

PRIVILEGES AND PROCEDURES COMMITTEE

(36th Meeting)

9th October 2009**PART A**

All members were present, with the exception of Deputy M.R. Higgins, from whom apologies had been received.

Connétable J. Gallichan of St. Mary, Chairman  
 Senator B.I. Le Marquand  
 (not present for Item Nos. A8, A9 and A10)  
 Deputy J.B. Fox  
 Deputy J.A. Martin  
 (not present for Item Nos. A8, A9 and A10)  
 Deputy C.H. Egré  
 (not present for the conclusion of Item A3; not present for Item Nos. A4  
 and A5)  
 Deputy M. Tadier

In attendance -

M.N. de la Haye, Greffier of the States  
 Mrs. A.H. Harris, Deputy Greffier of the States  
 Miss A-C. Heuston, 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 June (Part A only), 3rd July (Parts A and B), 14th July (Part A only), 15th July (Part B only), 17th July (Parts A and B), 17th August (Part A only) 25th August (Parts A and B), 28th August (Part A only) 1st September 2009 (Parts A and B) 7th September 2009 (Part A only) having been previously circulated, were taken as read and were confirmed.

Draft Freedom of  
 Information  
 (Jersey) Law  
 200-.  
 670/1(14)

A2. The Committee, with reference to its Minute No. A1 of 28th August 2009, received a draft white paper and associated documents in connexion with the draft Freedom of Information (Jersey) Law 200-. Deputy Egré was not present for the conclusion of this item.

**Appeals mechanism**

DGOS

The Committee received correspondence dated 3rd September 2009 from the Data Protection Commissioner, Mrs. E. Martins, concerning the proposed appeals procedures under the draft legislation. The Committee also received correspondence dated 9th September 2009 from H.M. Attorney General, Mr. W.J. Bailhache, Q.C., in this regard. The Committee discussed the various possible appeals procedures and mechanisms, including the possibility of Jurats sitting as a tribunal.

The Committee considered correspondence dated 23rd September 2009 received from Mr. D. Maltwood. The Committee noted that Mr. Maltwood was a member of the Records Advisory Panel, and wished to know whether the Committee had

considered enabling the proposed rôle of Information Commissioner to be carried out by an honorary body such as the Records Advisory Panel. The Committee agreed that the legislation would need to work in a cost-effective manner and the Chairman was requested to respond to Mr. Maltwood, enclosing a copy of the white paper.

### **Neither confirm nor deny**

The Committee received correspondence in respect of the inclusion of a neither confirm nor deny clause from H.M. Attorney General, dated 5th October 2009; from Mr. S. Le Marquand, Director, Law Enforcement, Customs and Immigration, dated 17th September 2009; and from Mr. J. Harris, Assistant Director, Policy and Planning, Education, Sport and Culture, dated 22nd September 2009. The Committee was also advised that the States of Jersey Police had contacted H.M. Government and other agencies in respect of the draft legislation and would provide a full response as soon as possible. Having considered the matter, the Committee agreed that it would be minded to reinstate the neither confirm nor deny clause.

### **Categories of information**

The Committee requested that the draft legislation be amended to categorise the information which a public authority may refuse to supply as 'qualified exempt information' and 'absolutely exempt information' rather than 'restricted' and 'qualified' information. The Committee also agreed that these definitions should be defined within the law.

### **Implementation**

The Committee considered that there could be merit in appointing a respected person with direct experience in establishing the systems and procedures for a Freedom of Information Law for an initial period following the introduction of the legislation. During the formative period of the Jersey Competition Regulatory Authority, for example, the late Rt. Hon. The Lord Kingsland TD QC PC had undertaken such a rôle.

### **Compliance**

The Committee, with regard to the provisions available under the Data Protection (Jersey) Law 2005, agreed to request the Law Draftsman to include within the draft Freedom of Information (Jersey) Law 200- power for the Information Commissioner to order the provision of information, with appropriate penalty, which should include an initial fine plus an additional sum per day for continued non-compliance.

**Subject to any final amendments, the Greffier of the States was requested to present the white paper to the States in the Report series. It was agreed that a copy of the white paper would then be sent to all interested parties for their consideration and comments.**

Review of the Code of Conduct for Elected Members and disciplinary sanctions.  
1240/4(166)

A3. The Committee, with reference to its Minute No. B2 of 17th July 2009, received a revised draft of a report entitled: Review of the Code of Conduct for Elected Members and disciplinary sanctions. The Deputy of St. Peter was not present during consideration of this item.

