

PRIVILEGES AND PROCEDURES COMMITTEE

(38th Meeting)

24th February 2005PART A

All members were present, with the exception of Deputy J-A. Bridge, from whom apologies had been received.

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. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 P. Baker, Instructing Officer (for a time)
 I. Clarkson, Committee Clerk

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

- Minutes. A1. The Committee reviewed the Minutes of the meeting held on 24th January 2005. The Committee noted that Deputy C.J. Scott Warren had incorrectly been recorded as having been present at the meeting. The Committee requested that revised Minutes be prepared for signing at a subsequent meeting.
- Standing Orders of the States of Jersey: revision. 1240/4(171)
 Clerk
 G.O.S.
 L.D.
- A2. The Committee, with reference to its Act No. A3 of 24th January 2005, recalled that it had made a number of policy decisions in connexion with the ongoing review of the Standing Orders of the States of Jersey.
- The Greffier of the States advised the Committee that a revised law drafting brief, incorporating the aforementioned policy decisions, had been forwarded to the Law Draftsman for progression, pending approval from the Committee.
- The Committee agreed that, in the interests of efficiency and expediency, the Law Draftsman should be instructed to prepare a first draft of the revised Standing Orders, on the basis of the amended brief, for consideration by the Committee in due course.**
- The Greffier of the States was requested to take the necessary action.
- Public Elections (Jersey) Law 2002: consultation paper. 424/2(13)
- A3. The Committee, with reference to its Act No. A1 of 24th January 2005, recalled that it had published an R.C. entitled, 'Public Elections (Jersey) Law 2002: Proposals for change – Consultation Paper' (R.C. 7/2005 refers).
- The Committee noted that the deadline for receipt of responses to the Consultation Paper was 25th February 2005 and that formal consideration of any responses

received would take place at its next meeting.

Clerk
D.G.O.S.

On a related matter, Senator P.V.F. Le Claire advised the Committee that Deputy G.P. Southern was considering bringing forward a report and proposition to facilitate the inclusion of political party names on ballot papers.

Shadow Public
Accounts
Committee:
appointment of
members.
570/1(2)

A4. The Committee, with reference to its Act No. A10 of 25th November 2004, recalled that it had sought the views of the Finance and Economics Committee on the matter of whether the Committee should assume responsibility for making recommendations to the States on membership of the Shadow Public Accounts Committee.

Clerk
G.O.S.
T.O.S.
C.I.Aud.
F.E.C.C.
Scrutiny

The Committee received correspondence, dated 10th February 2005, from Senator T.A. Le Sueur, President of the Finance and Economics Committee, in connexion with the aforementioned matter.

The Committee noted that the Finance and Economics Committee supported the suggestion that the Committee should assume an oversight rôle in respect of the Shadow Public Accounts Committee. **The Committee therefore agreed to assume responsibility, on the understanding that it would pass to the Scrutiny Chairmen's Committee following the commencement of the ministerial system of government.**

On a related matter, the Committee noted that, following recent resignations, there was a need to recruit two independent members to the Shadow Public Accounts Committee. Accordingly a draft advertisement, prepared by the Chief Internal Auditor, was presented to the Committee for consideration. **The Committee expressed concern that the advertisement was unnecessarily complex and potentially expensive. It therefore directed the Committee Clerk to liaise with individual Committee members and the Chief Internal Auditor regarding possible amendments. Notwithstanding the foregoing, the Committee confirmed that it was prepared to propose to the States the appointment of two new independent members.**

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

Shadow Scrutiny:
Chairmen's
Committee:
vacancies.
502/1(12)

A5. The Committee received a draft report and proposition, prepared by the Deputy Greffier of the States, in connexion with the appointment of 2 Members to the Chairmen's Committee.

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

The Committee recalled that, on 24th July 2003, the States had approved as amended a proposition of the Committee entitled 'Machinery of Government: establishment of Scrutiny Panels and Public Accounts Committee' (Projet No. P.79/2003 refers). That proposition had stipulated that the Chairman of the Public Accounts Committee, the Chairmen of the Scrutiny Panels and 2 other members of the States not involved in the Executive appointed by the States, would form a Chairmen's Committee to coordinate and oversee the work of the Public Accounts Committee and the Scrutiny Panels and to report to the Privileges and Procedures Committee on the operation of the scrutiny function and, where necessary, to make recommendations for change.

The Committee noted that the involvement of the Chairmen's Committee in overseeing the work of the Public Accounts Committee and the Scrutiny Panels would not extend beyond the prevention of duplication, assessing the practical workability of reviews proposed and the matter of monitoring resource allocations to individual Panels.

