through the payroll in subsequent months. The statement would show any reduction in contribution liability where credits had been awarded as a result of an STIA claim;
- (d) States members would be required to sign authority agreements with the States Treasury and Social Security Department to enable the transfer of pertinent information; and,
- (e) any States members paying on an earnings related basis would be required to complete details as soon as possible at the beginning of each year. This would enable an assessment to take place and the member would present details to the States Treasury so that contribution deductions could be amended through payroll.

With regards to STIA, it would not be possible to set down a procedure that would cover every possibility and it had been suggested that the Committee might consider including some direction in the members' Code of Conduct to the effect that -

'In the event that a States member makes a claim for STIA and is claiming a refund of their employer contributions, then the States member is expected to agree to repay the benefit received to the Treasury. Members should also be reminded that they are not permitted to work while in receipt of STIA'.

For the purpose of efficient administration the States member would be required to submit their medical certificate to the States Treasury it would then receive an authority code and be submitted to the Social Security Department, the benefit would then be refunded directly to the Treasury.

The Committee was advised that prior to the procedure being implemented there would be some administrative arrangements to be made by both the States Treasury and Social Security Department. If approved it was proposed that the new arrangements would begin from 1st January 2007.

The Committee, having considered the proposal, was of the opinion that it was unacceptable for the proposal to be delayed further and requested that it be implemented with effect from 1st October 2006. With regard to STIA the Committee agreed to the submission of the wording to be included in the Code of Conduct, subject to minor amendment and further requested that States Members should be reminded of their obligation that they "must" repay the benefit received to the Treasury.

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

On a related matter, the Committee was advised that Mr. Filippini, Assistant Greffier of the States would be leaving the States Greffe to take up a new post of Chief Officer in the Bailiff's Chambers. The Committee expressed its appreciation for the excellent work undertaken by Mr. Filippini over the years and wished him well in his new role.

Proposed review
of ministerial
government -
proposition of
Senator B.E.
Shenton
(P.77/2006).
465/1(77)
Encl.

A3. The Committee considered a report and proposition entitled 'Ministerial Government: review of the first 12 months' (P.77/2006 - lodged 'au Greffe' by Senator B.E. Shenton on 20th June 2006), together with a draft comment of the Council of Ministers.

The proposition requested the Committee to present a report to the States by March 2007 reviewing the first 12 months of Ministerial Government. It was noted that if the review did not begin until the expiry of the 12 month period it would have to be undertaken during the first 3 months of 2007. Whilst the Committee did not believe that the proposed review should be conducted over a long period of time it did not agree that a fixed deadline of March 2007 should be set by the States in case the review took longer than planned.

The Committee noted that the Council of Ministers' comment supported the proposed review and agreed that the Privileges and Procedures Committee should oversee the exercise. However the Council felt that the States should approve the terms of reference for the review and requested that the Committee bring forward draft terms of reference for approval by the Assembly. The Council accepted that there would be a need for administrative and executive support but considered that the review should be undertaken on behalf of the Privileges and Procedures Committee by an experienced professional, independent of the States organisation, who would be in a better position to take an objective and impartial view of the strengths and weaknesses of the operation of ministerial government in its first year. The Council considered that given such an individual would be expected to be highly credible, impartial and skilled in analysis and reporting, the costs of the review was likely to be in the order of £50,000. It was noted that the initial preferred source of funding would be from within the existing budget of the Committee, however, in the event of a shortfall, the Council of Ministers would undertake to fund the balance required.

The Committee expressed concern that it did not want it to turn into a major review which it felt would occur if an independent outsider was brought in to conduct the review. It was agreed that it was too soon to conduct a major review and the view was taken that the new system of ministerial government would need to run for at least three years before it could determine whether major changes were needed. The Committee was of the opinion that the review should be conducted through a Sub-Committee of members with officer support possibly on secondment as suggested in Senator Shenton's report.

The Committee agreed that clear terms of reference for the review should be drawn up and then agreed by the States, this would allow members the chance to approve the terms of reference and lodge amendments if they wished. As it was considered that the terms of reference would cover all of the areas that Senator Shenton's proposition referred to it was agreed that the Senator should be requested to consider deferring the debate on P.77/2006 or withdrawing the proposition entirely and the Committee would endeavour to draft terms of reference for a review and lodge these within a maximum period of two weeks.

