

PRIVILEGES AND PROCEDURES COMMITTEE

(5th Meeting)

14th February 2003PART A

All members were present, with the exception of Senator C.G.P. Lakeman and Deputy R.G. Le Hérissier, from whom apologies had been received.

Connétable D.F. Gray  
 Deputy F.J. Hill, B.E.M.  
 Deputy C.J. Scott-Warren  
 Deputy J-A. Bridge  
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States  
 W.J. Bailhache, H.M. Attorney General (for a time)  
 R.W. Whitehead, Principal Legal Adviser, Law Officers Department  
 C. Pasturel, Assistant legal Adviser  
 P. Byrne, Executive Officer  
 M.P. Haden, Committee Clerk.

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

States members'  
 remuneration.  
 1240/3(68)

A1. The Committee, with reference to its Act No. A3 of 7th February 2003, gave further consideration to the issue of States members' remuneration and to its report and proposition (P.238/2002) in this connexion.

Ex.Off.

The Committee received Mr. M. Campbell, Comptroller of Income Tax, in connexion with the question of an automatic round sum allowance for States members' expenses. The Committee was advised that the Comptroller was prepared to continue the current practice of allowing a practical concession to States members in respect of non-scrutinised expenses up to a specified amount. (The current allowance was in the region of £3,600, would rise yearly in line with the current updating formula for States members' remuneration, which was according to the Retail Price Index (RPI) minus half of one per cent.) It would, however, be necessary for members to make a fully documented claim in respect of their total expenses claim, if they wished to claim a sum beyond the limit of the round sum allowance. The Comptroller explained that it would be possible for members to make an expenses claim for any amount up to the total amount of their remuneration, so long as that claim could be fully justified as having been wholly incurred as part of their duties as a States member.

The Committee requested that its proposition be revised to specify the above round sum allowance.

On a related matter, the Comptroller confirmed that the refund received by those States members who claimed reimbursement of Class 2 Social Security payments was taxable as it was considered to be a perquisite of employment.

The Committee thanked the Comptroller of Income Tax before he withdrew from the meeting.

The Committee recalled that it had requested that a revised *projet* be prepared requesting the States to approve the removal of the means tested element in the States members' remuneration package but increasing the current maximum level of income available. The Committee considered a revised draft *projet* and made a number of further amendments highlighting its view that a fundamental review the arrangements for States members' remuneration should be linked to the introduction of the ministerial system of government and indicating that it would return at a later stage with further proposals in this respect. In particular, the Committee wished to draw attention to the importance of States members making a proper and adequate pension provision.

The Committee recalled that it was awaiting comments from the Finance and Economics Committee regarding the timing for the implementation of the new remuneration and expenses package. The Vice President undertook to request the President of the Finance and Economics Committee to ensure that this matter received early attention with a view to the revised *projet* being lodged 'au Greffe' on 18th March 2003 for debate on 1st April 2003.

Code of Conduct  
for elected States  
members.  
1240/9/1(110)

A2. The Committee, with reference to its Act No. A6 of 7th February 2003, gave further consideration to its draft report and proposition on a proposed Code of Conduct for elected states members.

Ex.Off.

The Committee received a report, dated 10th February 2003, from the Greffier of the States following his research into the way in which Codes of Conduct in other parliamentary bodies dealt with the issue of private conduct which might bring the States into disrepute. It noted that other Codes did not attempt to define the concept of 'disrepute'.

The Committee considered the composition of the proposed Sub-Committee which would be formed to investigate any breaches of the Code of Conduct. The Committee confirmed that the Sub-Committee would be appointed by the Privileges and Procedures Committee on *ad hoc* basis for each investigation and would consist of three members of the States of whom one would be a member of the Privileges and Procedures Committee. The Committee was aware of the importance of the Sub-Committee being seen to be impartial but, as the Sub-Committee was purely investigative, it did not feel that it was necessary to include a member's right to object to a particular member of the Sub-Committee. It agreed that the Sub-Committee should have the power to require a member to appear before it when investigating a breach of the Code.

The Committee, having requested certain revisions to the above draft report, agreed that States members had been afforded an adequate period of consultation since the publication of the Committee's first report on 22nd October 2003, and decided that it would aim to lodge its revised report and proposition on the 18th March 2003 with a view to a debate by the States on 8th April 2003.

Official Report of  
the States  
Assembly and its  
Committees  
(‘Hansard’).

