

PRIVILEGES AND PROCEDURES COMMITTEE

(13th Meeting)

24th June 2004PART A

All members were present.

Deputy R.G. Le Hérisssier
 Senator P.V.F. Le Claire
 Connétable D.F. Gray
 Deputy P.N. Troy
 Deputy C.J. Scott-Warren
 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. S. Stoten, Committee Clerk

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

Minutes A1. The minutes of the meetings held on 13th May and 15th April, were taken as read and approved.

Matters arising A2. The Committee recalled that it had agreed that a joint working party with the Legislation Committee on electoral reform should be established and that it was awaiting confirmation from the latter that a member had been nominated.

The Committee was advised that Deputy G.W.J. de Faye had been nominated as a member of the Working Party and that on receipt of an Act confirming the same, an inaugural meeting would be arranged.

The Committee further recalled discussion at its last meeting regarding security in the precincts of the States Chamber and concerns in light of the current international situation.

The Committee agreed to contact the President of the Environment and Public Services Committee enquiring as to whether any enquiries had been made to the States Police in this regard and particularly whether measures were in place to ensure the security of States members and those working in the States Building.

The Greffier of the States was requested to draft an appropriate letter for the President.

Code of Conduct Sub-Committee 1240/9/1(110) A3. The Committee received and considered a discussion paper dated 24th June 2004 detailing a meeting of the Code of Conduct Working Party, with the Greffier of the States in attendance, held on the 15th June 2004.

The Committee recalled that Senator P.V.F Le Claire and Deputy C.J. Scott-Warren

had been nominated as Chairman and member of the Sub-Committee and had been tasked with taking the draft Code of Conduct for States members forward. The Committee noted that the Working Party had considered a transcript of the States during the debate of the draft code. The Committee recognised the importance of addressing and potentially amending the draft code in light of the recent censure debate of Senator F. H. Walker and noted a list of issues identified by the Sub-Committee for it to address and agreed to prioritise them as follows –

(i) Complaints process

Should States members be forced to use the Code first before, for example, taking a vote of censure to the States? Would this be desirable or possible? What procedures existed for officers to make complaints under the Code and was it feasible for officers to do so?

(ii) Data Protection issues

Comments made in connection with the recent vote of censure debate had drawn attention to the need to take account of Data Protection issues whilst preserving the right of all States members to bring forward matters that might involve personal information.

(iii) Timescale for complaints

The Sub-Committee noted that there had been comments during the April 2003 debate suggesting that it might for example, be difficult to deal with complaints near to an election.

(iv) Charitable interests

This matter led to significant discussion during the debate on the draft Code. It would be necessary to find an amended form of words to explain that a States member could continue to be involved in charitable interests but should not abuse his or her position as a member to obtain undue advantage for the charity.

(v) Independent complaints procedure

The matter of replacing the Sub-Committee of PPC with an independent complaints procedure was raised during the debate and had since been discussed by the Committee. The initial view of the Sub-Committee was that outsiders should not be involved in this procedure to preserve the autonomy and independence of the States as a Parliamentary Assembly. It was noted that the involvement of outsiders might open the process to judicial review and therefore interference by the Courts in the workings of the States. Nevertheless the Sub-Committee accepted that this matter needed to be discussed further by the Committee.

(vi) Lobbying

Guidelines might be needed in the Code to define lobbying to explain what form of pressure is acceptable on other members and officers and what constitutes undue pressure.

(vii) Acting in the best interests of the Island

Further clarification was needed on the definition of “acting in the best interests of the Island”. It was noted that this wording had been commented on during the debate. It was suggested that the addition of the words “in which he or she believes to be” before the words “the best interests of the Island” could be helpful to ensure that it was not suggested that there was only one correct way of interpreting what the best interests of the Island may be at any particular time.

(viii) Protection of complainants against legal proceedings

It would be necessary to check that complainants would not be subject to legal proceedings because of comments made in submitting complaints .

(ix) Advice and interpretation of the Code

How could members obtain advice on the interpretation of the Code? Who should adjudicate in advance on whether a particular interest or proposed course of action was likely to constitute a breach? In this context the Sub-Committee considered that it might be useful for new members to be told about the Code during the induction process and it would also be helpful for some form of explanatory booklet to be issued giving practical examples of the application of the Code.

(x) Attendance in the Chamber

Should the present provisions in the draft Code on attendance in the Chamber be retained? It was noted that as presently drafted members were required to be present in the Chamber when the States were meeting unless there were compelling reasons not to do so. In the light of recent difficulties with the quorum this matter might need to be reviewed.