The Committee concluded that only the final three paragraphs of the report accompanying the proposition were necessary and that the preceding paragraphs should be removed.

The Committee approved the report and proposition, as amended, and requested that it be lodged 'au Greffe' immediately and with a view to securing a debate on 1st March 2005.

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

Ombudsman:
report concerning
Ombudsman in
Gibraltar.
1386/4(15)
1386/2(78)

A6. The Committee received a report, dated 14th February 2005, prepared by the Greffier of the States, in connexion with the office of the Ombudsman in Gibraltar.

The Committee was interested to note that the Gibraltar Ombudsman received 645 and 740 complaints during 2002 and 2003 respectively, despite the relatively small population of that colony and notwithstanding the fact that the findings of the Gibraltar Ombudsman were not binding. Further to the foregoing, it noted that the Ombudsman was not able to consider a complaint unless all other avenues of redress were exhausted, a limitation that did not apply in respect of cases submitted to the administrative appeals system in Jersey. The Committee understood that over 50 per cent of complaints submitted to the Gibraltar Ombudsman fell into this category.

Clerk
G.O.S.
L.D.

The Committee maintained the view that reform of the existing administrative appeals system was necessary, as had been set out in its Consultation document presented to the States during the preceding year (R.C. 20/2004 refers). To that end the Committee noted that it had intended to lodge 'au Greffe' amendments to the Administrative Decisions (Review) (Jersey) Law 1982 in the near future. It nevertheless acknowledged that certain Members, including Deputy A. Breckon of St. Saviour, believed strongly that the introduction of an Ombudsman would be a more appropriate solution for Jersey.

The Committee decided that, prior to taking a decision on whether to proceed with the aforementioned amendments to the Administrative Decisions (Review) (Jersey) Law 1982, it should invite Deputy A. Breckon to its next meeting to discuss the advantages and disadvantages of an Ombudsman system.

The Committee Clerk was directed to take the necessary action.

Law Drafting
Programme 2006.
422/23/1(17)

A7. The Committee received correspondence, dated 14th February 2005, from the Business Manager, Policy and Resources Department, in connexion with the 2006 Law Drafting Programme.

The Committee, with reference to its Act No. A4 of 24th February 2005, recalled that it might require drafting time for a series of amendments to the Public Elections (Jersey) Law 2002. Accordingly it requested that an appropriate Legislation Request Questionnaire be forwarded to the Policy and Resources Committee prior to 15th April 2005.

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

States of Jersey
Law 200-:
amendment.
450(3)

A8. The Committee, with reference to its Act No. A5 of 25th November 2004, received a proposition lodged 'au Greffe' by the Policy and Resources Committee entitled, 'Draft States of Jersey (Amendment) Law 200-' (Projet No. P.26/2005 refers).

Clerk
G.O.S.
P.R.C.C.
P.R.E.O.

The Committee noted that the proposition included revised arrangements for the appointment of Ministers, whereby the Chief Minister designate would nominate candidates for a specific Ministerial office individually. In addition, the Committee noted that the proposition would have the effect of removing the ability of a Chief Minister designate to take on the additional responsibility of a Ministerial office.

The Committee expressed disappointment that the Policy and Resources Committee had declined to consult with the Committee on the proposed amendment.

The Committee agreed that it would be preferable for individual Members to comment on the proposition during the course of the debate. Accordingly it declined to issue a formal comment.

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

Standing Orders
of the States of
Jersey:
declaration and
registration of
Members'
interests.
1240/4(171)

A9. The Committee received a report, dated 10th February 2005, prepared by the Committee Clerk, in connexion with the declaration and registration of Members' interests.

The Committee, with reference to its Act No. A3 of 24th February 2005, noted that policy decisions on the matter of declaration and registration of interests were required in relatively short order, so as to allow for any revisions to the existing rules to be incorporated into the new Standing Orders of the States of Jersey. It nevertheless noted that the report raised a number of complex and inter-related issues. **Accordingly it decided that the matter should be referred to the Code of Conduct Working Party for detailed consideration and that the Working Party should make recommendations to the Committee prior to the end of April 2005.**

Clerk
G.O.S.
L.D.

The Committee Clerk was directed to take the necessary action.

Freedom of
Information: law
drafting
instructions.
955(36)

A10. The Committee, with reference to its Act No. A1 of 8th February 2005, recalled that it had approved a number of key policy principles on which to base drafting instructions for the proposed Freedom of Information Law.

The Committee received a report, dated 17th February 2005, prepared by the Instructing Officer, in connexion with law drafting instructions for the draft Freedom of Information Law.