A3. The Committee, with reference to its Act No. A6 of 17th January 2003, received a draft report, prepared by the Deputy Greffier of the States and Mr. P. Monamy, Senior Committee Clerk, on the proposed Official Report of the States Assembly and its Committees (‘Hansard’).

Ex.Off.  
D.G.O.S.

- (a) **Verbatim Reports** - to confirm its previous decision that a substantially verbatim would be appropriate (removing only hesitations and redundancies). It requested that information on the various other editing possibilities should be included in the appendix to the report so that States members would be aware of alternative options. It agreed that it was not necessary to transcribe routine procedural matters, such as lodging of propositions. It recognised, however, that on occasions a significant debate arose in relation to procedural matters, such as occurred in respect of third-party appeals under the new Planning and Building (Jersey) Law 2002. It was agreed that it would be appropriate to transcribe the debate in these circumstances;
- (b) **Outsourcing** - that it would not be feasible to maintain a fully trained team of staff to carry out the transcription work. It supported the outsourcing of the work required to produce the first draft of the official report and the appointment of a member of staff of the States Greffe as 'Hansard' Editor to refine and finalise the draft;
- (c) **Timescale** - to confirm its preference for a two week cycle in producing the official report, so that the transcript would be available for the next scheduled States meeting. It requested that information on other possible timescales, with costings, should be included in the appendix to the report so that States members would be aware of alternative options;
- (d) **Search engine** - that the costs of a good quality search engine should be researched and included in the report;
- (e) **Use of the States Chamber** - that, in the event that the States Chamber was required at the same time both by the Royal Court and Scrutiny Panels or the Public Accounts Committee (PAC), that the Scrutiny Panels and the PAC should have priority;
- (f) **Timing of the Project** - that, in order to accord with the budget cycle, funding for the project should be requested with effect from 1st January 2005. It was hoped, however, that money might be made available in 2004 so that the system might be in place by 1st January 2005 and so allow for a trial period in advance of the introduction of the new ministerial system;
- (g) **Official Report for Scrutiny Panels and PAC** - that it was probably unnecessary for all meetings of Scrutiny Panels and PAC to be transcribed. The Committee agreed that it should be left to Scrutiny Panel and the PAC to decide for themselves when a transcription service was appropriate, for example during sessions when taking evidence from witnesses. Other meetings might be minuted by a Clerk, in the same way as current Committee meetings were documented. It was agreed, however, that it was important that sufficient funding was made available to meet the transcription needs of Scrutiny Panels and the PAC.

The Committee requested that the above report be simplified in order to highlight the main issues, with the details being included in appendices.

Freedom of Information.  
1240/1/2(18)  
955(28)

Ex.Off.  
D.G.O.S.  
A.G.

A4. The Committee, with reference to its Act No. A5, dated 24th January 2003, discussed with H.M. Attorney General its draft consultation paper on Freedom of Information.

The Committee recalled that it had been minded to support proposals for legislation in respect of Freedom of Information based on the model of the New Zealand Official Information Act, 1982, which went beyond the provisions of the United Kingdom legislation, the Freedom of Information Act 2000. It was advised that if a difference existed between Jersey and the United Kingdom in this respect, it might lead to the situation whereby the United Kingdom would be reluctant to share sensitive information with the Island. H.M. Attorney General undertook to seek the advice of the Lord Chancellor's Department on this matter.

The Committee agreed that, for both practical and political reasons, it would not be in a position to make any firm recommendations on future legislation on Freedom of Information until such time as the above matter received clarification. The Committee was conscious that the States in its Act of 26th March 2002 had requested it to bring forward proposals on public access to information before the end of December 2002. Yet it was mindful of the complexity of the issues involved in this matter. It was agreed that the draft paper should be circulated to States Members in the form of a *Rapport et Correspondance* in order to inform members of the progress made on considering this subject. The Committee agreed that the consultation paper should merely indicate the direction of its thinking at this stage and request feedback from members and other interested parties.

The Committee was mindful of the interconnexion between Freedom of Information, Official Secrets and Data Protection legislation. It was aware that the Finance and Economics Committee currently had political responsibility for Data Protection and was due to bring forward proposals in this regard by the end of 2003. The Committee considered the question whether responsibility both Freedom of Information and Data Protection might more appropriately lie with a different Committee altogether, such as the Legislation Committee. It was agreed that the views of the President of the Finance and Economics Committee on this matter should be sought. The Committee recalled that the Legislation Committee had agreed that it would set up a Working Party to consider Official Secrets legislation, which was the mirror of Freedom of Information.