Having considered the revised report, the Committee agreed that States members should be invited to comment on the proposals prior to the amendments to Standing Orders being drafted and lodged for debate. It was agreed that this should be set out in a foreword to the report.

**The Greffier of the States was requested to present the paper to the States in the Report series.**

Review of States appointments.  
1240/6(55)

A4. The Committee, with reference to its Minute No. B2 of 3rd July 2009, considered a report prepared by the Greffier of the States, dated 26th August 2009, in connexion with appointments made by the States. The Deputy of St. Peter was not present during consideration of this item.

The Committee recalled that in July 2009 it had considered a report prepared by the Council of Ministers in relation to a large number of appointments currently made by the States. The Committee had agreed that a revised system should be instituted for the majority of these appointments, under which details of the proposed nomination would be presented to members in a report at least 2 weeks before the appointment was finalised. Work had since been undertaken to identify the precise source of the requirement for States approval in relation to the various appointments, and the Committee received a draft proposition to establish revised procedures for appointments made by the States.

**The Committee approved the report and proposition and agreed that it should be referred to the Council of Ministers for comment prior to lodging. The Chairman was requested to write to the Chief Minister advising that the Committee hoped to lodge the report and proposition “au Greffe” in November 2009.**

**The Committee Clerk was requested to take the necessary action.**

Freedom of Information – members’ access to information in pursuit of their parliamentary function.  
670/1(18)

A5. The Committee received a report prepared by the Deputy Greffier of the States entitled: Freedom of Information – members’ access to information in pursuit of their parliamentary function. The Deputy of St. Peter was not present during consideration of this item.

The Committee noted that the most recent public statement relating to members’ right of access in Jersey had been made in 1987 by the then H.M. Attorney General. It was agreed that it would be appropriate for this ruling to be reviewed, updated and, if necessary, replaced with a new policy on how members could access confidential information.

**The Deputy Greffier of the States was requested to write to H.M. Attorney General in respect of the above.**

States members’ facilities.  
1240/9/1(137)

A6. The Committee discussed the following matters arising in respect of States members’ facilities:

- (a) as votes had been cast in error during States sittings, the Committee requested that voting buttons be covered in order to avoid a recurrence;
- (b) it was possible for members to miss a vote when in the vicinity of the Chamber as the audio relay could not be heard in some areas. It was therefore requested that an additional speaker be installed;
- (c) The Deputy of St. Peter raised concern in respect of the two-way radios beside the lifts in the States Building; and
- (d) members requested that further consideration be given to the temperature in the States Chamber and the function of the microphones.

**It was agreed that these matters would be referred to the Finance and Administration Manager, States Greffe.**

Oral questions with notice that are not answered during the 2 hour period.  
450/2/1(18)

A7. The Committee received a paper, dated 13th August 2009 and prepared by the Greffier of the States, in respect of how to deal with oral questions with notice that had not been answered during the 2 hour period.

The Committee recalled that it had undertaken to consider whether the current provisions in Standing Orders should be altered in relation to oral questions with notice that were not answered during a meeting. The extension of question time to 2 hours would allow more questions to be answered but it was likely that some would still remain unanswered.

The Committee noted that Standing Order 63(9) stated that a question that had not been asked before the end of the 2 hours allowed, would be taken to have been withdrawn. However, the current Chief Minister had indicated that he expected Ministers to circulate answers to unanswered questions to all members by e-mail.

The Committee discussed the possible options, as follows:

- (a) enforce the current Standing Order and request Ministers to stop circulating answers by e-mail;
- (b) maintain the status quo with answers being circulated by e-mail;
- (c) convert unanswered oral questions into written questions; or
- (d) move any unanswered questions forward to the next meeting.

The Committee agreed that there was no reason to prevent Ministers from circulating answers via e-mail. It was also agreed that it was a matter for the member who had asked the question to decide whether to re-submit it for the next States sitting.

**The Committee concluded that no amendments should be proposed at the present time. The official position would therefore remain that any unanswered question should be deemed to be withdrawn. If Ministers or others wished to continue to circulate written notes and draft answers informally, the Committee considered that this was helpful to members and saw no reason why it should cease. The Committee did not, however, consider that the practice should be considered to be mandatory.**

Composition and election of the States: Single election day each year.  
1240/22/1(50)

A8. The Committee, with reference to its Minute No. A1 of 14th July 2009, received a report, dated 28th September 2009 and prepared by the Greffier of the States, entitled: Single election day. Senator B.I. Le Marquand and Deputy J.A. Martin were not present for consideration of this item.