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

The Instructing Officer reported that preparation of a draft report and proposition was nearing completion. Clarification was nevertheless sought from the Committee on several matters.

First, the extent to which the proposed law could be used to extract information from small private companies in receipt of limited States funding was queried. It was clarified that the Chief Internal Auditor, whose rôle and responsibilities would fall within the remit of the proposed law, was fully empowered to investigate the application of States funds within such organizations. **The Committee therefore decided that it was not necessary for the law to apply to small private companies in receipt of limited States funding.**

Second, and with regard to the Committee's decision that all individuals should have a right to apply, regardless of their nationality or residency, the Committee confirmed that the said right would extend to bodies corporate.

Clarification was requested on the matter of the extent to which information should

be made available in a format suitable for applicants with particular special needs. **The Committee was of the view that there should be an obligation to respond to a special need, although the extent of any action taken by a department or a particular official to satisfy a particular need should be proportionate to the nature of the request.**

On the matter of punishable offences, the Committee was advised that analysis of existing legislation, such as the Official Secrets (Jersey) Law 1952, had revealed that the appropriate criminal offences already existed. **It therefore agreed that there was no need to create additional offences within the draft Freedom of Information Law.**

Finally, and with reference to the possible effect of freedom of information legislation on operational policing, the Committee received further correspondence, dated 9th February 2005, from the Chief Officer of the States of Jersey Police. It noted the additional information provided, including the need for the police service to be able to respond to requests for information in a way that avoided inappropriate revelations to known or suspected criminals. **Accordingly the Committee agreed that the draft Law should provide a defence for police officers who declined to release information on genuine public interest grounds.**

The Committee noted that a draft report and proposition would be presented for consideration at its next meeting.

Electoral
expenses:
reporting and
regulation.
424/2(13)

A11. The Committee, with reference to its Acts Nos. A1 of 24th January 2005 and A19 of 24th February 2005, recalled that the Joint Working Party on Electoral Reform had declined to include in its report a recommendation that electoral expenses incurred by candidates be regulated. It had nevertheless recognized that the possible advent of a political party was likely to raise the profile and increase the relevance of the issue of electoral expense regulation.

Clerk

The Committee received a report, prepared by Mr. N. Fox of the States Greffe, in connexion with the reporting and regulation of electoral expenses.

It was reported that a majority of jurisdictions had mechanisms in place to curb the extent to which personal funds could be used for electioneering purposes. Mechanisms used included open accounting, limitation and centralized funding for campaigns. It was also reported that resourcing implications would inevitably follow from a decision to introduce any regulation of expenses.

The Committee recalled that candidates contesting the elections of Senators and Deputies in 2002 had employed a variety of campaigning techniques. In particular there had been speculation as to the funds expended by certain candidates on their respective campaigns. It nevertheless concluded that there was a lack of evidence to suggest that the voting intentions of the electorate had been unduly influenced by those campaigns that were perceived to have been comparatively expensive.

The Committee was of the view that the advantages to the democratic process that would accrue from regulating electoral expenses were insufficient to justify the administrative burden that would be created by such regulation. It nevertheless considered that the general issue of electoral expenses might be of significant interest to other States Members. **Accordingly the Committee agreed to circulate the aforementioned report to all Members of the Assembly and to invite comments.**

The Committee Clerk was instructed to take the necessary action.

Terms of reference: provision of information concerning the work of the Assembly. 465/1(2) 871/1(2)

Clerk

A12. The Committee, with reference to its Act No. A14 of 22nd March 2004, reviewed its terms of reference. It noted that significant progress had been made in recent months and that the production of revised Standing Orders remained the most important task for the Committee to address in the short term. Nevertheless, the Committee considered whether it should give further consideration to that section of its terms of reference which concerned the provision of information to the public about the work of the Assembly.

The Committee acknowledged that the ongoing development of the States Assembly Web site had been particularly successful. It had, for example, allowed for the voting records of individual members to be made available to the public and the text of oral questions and answers. The Committee further noted that the Greffier of the States had actively promoted visits by schools within the Island to the States Assembly. However, there was general agreement that citizenship issues could be discussed and promoted more widely.

The Committee requested that Senator P.V.F. Le Claire produce a discussion paper on the matter for consideration by the Committee at its next meeting.

Code of Conduct: complaint against Senator E.P. Vibert. 1240/9/2(6)

G.O.S. Clerk A.G.

A13. The Committee received correspondence, dated 21st February 2005, from Senator F.H. Walker in connexion with a complaint regarding material published on Web sites allegedly owned or operated by Senator E.P. Vibert.