The Committee further agreed that a memo would be addressed to all States members inviting their contributions. It was noted that in regard to members’ interests, the definition of pecuniary interests had not been addressed in the draft code and it was agreed that the matter should be dealt with as a matter of priority.

On a related matter, the Committee recalled that the Ministerial Code would also need clarification in respect of Ministerial interests; the Committee Clerk was directed to enquire on its behalf to the Policy and Resources Committee as to whether a draft code was available. It was agreed that the Ministerial Code would need to be agreed and progressed alongside the Code of Conduct for all members. The view of the Sub-Committee was that certain Ministerial posts would conflict with certain pecuniary and professional interests (for example a property developer might not be able to be Minister of the Environment or a hotel proprietor might not be able to be Minister of Economic Development). It was recognised that rules needed to cover not only actual interests but the perception of a conflict.

Draft States of
Jersey Law 200-
450(1)

P.R.E.O.
C.E., P&R
F.E.C.C.
T.O.S.

A4. The Committee, with reference to Act no. A4 of its meeting held on 13th May 2004, and with the Law Draftsman, Principal Legal Adviser and H.M. Attorney General present, received and considered the Draft States of Jersey Law 200- (SOJL) and a supporting undated report prepared by the Greffier of the States.

The Committee noted that the Committee as previously constituted had considered a latter version of the draft law which had since been given pre-audit approval by the Department of Constitutional Affairs. The Committee recalled that the Privileges and

Procedures Committee as previously constituted had decided to bring forward a new Law to replace the States of Jersey Law 1966 that was as simple and as short as possible with matters of detail contained in subordinate legislation, in particular the new Standing Orders of the States that would be brought forward for approval by the Committee in 2005. Of the elements most different from the existing Law, the Committee noted that Article 16 no longer reflected the Bailiff's right to a casting vote as this had been abolished with the support of the Bailiff in order that a potentially 'political' voting role in the Assembly could no longer exist. In relation to the Constitution of the States, the Committee noted that any decision on the future composition of the States Assembly arising out of the work of the Special Committee on the Composition and Election of the States Assembly was not yet encompassed in the new Law in order that ministerial government could start on schedule. However, any relevant propositions adopted by the States would require amendments to the Law.

The Committee noted that many matters would be covered in new Standing Orders and further noted that work was underway on drafting the new Standing Orders.

The Committee approved the draft States of Jersey Law 200- and agreed to lodge it at the earliest opportunity at the next States sitting on 29th June 2004. The Committee further approved the inclusion of criminal liability for Ministers whereby a Minister in a corporate sole capacity would be criminally liable for any activities deemed of a criminal nature in the same way as was currently applicable to Committees in the 1966 Law. The issue was specifically relevant in respect of transfers of function. The Committee was confident this would not dissuade any individual member from becoming a Minister and requested that a suitable paragraph be drafted in the accompanying report to highlight the issue in a un-alarmist fashion. In the Committee's opinion, the inclusion would encourage scrutiny of the transfer of functions in the future and ensure that ministers were culpable in their actions where appropriate.

The Committee expressed its thanks to the Law Draftsmen and Legal Adviser teams for their hard work in preparing the draft and liaising with the Department of Constitutional Affairs. The Committee noted that a seminar to present the Draft Law to all States members and the media would be scheduled for the autumn and that the original scheduled for 12th July would be cancelled.

The Greffier of the States was requested to identify a suitable date for the seminar and advise members accordingly.

On a related matter, the Committee discussed the merits of a Hansard recording system for States sittings and the possibility of introducing the requirement into the SOJL having been unsuccessful in securing funding during the Fundamental Spending Review. The Committee confirmed its commitment to Hansard and agreed to amend the draft Law and the Financial and manpower Statement and the Resource Plan accordingly.

The Greffier of the States was requested to take the necessary action on its behalf in order that the amendment could be brought forward.

The Greffier of the States was requested to send a copy of this Act to the Policy and Resources and Finance and Economics Committees for their information.

Composition and
Election of the
States Assembly.

A5. The Committee considered the proposition 'Composition and Election of the States Assembly.' P.115/2004) lodged 'au Greffe' by Deputy F.J. Hill B.E.M. on 15th June 2004 and whether an appropriate response was necessary.

P.115/2004
1240/22/1(13)

Pub.Ed.
States (2)

The Committee recalled a Rapport et Correspondence had been presented by the Special Committee on the Composition and Election of the States Assembly recommending proposals for reform and agreed a comment as follows –

‘The Privileges and Procedures Committee notes the proposition of the Deputy of St. Martin and encourages members to read the report RC.25/2004 presented by the Special Committee on the Composition and Election of the States Assembly on 8th June 2004 which gives background information to all the relevant issues.’