The Committee requested clarification of the right of access by States members to information held by the States Greffe and the data protection issues which might occur in the event of a States member disclosing confidential information gained from such access. H.M. Attorney General requested that the Greffier of the States put his concerns in writing in order that he might be able to give a considered answer.

Role of H.M. Attorney General as legal adviser to the States the Executive and Scrutiny Panels.  
1240/22/1(18)  
465/1(17)

Ex.Off.  
A.G.

A5. The Committee, with reference to Acts Nos. A2 of 27th June and A12 of 2nd October 2002, of the Committee as previously constituted, and associated correspondence between the President and H.M. Attorney General, discussed with H.M. Attorney General his role as legal adviser to the States, the Executive and Scrutiny Panels.

The Committee recalled that, in its previous discussion with H.M. Attorney General on this issue, it had expressed the view that independent advice should be available to Scrutiny Panels. Research had shown that other jurisdictions commonly had resources available for Scrutiny Panels to obtain separate legal advice where necessary, although it was recognised that this need did not arise frequently. The

Committee felt that possible conflicts of interest might arise on issues where the Scrutiny Panels were in disagreement with the Executive and that this might put H.M. Attorney General in an invidious position.

H.M. Attorney General expressed the view that it would be unfortunate if Scrutiny Panels found themselves in the position of attempting to get legal advice to attack the approach taken by the Executive on a particular issue. Furthermore, he was concerned that, in the event of competing legal advice being obtained by different sides on a particular issue, politicians were not competent to make a judgement between the two sets of legal arguments. That was for a Court to decide. There was a potential and unacceptable risk to the professional reputation of the Law Officers if a very public choice as to which legal advice to follow was made on political and not legal grounds.

H.M. Attorney General stated that his role was to advise the States, whether in the Council of Ministers, Scrutiny Panels or the States Assembly, on the legal position on any given policy. The legal interest was the same, that is, to ensure that what was resolved to be done politically was achieved legally. He did not see any reason why legal analysis should not be provided by the Law Officers' Department to both sides of a political question. Where there was a choice between alternative policies, the role of the legal adviser was to present the legal analysis impartially, not to favour one political interest over another. It was for politicians to decide on the merits of the competing policies.

As to potential conflicts of interest on matters where advice was sought by both the Executive and Scrutiny Panels, H.M. Attorney General maintained that lawyers were used to keeping confidential the information given to them for the purposes of advice required. He saw no reason why the Law Officers' Department should not continue to fulfil the role as it did at present. He did, however, accept that circumstances might arise where independent advice would be appropriate and that he might advise a Scrutiny Panel accordingly. Such circumstances were likely to be exceptional, in his view, and should be dealt with as and when they arose. It was unnecessary and impractical by reason of lack of human and financial resources to establish a separate division within the Law Officers' Department to provide legal advice for Scrutiny Panels, as had previously been suggested. This proposal would have significant resource implications. In any case, H.M. Attorney General would retain ultimate responsibility for ensuring that legal advice was to both sides was consistent.

H.M. Attorney General raised with the Committee those cases where members represented at a political level the particular interest of one of their constituents or a member of the public in relation to an Executive decision which had been taken by government. In these cases there were potentially legal points which could be raised against the Executive in exercise of statutory rights of appeal or in seeking judicial review. The Scrutiny Panel should not, in his view, have access to legal advice on behalf of the constituent. Scrutiny should take place at a political and not legal level. Legal disputes were to be resolved in Court and for that purpose the constituent should obtain his own legal advice which could, if the constituent so wished, be made available to the member giving political support.

On a related matter, the Committee discussed with H.M. Attorney General the occasions when he had exercised his right to speak in the States Assembly. It was recognised that H.M. Attorney General intervened in debates without being asked a specific question only on rare occasions. It was accepted that this right should not be altered in the new States of Jersey Law.

Scrutiny Function  
- proposed 'call-  
in' mechanism.  
1240/22/1(9)

Ex.Off.  
A.G.

A6. The Committee, with reference to its Act No. A2(a) of 17th January 2003, discussed with H.M. Attorney General the application of the proposed 'call-in' mechanism in the new ministerial system.

H.M. Attorney General reported that 'call-in' had been discussed in a meeting with the President and Professor J. Jowell in London on 14th February 2003. Professor Jowell had advised that 'call-in' was not available in a sovereign legislature. In his view, 'call-in' would not be appropriate in the States of Jersey which exercised sovereign powers in relation to matters within its jurisdiction.

