

STATES OF JERSEY



DRAFT LOI (201-) (AMENDEMENT) AU SUJET DES ASSEMBLÉES PAROISSIALES

Lodged au Greffe on 9th December 2014
by the Comité des Connétables

STATES GREFFE



Jersey

DRAFT LOI (201-) (AMENDEMENT) AU SUJET DES ASSEMBLÉES PAROISSIALES

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chairman of the Comité des Connétables has made the following statement –

In the view of the Chairman of the Comité des Connétables, the provisions of the Draft Loi (201-) (Amendement) au sujet des assemblées paroissiales are compatible with the Convention Rights.

Signed: **Connétable L. Norman of St. Clement**

Chairman of the Comité des Connétables

Dated: 9th December 2014

REPORT

- 1 Article 9 of the Loi (1804) au sujet des assemblées paroissiales (“Article 9”) governs the procedure for convening a Parish Assembly, whether secular or ecclesiastical. The Connétable is President of the secular Assembly whilst the Rector is the President of the Ecclesiastical Assembly.
- 2 Briefly stated, Article 9 requires the Connétable or the Rector, as the case may be, to convene an Assembly within 8 days of receiving a request to do so from 4 or more members (‘principals’)¹ of the Assembly. The request must be made in writing, dated, and must state the subject for which the Assembly is to be convened.
- 3 The text of Article 9 (in translation) is as follows –

“Each President of a Parish Assembly² shall be required to convene an Assembly within the 8 days of having been requested to do so by 4 or more principals of the Parish, provided that the request is made to the President in writing, is dated, and mentions the subject for which the convening of the Assembly is sought; and provided also that the request is received by the President no later than Wednesday in any week, in order that there is time to convene an Assembly in the course of the following week.”
- 4 The draft Law would replace Article 9. The new Article 9 would provide that, in relation to the convening of a Parish Assembly by the Connétable (again in translation) –

“The President of a Parish Assembly shall be required to convene an Assembly within a fortnight³ after being requested to do so by 10 or more principals⁴ of the Parish, provided that the request is made to him or her in writing, is dated, and mentions the subject for which the convening of the Assembly is sought.”
- 5 The effect of the amendment would therefore be –
 - (a) to increase the notice period for convening a Parish Assembly from a minimum of 1 week to a minimum of a fortnight;
 - (b) to increase the minimum number of principals⁵ who must request the Parish Assembly from 4 to 10.
- 6 It will be helpful to clarify the legal effect of Article 9 (based on the advice of the Attorney General). Certain basic requirements have to be met for an Assembly to be able to be convened –
 - *The subject (‘sujet’) put forward must be a lawful one.*
- 7 This fundamental requirement is affirmed by the case of *Renouf et au -v- Cabot, Connétable* (1934) 238 Ex 44.
 - *There needs to be a proposition.*

¹ The word “*principals*” for this purpose now effectively means persons who are entitled to vote at a Parish Assembly – see *Rates (Jersey) Law 2005, Article 23*

² The Connétable is President of the secular Assembly whilst the Rector is the President of the Ecclesiastical Assembly

³ *‘une quinzaine’*

⁴ *See footnote 1*

⁵ *See footnote 1*

- 8 Whilst Article 9 mentions merely the need for a subject (*'sujet'*), this has to be read in conjunction with Article 12 of the principal Law which requires the President to submit for discussion each motion put – *mettre en délibération chaque motion faite* – which clearly infers that a proposition needs to be put to the Assembly.
- 9 Moreover the Loi (1815) sur l'ordre de procédure aux assemblées paroissiales requires the President to produce the convening notice (*billet de convocation*) to the Assembly and, on the deliberations of the different items (*'des différents objets'*), to follow the order set out in the convening notice. The requirement that there should be an *objet* infers also a resolution or proposition.
- *The proposition must relate to a matter within the competence of a Parish Assembly.*
- 10 The *Assemblée Paroissiale* has a range of functions at customary law and in statute. The more routine of the statutory functions now arise under the Rates (Jersey) Law 2005, the Licensing (Jersey) Law 1974 and the Loi (1914) sur la Voirie.
- 11 The Working Party on Parish Assemblies in 2001⁶ noted that the traditional functions of the Parish Assembly had been stated in the 19th Century to be –
- (i) the care of the roads;
 - (ii) the promotion of local improvements (new roads or drains, the removal of nuisances, etc.);
 - (iii) the administration generally of local charities;
 - (iv) the making of rates;
 - (v) the administration concurrently with the Constable of relief to the poor,
- but that some of these functions had given way to new statutory régimes: “..., in relation to charities, whilst Parishes undoubtedly continue to have much involvement, it can no longer be said that they have the function, in a formal sense, of administering local charities. An important addition, however, to the original list of functions is the consideration by the Assembly of licensing applications under the Licensing (Jersey) Law 1974...” Of course, since 2001, (iii) above – Parish Relief – has been largely subsumed into the administrative apparatus of a centralised social security scheme.
- 12 The 2001 Working Party did consider what it termed as public interest meetings. It noted that the functions of Parish Assemblies “[had] evolved throughout the centuries notably in relation to policing and matters relating to charities. The evolutionary process will undoubtedly continue. The Working Party has not identified a need for specific reform in terms of increasing or diminishing the role and responsibilities of the Parish Assembly. It does not consider that the role of Parish Assemblies should be extended to matters beyond those specifically relating to the administration of the Parish. The Working Party observed that on occasions meetings were held in Parish Halls to debate matters of local interest, for example, Les Landes Race Course and Pontins Holiday Camp Site in St. Ouen; but it did not consider that a statutory framework was required for such informal proceedings which ought not to be confused with the formal business of Parish Assemblies.”