The Committee Clerk was requested to take the necessary action to ensure that the comment was presented to the States at the earliest opportunity.

Scrutiny.
502/1(21)
502/1(20)

A6. The Committee noted a letter dated 10th June 2004, addressed to the President from Senator E.P. Vibert in relation to the review of the Agri-Environment Scheme and the proposed engagement of an independent adviser.

Scrutiny

The Committee noted that the proposed adviser was Dr. Jane Dwyer whose services had been previously retained in Jersey during the initial scoping of the potential for an Agri-Environment Scheme in the Island. The Panel had indicated it was content that Dr. Dwyer possessed significant experience and local knowledge to be of assistance during the review and that estimated costs for her services were in the region of £100 per day. The Committee further noted that the Panel did not anticipate that costs would amount to more than £700.

The Committee was informed that the President had acquiesced to the request and ratified his decision accordingly.

On a related matter, the Committee considered several issues that had been brought to its attention by Senator E.P. Vibert’s Panel as follows –

Transcription

The Committee noted a request in respect of transcription requirements in light of the forthcoming Agri-Environment Review hearing and further noted that the services of Marten Walshcherer in the United Kingdom had been retained for this purpose.

The Committee approved the expenditure having recognised the urgency of the requirement however; it was concerned that a more competitive tendering process should be followed in the future.

On a related matter, the Committee agreed to investigate other alternatives to transcribing debates, scrutiny reviews and indeed States sittings in light of the absence of Hansard. The Committee further agreed that accuracy and value for money was paramount in the current economic crisis and hoped that new technology would offer a suitable alternative to the comparative high cost of transcription.

Budgets

The Committee considered the issue of splitting the existing scrutiny budgets between the two Panels and if necessary, the Public Accounts Committee as it was concerned that it would not have additional funds available to support the Panels for expenditure such as transcription or expert advisors should the Scrutiny budget fall short. Whilst the Committee did not wish to interfere with the day to day issues faced by the Panels, it was happy to consider any issues required further consideration determined by its overview position with regard to Scrutiny.

The Committee accordingly agreed to delegate responsibility for expenditure to the Panels and was confident in the knowledge that the Assistant Greffier of the States attended some of the Panel meetings in a finance capacity and would assist the Panels in managing their budgets. The Committee further agreed to consider an appropriate means of splitting and or managing the Panels budgets at its next meeting.

The Greffier of the States was requested to confirm the agreed PAC budget and the exact proposed management as adopted in the proposition 'Shadow Scrutiny: Arrangements and Approval of Chairmen and Members' (P.79/2003).

Conflict of Interest

The Committee considered a letter dated 23rd June 2004 from Senator E.P. Vibert addressed to the President in connexion with a potential conflict of interest of the President of the Environment and Public Services Committee who was due to attend the Agri-Environment Review. The Committee was requested to give its views in this matter as to whether or not any declared interest could be considered a conflict.

The Committee agreed that the Panel should, in general, decide where a conflict of interest arose and whether such a conflict would exclude a member from attending a hearing. The Committee further agreed that it could not force a member to participate if he or she had scrupulously declared an interest and withdrawn from Committee meetings when the issue had been discussed. It was anticipated in such circumstances, the Vice President would attend in the President's place. The Committee was of the opinion that Senator Ozouf should be invited to the Scrutiny Panel to explain his conflict further and confirm whether he had declared a similar conflict at the meetings of the Environment and Public Services Committee.

It was agreed that the issue of precedence of Scrutiny Panel meetings should be raised at the forthcoming Committee of Presidents meeting to ensure that Shadow Scrutiny and its hearings were considered as a high priority by Presidents and Committee members alike.

Draft Waste Strategy

The Committee was apprised of a letter dated 10th June 2004 received by the President from Senator E.P. Vibert in respect of the Review of Waste Management and the EPSC Departmental Schedule and the impact that a scrutiny review should have on related work being undertaken by the relevant Committee.

The Committee further noted that the Shadow Scrutiny Panel was concerned by public comments made by the President of the Environment and Public Services Committee that his Committee intended to lodge its draft Waste Strategy soon after the summer recess for consideration by the States in the autumn. Although the scrutiny review into this matter had been under way for some time it would not be in a position to present its findings to the States within this timescale.

The Committee agreed that a letter should be drafted from the President to all Committee Presidents and members of the Corporate Management Board to request that due account was taken of scrutiny reviews when Committees were bringing forward new policy initiatives or propositions to the States. The

Committee expressed concerns that a Committee might attempt to rush through a new policy initiative to avoid the results of a scrutiny review. It was agreed that a copy of the letter should be forwarded to Senator Vibert showing full support of the Scrutiny function and the work of the Panels.