H.M. Attorney General stated that, in his view, Scrutiny Panels would have a number of ways available to them to hold the Executive to account for the decisions it would take. The ultimate control available to Scrutiny Panel lay in the fact that the Executive would necessarily be in a minority in the States Assembly, according to the decision of the States in adopting P.122/2001. He noted that the view had been expressed that 'Call-in' would not apply to a number of areas of Executive decision making, such as international commitments, and in those circumstances it seemed conceptually curious to reserve the power to the less important areas of executive government. H.M. Attorney General offered the opinion that 'call-in' should not be included in the initial arrangements for Scrutiny but that the position should be reviewed in the light of experience. 'Call-in' might be introduced at a later stage, if it was felt that the Executive was acting frequently without due consultation and the fact that the Executive was in a minority in the states provided the necessary protection in that respect.

The Committee recognised that Scrutiny Panels would have a substantial workload under the new system of government and that it would be necessary to learn how to balance their different functions. There was a risk that Scrutiny might be rendered ineffectual if it was overwhelmed by competing issues and unable to focus its attention on a realistic programme of achievable objectives. In this context, 'call-in' could possibly be a distraction in that States members might wish to investigate a diverse range of relatively minor 'local' issues. There appeared to have been a tendency in the early days in many local government authorities where 'call-in' had been introduced to over-use the mechanism. It seemed, however, that the use of 'call-in' generally settled down quickly into more reasonable proportions, as Scrutiny Committees learnt how to use their resources effectively and efficiently.

The Committee considered a number of recent issues where 'call-in' might have been appropriately used to delay a decision taken by a Committee. It was suggested that the decision of the Finance and Economics Committee to pay the tax liability of 'j' category employees in respect of their housing subsidies might have been such an issue. It had been suggested that the decision might have been taken without fully taking into account all the implications of the decision and this was now the subject of a proposition by an individual States member. On the other hand, it was suggested that Scrutiny Panels themselves would not necessarily be in a position of knowledge to make an informed decision on whether or not to call in such a decision. Scrutiny Panels only had a very short window to decide whether to exercise the 'call-in' mechanism. Alternative ways of challenging the decisions of the Executive would remain open to States Members. They would retain, for example, the right to bring propositions to the States Assembly.

As to the suggestion that the introduction of 'call-in' might be deferred pending a review of the experience of Scrutiny after a period of time, it was suggested that it might be better if Scrutiny Panels in Jersey had the power of 'call-in' in reserve, even if it was only to be used in exceptional circumstances. The Executive was likely to be

more cautious and consultative in its decision making if it was conscious that this power was ultimately available to Scrutiny Panels.

The Committee noted the record, prepared by the Committee Clerk, of a telephone conversation with Ms Elizabeth Watson, Clerk of the Scottish Parliament, on the issue of 'call-in'. 'Call-in' had not been included in the powers accorded to Committees in the Scottish system of government. Committees held the Executive to account by holding enquiries into areas of government responsibility. Ministers might be called to appear before a Committee to answer questions on his/her decisions. The Committee agreed that it would be appropriate to invite a representative of a national parliament to come to Jersey to speak on the experience of scrutiny in the context of a national legislative assembly to balance against the local government input in its forthcoming Scrutiny Seminar.

The Committee recognised that it was important to resolve the issue of 'call-in' as soon as possible in order that it should not prove an obstacle to progress on drafting the new States of Jersey Law. However, a decision on the matter was not appropriate in the current meeting in the absence of the President and Deputy R.G. Le Hérissier. It agreed that the matter should be given high priority at a subsequent meeting once both members were available.

States Building -  
facilities for  
States members.  
1060/5/1(18)

A7. The Committee visited areas of the States Building which were currently being refurbished as part of Phase II of the refurbishment project. The Committee confirmed that it wished to include the two witness rooms on the first and second floor and the gallery to the old public library among the areas assigned to States members. It also requested that these areas should have a sound connexion so that members might hear Assembly transmissions.

Ex.Off.

Matters for  
information.

A8. The Committee noted the following matters for information -

- (a) notes of a meeting held on 12th February 2003 between the Executive Officer and Ms S. Du Feu, e-government Project Manager;
- (b) updated schedule of its Work Plan;
- (c) the date of its next meeting, to be held on Friday 7th March 2003, commencing at 12 noon in the Halkett Room, Morier House.