The Committee recalled that, on 10th September 2009, the States had approved the proposition: Composition and election of the States: single election day each year, lodged "au Greffe" by Deputy J.A.N. Le Fondré on 30th June 2009 (P.109/2009 refers). It had therefore been agreed that a single election day would be introduced in any year when there were elections.

The Committee noted that it was required to bring forward the necessary legislation to give effect to the decision of the States. The Committee was advised that the

changes to legislation would be relatively straightforward; however, it needed to consider when the single election day would take place. The Committee discussed the possibility of deferring elections to late November or May, but acknowledged the difficulties this would be likely to present in respect of the current budgetary timetable.

**It was agreed that a meeting should be arranged with the Minister for Treasury and Resources in order to discuss the matter.**

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

Composition of  
scrutiny.  
450/2/1(19)

A9. The Committee received correspondence dated 21st September 2009 from the Chairman of the Chairmen's Committee in connexion with the composition of scrutiny. Senator B.I. Le Marquand and Deputy J.A. Martin were not present for the consideration of this item.

The Committee considered the points raised as follows:

1. *The possibility of changing Standing Orders to ensure that all non-executive members were actively engaged with scrutiny reviews.*

The Committee considered that it would not be possible to oblige members to be actively involved in scrutiny, as members could not be compelled to attend meetings against their will. The Committee acknowledged that members needed to be free to choose their own methods of work and their own areas of involvement; focusing wherever they felt they could make the most contribution.

2. *A review of the Assistant Ministers' rôle given that some appeared to have exceedingly light workloads. Related to this, the possibility of Assistant Ministers serving on Scrutiny Panels.*

The Committee was not aware of any evidence that some Assistant Ministers had an exceedingly light workload. If Assistant Ministers were to serve on Scrutiny Panels, it would follow that this option should also be extended to Ministers. The Committee recalled that the Machinery of Government Review had examined this area, and felt that Ministers and Assistant Ministers were part of the executive and that their rôle should not be confused.

3. *A review of the Standing Orders to identify a means by which Scrutiny Panel Chairmen were appointed before allocation of Assistant Ministers.*

The Committee recalled that current Standing Orders allowed for the appointment of Chairmen of scrutiny panels immediately following the selection of the Chief Minister, Ministers, and Chairmen of the Privileges and Procedures and Public Accounts Committees. The Committee felt that the appointment of Scrutiny Panel Chairmen was as immediate as possible under the current system, and considered that it could not prevent private conversations taking place with regard to the allocation of the posts of Assistant Ministers.

4. *A review of Standing Orders which currently permit a newly elected member to serve as a Minister or Assistant Minister, and the*

*appropriateness of all new members first serving on scrutiny as a matter of course.*

The Committee perceived this to imply that Scrutiny played a lesser rôle than the executive, and did not consider this to be the case. The Committee did not feel that it would be appropriate for members to be restricted in this way. No difficulties had arisen to date with regard to newly elected members serving as Ministers or Assistant Ministers, and the Committee could not see any reason to prevent newly elected members from standing for a Ministerial rôle.

**The Chairman was requested to write to the Chairman of the Chairmen's Committee outlining the Committee's discussions, as detailed above.**

Rôle of un-  
elected members  
of the States.  
1240/6(56)

A10. The Committee, with reference to its Minute No. B5 of 27th March 2009, gave further consideration to the review of the rôles of the Bailiff, Attorney General and Solicitor General in the States. Senator B.I. Le Marquand and Deputy J.A. Martin were not present for consideration of this item.

The Committee recalled that, in accordance with the proposition: Review of the roles of the Bailiff, Attorney General and Solicitor General: terms of reference, lodged "au Greffe" on 31st March 2009 by the Council of Ministers (P.44/2009 refers), the Chairman and named local members of the Panel would be proposed to the States, after consultation with the Chairman of the Privileges and Procedures Committee, for approval in a second proposition.

**The Committee noted that a proposition to appoint a Chairman and members was likely to be lodged in due course, and agreed that the Chairman and Vice Chairman should consult with the Council of Ministers in this respect prior to the proposition being lodged "au Greffe".**