Legal Advice

The Committee was apprised of a letter received from Senator E.P. Vibert dated 23rd June 2004 concerning the provision of legal advice to Shadow Scrutiny Panels.

The Committee recalled it had given careful thought to the matter during its work on planning the introduction of the Scrutiny system and concluded, where possible, legal advice to the Panels should be provided by the Law Officer's Department as the Attorney General was the legal adviser to the States of Jersey as a whole and not just to the Executive arm of the Government. Where a conflict arose, the Committee agreed it might be necessary for Panels to pay for separate advice from a private lawyer.

The Committee agreed the Panels should follow the principles set out in the relevant sections of P.79/2003, paragraph 24, where advice on legal assistance was clarified in more detail but wished to be notified if either Panel encountered any problems obtaining appropriate legal advice.

Freedom of Information Working Party. 955(30)

A7. The Committee received an oral update from the Vice President as Chairman of the Freedom of Information Working Party in relation to the status of the Freedom of information research and work to date.

The Committee was informed that the Working Group was receiving officer support and that a meeting had been arranged with the Legal Adviser to discuss the way forward. The Committee further noted that it was the Working Party's intention to turn the existing Code of Practice on Public Access to Official Information into a Freedom of Information Law.

The Committee looked forward to an update at a future meeting.

Guidelines for Officers attending Scrutiny Panels. 502/1(17)

A8. The Committee noted the strongly held feelings of the Vice President in relation to the recently published 'Guidelines to Officers Attending Scrutiny Panels' distributed to the Committee via the Policy and Resources Committee in its Act dated 6th May 2004.

The Committee noted that the guidelines had been developed in order to provide advice and guidance to all States' employees on how they should conduct themselves when they were required to appear before a Shadow Scrutiny Panel. The guidelines had been prepared by the Policy and Resources and Human Resources Departments, following consultation with the Corporate Management Board and the Scrutiny Officers. The Vice President questioned the legal advice obtained when preparing the guidelines and whether the inclusion of the Code of Public Access to Official Information in the guide could be deemed appropriate or relevant.

The Committee noted that the Policy and Resources Committee had welcomed amendments to the guide arising from the Shadow Scrutiny process and agreed that the guidelines should be addressed at the forthcoming Tri-Partite meeting.

Scrutiny of the Annual Business

A9. The Committee noted an Act of the Policy and Resources Committee dated 6th May 2004 and an Act of the Finance and Economic Committee dated 13th May 2004

Plan.
502/5/5(1)

in relation to the scrutiny of the Annual Business Plan and of the Budget in the ministerial system.

The Committee, with reference to Act No A8 of its meeting held on 5th March 2004, recalled it had proposed an amendment to the Draft Public Finances (Jersey) Law 200- in particular that sufficient time should be allowed for proper scrutiny of the Annual Business Plan and budget and noted that both the Finance and Economics and Policy and Resources Committees had agreed the issue would be addressed independently of the Public Finances Law. The Committee was aware that the subject and the report produced by the Policy and Resources Department which accompanied its Act, would be raised at the forthcoming Tri-Partite meeting on 28th June but agreed further research was required before it would be in a position to discuss the matter further.

The Committee agreed that the topic required significant attention and should be the subject of a research project carried out by its Officers at the earliest opportunity.

Official functions
and States
Dinners.
1240/6/10(3)

A10. The Committee discussed the recent Royal visit of His Royal Highness The Prince of Wales and the official functions that were held in his honour, in particular, the States Dinner held at Highlands College.

The Committee discussed concerns relayed to it regarding the manner in which the events were organised, in particular –

- (a) seating plans, and the criteria used for selecting those who sat at the top table;
- (b) the number of civil servants invited;
- (c) the involvement of elected members in making the arrangements;
- (d) the invitation of spouses and partners; and
- (e) the overall cost of such events in times of financial restraint.

The Committee agreed to communicate its enquiries to the Bailiff accordingly.

Items for
information.

A11. The Committee noted the following matters for information –

an Act of the Finance and Economics Committee dated 27th May 2004 regarding the Code of Public Access to Official Information and proposed amendments.

Next meeting
dates.

A12. The Committee considered the date of its next meeting and agreed that it would be scheduled for 15th July 2004 between 2 p.m. and 5p.m. as opposed to 16th July which it agreed to cancel. The Committee further agreed to cancel its meeting scheduled on the 6th and 27th August during the recess period when members had planned absences.

Bookshop

The Committee were minded to move all future Privileges and Procedures Meetings to Thursdays between 2 p.m. and 5 p.m. in the future as this time proved more convenient to the majority of members.

The Committee Clerk was requested to make the necessary arrangements to adjust the Committee calendar and advise members accordingly.

