

# **STATES OF JERSEY**

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## **A PEOPLE'S ADVOCATE**

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**Lodged au Greffe on 16th November 2004  
by Senator S. Syvret**

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**STATES GREFFE**

## PROPOSITION

### THE STATES are asked to decide whether they are of opinion –

- (a) to agree in principle that a new post, to be known as ‘the People’s Advocate’, should be created in the States Assembly and –
  - (i) that the holder of the post should be suitably legally qualified;
  - (ii) that the purpose of the post should be –
    - (1) to give independent legal advice to the Assembly;
    - (2) to give independent legal advice to members of the States who are not members of the Executive;
    - (3) to give independent legal advice to Scrutiny Panels;
    - (4) to hear, consider, scrutinise, and/or peer review legal or other advice offered to the Assembly by the Attorney General and Solicitor General and, when appropriate, challenge that advice or offer an alternative opinion;
    - (5) to hear, consider, scrutinise and/or peer review legal or other advice offered by the Attorney General, Solicitor General or others to Ministers, Committees, Departments or bodies established under standing orders, and, when appropriate, to challenge that advice or offer an alternative opinion;
  - (iii) that the People’s Advocate shall be an unelected member of the States answerable to the Assembly with the right to speak but not to vote in the Assembly, and appointed, suspended or dismissed by the States;
  - (iv) that other than in the course of fulfilling the duties described in sub-paragraph (a)(ii) above, the People’s Advocate shall not be called upon to advise Ministers, Committees or Departments with executive functions, but may be called upon to give advice to Scrutiny Panels;
- (b) to agree that a Special Committee of the States should be established for the purpose of making detailed recommendations to the Assembly that shall give effect to the proposals in paragraph (a) above, and that such recommendations shall be produced no later than 6 months after the establishment of the Committee.

SENATOR S. SYVRET

## **REPORT**

It has been blindingly obvious for some years now that the Law Officers who sit as members of the States Assembly routinely make political speeches during debates and that such interventions are customarily designed to intercede on behalf of committees of the States or, more generally, to rescue the “establishment” position. So prevalent has such practice become that the Law Officers have become highly politicised and can no longer be viewed as independent. In any event it is frequently the case that the interventions made are clearly not technical legal advice, but rather brazen political interventions. This has led to a situation where ordinary members can no longer compete, as it were, with committees or the dominant faction within the Assembly, because they do not have an ‘equality of arms’. It can be neither democratic nor in the public interest for powerfully influential “legal” advice, or more frequently, pseudo-legal advice, to be used – without challenge – to affect the outcome of important public decisions.

Therefore this proposition seeks an ‘in-principle’ agreement to the establishment of a new non-elected post in the Assembly, to be the People’s Advocate. The post would be occupied by a legally qualified individual. Their principal duties would be to proffer independent legal advice to the Assembly and ‘back-benchers’ in a manner that would be wholly independent of either any executive function or the Law Officers’ Department.

This post is absolutely essential when a dramatic concentration of powers is to take place with the transition to Ministerial government. It is absolutely plain that the public interest will not be served fully unless ‘back-bench’ States members are equipped with this new resource to enable them to properly fulfil their duties of holding the executive to account.

Paragraph (b) of the proposition seeks the establishment of a Special Committee who will have the tasks of investigating how best paragraph (a) may be achieved and making detailed recommendations to the assembly no later than 6 months after the Committee’s establishment.

### **Financial and manpower statement**

Obviously there will be additional costs associated with this new post. It is likely that the employment of a suitably qualified individual, their support, office and associated costs might come to a significant sum and this should be recognised at the outset. However, such an investment in scrutiny is essential and will be comparatively little when compared to the other costs associated with the machinery of government changes. It will be one of the tasks of the Special Committee sought under paragraph (b) of the proposition to identify the costs, as well as making detailed recommendations.