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

States meeting
dates for 2007.
1240/4(112)
Encl.

A4. The Committee received a report dated 25th August 2006, prepared by the Greffier of the States, in connexion with the proposed meeting dates for the States for 2007.

The Committee noted that under Standing Order 4 it was required to draft this list and present it to the States by the end of September. No debate or approval was needed although any other member could lodge a proposition suggesting alternative dates. Standing Orders 3 and 4 read as follows -

“Sessions of the States

- (1) There shall be 2 sessions of the States in each year during which they shall meet.
- (2) The 1st session shall start on the 3rd Tuesday in January and end no later than the last Tuesday in July.
- (3) The 2nd session shall start on the 2nd Tuesday in September and end no later than the 3rd Tuesday in December.

Planning days for meetings of the States

- (1) The PPC shall, no later than the end of September in each year, present to the States a list of days for meetings of the States in the 1st and 2nd sessions in the following year.
- (2) Ordinarily, a meeting day is a Tuesday.
- (3) The list may include continuation days.”

The Committee was advised that as required by Standing Orders the first meeting in a year would be held on the 3rd Tuesday of January and regular fortnightly meetings had been scheduled with a 3 week gap to avoid Easter. For the second session, which had to begin on the 2nd Tuesday of September, a regular fortnightly cycle was possible through to December. The system of sittings lasting up to 3 days, which appeared to have been successful during 2006, was proposed for 2007. It was noted that none of the proposed dates fell within the school holidays although the 2nd continuation day for the first meeting in the second session, namely Thursday 13th September was Battle of Britain Day. The Committee, having discussed the matter, agreed that it would meet on the morning of Thursday 13th September (Battle of Britain Day) and, if necessary, continue the meeting on Friday 14th September 2007.

The Committee accordingly approved the list, subject to the abovementioned amendment, and requested the Greffier of the States to present it to the States as required by Standing Orders.

Constitutional
Advisory Panel.
1444/1(13)

A5. The Committee, with reference to its Minute No. A9 of 26th July 2006, considered correspondence sent to all non-executive States Members inviting ones who were interested in being nominated as a member of the Constitutional Advisory Panel to notify the Committee Clerk by Friday, 8th September 2006.

The Committee recalled that the Council of Ministers had agreed to the formation of an external Constitutional Advisory Panel. The Panel would be chaired by the Chief Minister with Connétable K.P. Vibert of St. Ouen, and Senators P.F.C. Ozouf and M.E. Vibert as members and the Committee had been requested to nominate a non-executive Member of the States as a member of the Panel. The Committee had agreed that it would give all non-executive States Members the opportunity to express an interest in being appointed to the Panel and that the selection would be

made by all Members of the States by means of a ballot to be held at the States sitting on 12th September 2006.

The Committee was advised that no Members had expressed an interest in becoming a member of the Panel. Having discussed the matter the Committee recalled that Deputy R.G. Le Hérissier had previously been a member of the Constitutional Matters Sub-Committee and it was agreed that, in the first instance, the Deputy should be asked whether he would be interested in being appointed as a member of the Constitutional Advisory Panel.

The Committee Clerk was requested to take the necessary action.

Draft Freedom of
Information
(Jersey) Law.
670(1)
Encl.

A6. The Committee, with reference to its Minute No. A3 of 9th August 2006, received and considered a questionnaire prepared by Mr. C. Borrowman, Assistant Law Draftsman, in connexion with the draft Freedom of Information (Jersey) Law 200-.

The Committee considered each question separately and the following comments were made -

- (1) Should the Jersey Financial Services Commission and the Jersey Competition Regulatory Commission be made subject to the Law?

It was agreed that both the Jersey Financial Services Commission and the Jersey Competition Regulatory Commission should be subject to the Law as they were both public bodies. However, the exemptions should provide sufficient protection for their work.

- (2) Should commercial trading companies owned or controlled by the States be made subject to the Law?

The Committee agreed that they should, but again the exemptions should be appropriate to assist those companies. Senator M. Vibert was keen to explore the implications further.