It was reported that allegations regarding the integrity of the Director-General of the Financial Services Commission and his Deputy had been published on several Web sites, including www.jerseyfsc.com and www.jfsc.com. The content of the relevant Web sites was understood to be in the control of Senator E.P. Vibert. Senator F.H. Walker was known to be of the view that the alleged actions of Senator E.P. Vibert in publishing the material were defamatory and constituted behaviour which was unbecoming of a States Member. He further contended that the material was damaging to the reputation of the Island. Accordingly Senator Walker had requested that the Committee investigate the matter.

The Committee noted that a rebuttal of the said allegations had been published on the JFSC website. Both officers had referred to the comments made on the websites as being defamatory and both had reserved their right to pursue a legal remedy.

The Committee recalled that it had no formal powers at present to conduct investigations under the Code of Conduct as that Code had no legal effect. Furthermore, the Committee recalled that, on 30th March 2004, the President had made a statement to the Assembly highlighting this difficulty. In addition the Committee acknowledged that it had previously received clear advice from the Law Officers' Department that it should not attempt to become involved in any complaints where legal action was pending or threatened.

The Committee concluded that it was unable to investigate an investigation into the complaint made by Senator F.H. Walker. It nevertheless noted that any Member was entitled to bring to the Assembly a vote of censure against Senator E.P. Vibert.

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

On a related matter, the Committee recalled that progress on the revised Standing Orders had been affected by the decision of the States to adopt Article 51 of the new States of Jersey Law 200-. The Committee accepted that the adoption of Article 51 had presented the Law Officers with a particularly complex challenge in terms of

determining how, or indeed whether, an appropriate disciplinary procedure for Members could be implemented. It nevertheless agreed that there was an urgent need to determine an appropriate way forward. **Accordingly the Committee requested the Greffier of the States to liaise with H.M. Attorney General with a view to ensuring that legal advice on the matter of Article 51 of the States of Jersey Law was made available to the Committee in early course.**

Draft Business
Plan 2005.
422/10(63)

A14. The Committee received a report, dated 11th February 2005, prepared by the Assistant Greffier of the States, in connexion with the draft Business Plan 2005.

A.G.O.S.
Clerk

The Committee recalled that a primary purpose of the Business Plan 2005 was to indicate how the Committee intended to work towards the achievement of the nine high-level strategic aims identified in the States Strategic Plan 2005 – 2010 (Project No. P.81/2004 refers).

The Committee deferred consideration of the draft Business Plan 2005 to its next meeting.

End of year
accounts 2004.
422/10/1(69)

A15. The Committee received a report, dated 17th February 2005, prepared by the Assistant Greffier of the States, in connexion with the 2004 end of year accounts.

A.G.O.S.
Clerk
T.O.S.
C.I.Aud.
F.E.C.C.
Encl.

The Committee noted that its net expenditure had risen by 96 per cent in 2004 against a budgeted increase of 88 per cent. Development of the Shadow Scrutiny function and the acquired expenditure budget for Members' support services were responsible for a significant portion of the increase. In contrast, the income received from the sale of goods and services had decreased by approximately one third to £62,438. It was acknowledged that increased use of the States Assembly Web site by both officers and members of the public had led to a corresponding drop in demand for the printed publications held in the States Bookshop, particularly as the information held on the States Assembly Web site could be accessed free of charge. Notwithstanding the foregoing, the Committee was pleased to note that its overall expenditure for 2004 amounted to £4,858,686 against a vote of £5,199,193.

On the matter of carry forward requests, the Committee identified a need to carry forward a total of £150,041 to service specified requirements in the following areas –

Scrutiny	£30,000
Reprographics	£ 6,850
Commonwealth Parliamentary Association	
Regional Conference	£40,000
Law Drafting	£10,371
Members' Services	£ 3,320
States Greffe	£25,000
Committee of Inquiry (Bus Contract)	£32,000
Assemblée Parlementaire de la Francophonie	£ 2,500
Total	£150,041

The Committee, with reference to its Act No. A6 of 4th November 2004, noted that a sum of £190,466 would remain uncommitted, and that the aforementioned sum would be sufficient to establish a Hansard style transcription service for the States Assembly prior to the commencement of the ministerial system of government. Whilst it accepted that funding for Hansard had not been included within the Resource Plan 2005 and that, in accordance with the provisions of the Treasury Code of Directions, the residual sum would ordinarily be returned to the general revenues of the States, the Committee recalled that the establishment of such a transcription

service formed a key part of its terms of reference, which were approved by the States on 26th March 2002 (Projet No. P23/2002 refers). Moreover, the Committee reaffirmed its view that the timely introduction of a Hansard system was necessary to ensure the effective operation of the new system of government. Positive feedback received by the Committee from individual members regarding the recently introduced transcription of oral questions served to reinforce this view.

