

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Commencement of Public Accounts Committee Ordinance and connected issues

Paper No: 247/09

Date: 26 November 2009

Report of: Attorney General

1.0 Purpose

1.1 To agree that the Public Accounts Committee Ordinance should be commenced on 1 February 2010, or if that proves to be impracticable, as soon as possible thereafter. To agree the maximum fine that the Committee can impose. To consider whether the Governor should refer the expenditure of public money on Stanley Dairy to the Committee.

2.0 Recommendations

2.1 That the Ordinance should be commenced on 1 February 2010, or as soon as possible thereafter.

2.2 That the maximum fine should be set at £7,500.

2.3 That expenditure of public money on the Stanley Dairy should be referred to the Committee.

3.0 Summary of Financial Implications

3.1 None – initial funding for the PAC is already in the budget for 2009-2010.

4.0 Background

Commencement of Ordinance

4.1 There is a clear intent from both Members of the Assembly and the public that the Public Accounts Committee should become operational as soon as this can sensibly be achieved.

4.2 The Public Accounts Committee Ordinance commences on a date to be fixed by the Governor by notice published in the Gazette.

4.3 Some further work needs to be done to enable the Ordinance to be commenced (such as prescribing forms under section 31, the appointment of Members, deciding on staffing arrangements), which makes the original target date of 1 January 2010 a little tight.

4.4 But commencement by 1 February 2010 should be possible, and Executive Council is accordingly recommended to agree that, unless something occurs which makes this impracticable, the Governor should specify that date for the commencement of the Ordinance.

Maximum fine

4.5 The scheme set out in the Ordinance is that if a person without reasonable excuse:-

- (a) fails to appear before the Committee after being summonsed to do so;
- (b) fails to produce any document that has been specified in such a summons;
- (c) refuses to take the oath or affirmation;
- (d) refuses to answer questions put by the Committee;

that person is liable to a fine to be determined by the Committee.

4.6 Such a fine can also be imposed if a person contravenes section 23 by publishing evidence given in private without the required consent, and if a person gives false evidence to the Committee.

4.7 The procedure that is set out in the Ordinance is that if the Committee believes that the imposition of a fine would be appropriate, the Committee refers that to the Attorney General, and if he decides that the matter should be referred back to the Committee, it may impose a fine up to the maximum level prescribed by the Governor by Order.

4.8 It seems sensible to base the maximum fine to be so prescribed on the standard scale that is used for criminal offences. Given that we are potentially looking at breaches not just by individuals, but by corporate entities, the maximum fine should be sufficient to ensure that persons co-operate with the Committee.

4.9 On that basis, it is recommended that a maximum fine is set at level 6 of the standard scale: £7,500. The levels below and above this are level 5 (£3,000) and level 7 (£12,000). This is simply the maximum, and it will be for the Committee to decide on the amount of the fine up to this maximum. If this level proves to be insufficient, we can raise it at a later date.

Stanley Dairy

4.10 As discussed with Members, if it is desired to conduct a review of the Stanley Dairy saga, it would be possible to do this via a number of mechanisms, ranging from an internal review to a full Inquiry.

4.11 There are advantages and disadvantages with an internal review and with a full public inquiry, but a median position would be to utilise the power of the Governor under section 11(1)(e) of the Ordinance to refer any matter to the Public Accounts Committee, and the Committee then has to consider and report on that matter.

4.12 It is recommended that such a reference be made to the Committee once it has been established along the following lines:-

“To consider and report to the Governor on the expenditure of public money by FIG/FIDC in support of the Stanley Dairy, the lessons to be learnt from the failure of the Dairy, and how future such projects should be managed to prevent a recurrence.”

4.13 The Committee will then look at it in terms of economy, effectiveness and efficiency of the benefit (or otherwise) derived from the expenditure of that public money.

Legal Implications

None

Human Resources Implications

None