- (3) Should a public authority be allowed to refuse to say whether it had the information requested or should it only be allowed to refuse to disclose the information?

The Committee felt that a public authority should not be allowed to do this, except in the case of detection of crime. There was some discussion as to whether the existence of legal advice should be disclosed and this issue was not resolved.

- (4) Should the Law provide for each public authority to have a publication scheme or could this be omitted or, perhaps, be left to be dealt with by Regulations?

It was agreed that there should be a publication scheme although there was discussion as to the form this scheme should take. One view was that there should be a universal type of scheme to ensure consistency across the States, but equally it was suggested that there should be flexibility to deal with public authorities of different sizes. It was agreed that publication schemes could be dealt with by Regulation. There was discussion as to what a publication scheme would cover and it was suggested that this would include what should be published, when it should be published and in what form.

- (5) Should the exemption in respect of information intended for future

publication be time limited (e.g. “within a reasonable time but in any event within [1 year] of the date of the application”)?

The view was expressed that information intended for future publication was not a legitimate exemption. It was agreed that more thought would need to be given to this suggestion.

- (6) Should information obtained by the police through confidential sources be absolutely exempt, as the Chief of Police suggested, or should the certificate of the Chief Minister certifying the information to be exempt information on the grounds of national security be required?

The Committee was of the opinion that there appeared to be two distinct issues here. One related to, for example, informers and the other was matters of national security. It was suggested that a politician should not determine whether information was exempt or not in general policing issues, however it would be more appropriate for the Chief Minister to determine exemption in the case of national security matters.

The Committee was advised of an instance in which an individual was unable to access personal information relating to her child which had serious consequences for the family unit. The Committee recalled that under the Code of Practice on Public Access to Official Information, individuals had a right of access to personal information, subject to exemption, and that information was not subject to the introduction date of the Code. As it was intended to enshrine the provisions of the Code of Practice into Law, the Committee wanted to assure itself that the provisions relating to access to personal information would also be included within the Freedom of Information Law, especially as in some circumstances, the Data Protection Law did not provide the necessary access.

- (7) Is the exemption on the grounds that the disclosure of the information might prejudice the economy or financial interests of Jersey necessary?

It was felt that there would need to be great care with this exemption and there should be a public interest disclosure aspect.

- (8) Is the exemption in respect of investigations and proceedings conducted by public authorities in Article 36 necessary in view of the comprehensive exemption in respect of law enforcement in Article 37?

Yes, however this should be time-limited.

- (9) Is the exemption in respect of States Assembly privileges necessary?

The Committee was of the opinion that the exemption in relation to States Assembly privileges was necessary.

- (10) Is the exemption in respect of the formulation of States policy necessary in view of the way in which States policy is presently formulated and, if it is, should the exemption be further restricted?

The exemption in respect of policy under-development had been abused under the Code of Practice on Public Access to Official Information and the view was put that such an exemption was not required. The contrary view was also expressed that the current

exemption worked well.

- (11) Is the exemption in respect of pre-code information necessary since the information should be covered by other exemptions if any problems about its release exist?

The Committee agreed that an exemption in respect of pre-Code information was not necessary.

- (12) Should the Law exempt information that relates to employer/employee relations and, if it should, what sort of information should the exemption exempt?

The Committee was of the opinion that an exemption would be required in relation to employer/employee relations however it should be reasonably narrowly drawn and have a public interest clause. It was agreed that pay and negotiations should be exempt from disclosure, however further thought needed to be given as to whether access to references should be exempted. It was agreed that the situation elsewhere should be investigated, for example in the U.K.

- (13) Is it necessary to provide for the issue of Codes of Practice or can these merely be left to be dealt with administratively or by Regulations, if necessary?

It was thought that Regulations supplemented by guidance notes would be sufficient.

- (14) Should appeals under the Law be to a renamed Data Protection Commissioner and subsequent to a renamed Data Protection Tribunal or should appeals be to another person or body, such as the Royal Court as is the case under the Planning and Building Law?