The Committee approved the 2004 end of year accounts, together with the specified carry forward requests totalling £150,041. In addition, the Committee requested that the Assistant Greffier of the States notify the Treasurer of the States of the Committee's request for permission to utilize the residual sum of £190,466 to facilitate the introduction of a Hansard style transcription service prior to the commencement of the ministerial system of government.

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

Shadow Scrutiny:
Southern Panel:
draft programme
of work.
502/1(13)
502/5/12(1)
502/5/13(1)

A16. The Committee, with reference to its Act No. A1 of 5th January 2005, recalled that it had requested details of the proposed programme of work to be undertaken by the two Shadow Scrutiny Panels during the course of 2005.

Accordingly the Committee received a draft project plan and timetable for the Shadow Scrutiny Panel chaired by Deputy G.P. Southern. It noted that this Panel intended to review the following –

Clerk
D.G.O.S.
Scrutiny
P.R.C.C.
P.R.E.O.

- (a) Jersey Tourism: relocation and lease of new office accommodation (Projet No. P.22/2005 refers), and
- (b) Migration: monitoring and regulation (Projet No. P.25/2005 refers).

The Committee was advised that both projects had been approved by the individual Chairmen of the Shadow Scrutiny Panels, although formal approval from the Shadow Chairman of the Shadow Public Accounts Committee had yet to be obtained.

It was reported that the review concerning the offices of Jersey Tourism was to be conducted in a similar manner to that of the 'call in' reviews used at local government level in the United Kingdom. Full cooperation had been sought and obtained in advance from the Economic Development Committee, to the extent that that Committee intended to seek the leave of the States to defer debate on the matter to 15th March 2005. In return, the Panel had agreed to complete its report by 10th March 2005.

With regard to the migration review topic, the Committee noted that a full scale review of the draft migration policy was proposed, with a target completion date of 3rd May 2005. It was reported that the Policy and Resources Committee had been approached regarding the possibility of delaying a debate on the matter until such time as the Panel's report had been presented to the States. While a formal response had yet to be received, it was understood that the Policy and Resources Committee wished to cooperate with the review.

The Committee was pleased to note the detailed scoping information, including projected resourcing implications, that had been provided by the Panel. It concurred with the view of the Chairmen of the Shadow Scrutiny Panels that the proposed programme of work was both appropriate and achievable.

The Committee endorsed the proposed programme of work for the Shadow Scrutiny Panel chaired by Deputy G.P. Southern, subject to the agreement of the Shadow Chairman of the Shadow Public Accounts Committee. It further agreed to request that the Policy and Resources Committee defer a debate on Projet No. P.25/2005 until such time as the Panel's review had been completed.

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

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

Les Pas:
correspond-ence
from Mr. B.
Cooper.
1135/19/1(7)

A17. The Committee received correspondence, dated 1st February 2005, from Mr. B. Cooper of St. Peter in connexion with the proposition entitled 'Fief de la Fosse: proposed agreement with Les Pas Holdings Limited' (Projet No. P.117/2003 refers).

Clerk
D.G.O.S.

It was reported that Mr. B. Cooper held the view that the decision taken by the States on 24th September 2003 to approve an agreement with Les Pas Holdings Limited was flawed and that a translation of an Order in Council, dated 27th February 1847, provided conclusive evidence that Les Pas Holdings Limited did not have a valid claim to the St. Helier foreshore. Further to the foregoing, the Committee was advised that Mr. Cooper had requested that the President represent him before the European Court of Human Rights in related proceedings.

The Committee concluded that there was no evidence to suggest that the decision taken by the States in connexion with Projet No. P.117/2003 was in any way flawed. It further considered that it would not be appropriate for the President to represent Mr. Cooper in any related proceedings before the European Court of Human Rights.

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

Matters for
information.

A18. The Committee noted the following matters for information –

- (a) correspondence received in connexion with a letter from the President to Senator S. Syvret concerning the operation of the Board of Administrative Appeal,
- (b) a list of outstanding Committee actions and matters arising from previous meetings,
- (c) correspondence from the Greffier of the States to the President of the Policy and Resources Committee concerning evidence given by witnesses to Scrutiny Panels,
- (d) the minutes, dated 11th January 2005, of the Working Party on the Arrangement of Public Business in the States Assembly, and
- (e) the minutes, dated 12th January 2005, of the Joint Working Party on Electoral Reform.