There was some discussion about an appropriate appeals procedure and the view was put that an unelected person, such as a renamed Data Protection Commissioner, should not be able to make rulings over States members. It was agreed that the sequence of an appeal could be first to the renamed Data Protection Commissioner, then to the renamed Data Protection Tribunal and finally to the Royal Court.

- (15) Are the entry and inspection provisions (Articles 61 to 70) necessary in the Jersey context or are they a little "heavy handed"?

An answer was not determined to this question, there was a need to review the Articles quoted.

The Committee agreed that the Law Draftsman should be asked whether it would be possible to prepare a simplified Law to deal with freedom of information. It was recognised that there would be time and resource implications involved in this and it was agreed that the Law Draftsman should be consulted regarding the time he endeavoured it would take to draft a simpler version of the Freedom of Information Law.

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

In-camera States
debates.
1367/3(23)
Encl.

A7. The Committee considered correspondence dated 14th September 2006 received from Mr. C. Bright, Editor, Jersey Evening Post and the Chief Minister in connexion with in-camera States debates.

The Committee noted that Mr. Bright had concerns over the recent decision of the

States to hold a debate on the Chairmanship and composition of the Waterfront Enterprise Board in-camera. Mr. Bright requested that the Committee consider whether Standing Orders relating to in-camera debates should be revised so as to ensure that they could only be used on rare occasions for compelling or exceptional reasons. It was further noted that Mr. Bright requested that consideration be given to bringing forward a proposition to ask the States to agree to release the transcripts of the debate concerning the appointment of the Chairman of the Waterfront Enterprise Board Limited.

The Committee was of the opinion that an amendment to Standing Orders was not necessary as in-camera debates were already only used rarely and for exceptional reasons. It was considered that in a small community such as Jersey it was not unreasonable for debates concerning individuals to be conducted in private. The Committee agreed that it would not bring forward a proposition to ask the States to agree to release the transcripts of the debate as members participating in that debate had done so in the expectation that the deliberations would remain private and it did not feel it was appropriate to seek to make them public.

The Greffier of the States was requested to advise Mr. Bright of the Committee's decision.

Matters for information.

A8. The Committee noted the following matters for information -

- (a) e-mail correspondence, dated 10th August 2006, sent to Deputy P.J. Ryan, Chairman, Corporate Services Scrutiny Panel, regarding scrutinising the draft Freedom of Information Law;
- (b) correspondence, dated 11th August 2006, sent to the Bailiff of Jersey regarding the draft Freedom of Information Law consultation;
- (c) correspondence, dated 14th August 2006, sent to Senator F.H. Walker, Chief Minister, regarding Scrutiny - period of time for reference to Scrutiny;
- (d) correspondence, dated 14th August 2006, sent to Deputy G.P. Southern, Chairman, Economic Affairs Scrutiny Panel, regarding Scrutiny - lodging times and period of time for reference to Scrutiny;
- (e) correspondence, dated 14th August 2006, sent to four Chairmen of the various Scrutiny Panels regarding the new Scrutiny system;
- (f) correspondence, dated 16th August 2006, sent to Mr. C. Swinson OBE, Comptroller and Auditor General, requesting his comments on an amendment to the Annual Business Plan in relation to the funding of a fifth Scrutiny Panel;
- (g) correspondence, dated 23rd August 2006, received from Mr. C. Swinson OBE, Comptroller and Auditor General, regarding the amendment to the Annual Business Plan regarding the amendment to the Annual Business Plan in relation to the funding of a fifth Scrutiny Panel;
- (h) the Committee was advised that several States members were suffering from back problems and they were of the opinion that the chairs in the States Chamber were exacerbating the problem particularly as members were required to sit for long periods of time. The Committee agreed that those Members who were experiencing problems could receive a health and safety check with a view to rectifying the problem;

- (i) the Chairman raised the issue of whether it was appropriate for the Committee to become more involved in the planning of Public Business for States meetings. The Committee recognised that the list of Public Business changed frequently, for instance, due to matters being debated at a later date or referenced back and that its involvement might not, therefore, be beneficial; and
- (j) the Committee confirmed that its next meeting would be held on Wednesday, 18th October 2006, commencing at 9.30 a.m. in the Le Capelain Room, States Building, Royal Square, St. Helier.