⁶ under the chairmanship of Deputy Harry Baudains (together with Jurat M. Rumfitt, Senator C.G.P. Lakeman, Deputy K. Syvret, Connétable K. Le Brun of St. Mary, Centenier E. Gallichan of St. Helier and Mr. G. MacRae *Procureur du Bien Public* – St. Brelade)

- 13 This is worthy of note in relation to Article 9. A Connétable – or a Rector – of a Parish is bound to convene an Assembly only for a matter that is within the ordinary competence of the Assembly in the first place. On receipt of a request to convene an Assembly to debate a matter not within its customary or statutory competence, the Connétable or the Rector, as the case may be, would not be bound to convene an Assembly for that purpose alone. Moreover, the Code of Laws of 1771, in relation to the lodging of Propositions ‘au Greffe’, provides that the purpose of the delay before the States debate is “*in order that every individual of the States may have full time to consider thereof, and the Connétables to consult their Constituents if they judge necessary*”.
- 14 Hence it is a matter of discretion for the Connétable to consult as he or she sees fit: and each Connétable is a representative of the Parish and not its delegate.⁷ Thus matters before the States Assembly are not automatically matters within the competence of an Assemblée Paroissiale in respect of which the requisite number of principals⁸ can require the Connétable to convene a formal meeting in accordance with Article 9. As the 2001 Working Party contemplated, however, that need not prevent the Connétable from acquiescing as he or she sees fit in arrangements for some other form of public meeting or consultation.
- 15 The Dean and Rectors of the Ancient Parishes have been consulted and none has objected to the amendments which, if approved, will apply to both the Ecclesiastical Assembly and to the Parish Assembly. The amendments, though minor, are considered by the Comité des Connétables to be a practical necessity to ensure a reasonable level of interest in the issue to be considered and that the meeting may be arranged within a reasonable timescale.

Financial and manpower implications

There are no financial or manpower implications for the States or the parishes arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

⁷ See Report of the Committee of the Privy Council (1947) page 12.

⁸ See footnote 1

Human Rights Notes on the draft Loi (201-) (Amendement) au sujet des assemblées paroissiales.

These Notes have been prepared in respect of the draft Loi (201-) (Amendement) au sujet des assemblées paroissiales (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Consideration has been given to whether Article 9 of the Loi (1804) au sujet des assemblées paroissiales, as amended by the draft Law (“Article 9”), engages Article 3 of the First Protocol of the ECHR (“A3P1”) which guarantees the right to free elections.

A3P1 provides –

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

The right is expressed to be concerned purely with the choice of ‘the legislature.’ The European Court of Human Rights (“ECtHR”) has found in the past that ‘legislature’ does not necessarily mean the national parliament and that this word must be “interpreted in the light of the constitutional structure of the State in question.”

The question of whether or not a Parish Assembly would be deemed a ‘legislature’ has not been subject to judicial consideration. However, a Parish Assembly has only a limited jurisdictional remit and is not a general discussion forum; it has no independent power to issue decrees having force of law and is therefore distinguished from bodies such as the Flemish Council and the European Parliament both of which have been found by the ECtHR to be a ‘legislature’ for the purposes of A3P1. It is reasonable on this basis to conclude that a Parish Assembly does not constitute a legislature and therefore that Article 9 does not engage A3P1.

Consideration has been given to whether Article 9 engages Article 10 of the ECHR (“A10”) which guarantees freedom of expression.

A10 provides –

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

At present, the Rector or the Connétable, as the case may be, is required (subject to certain caveats) to convene an Assembly on the requisition of 4 principals – i.e. electors – of the Parish, and to do this within a period of 8 days. As a result of the proposed amendment, Article 9 would read, in translation, as follows –

“The President of a Parish Assembly shall be required to convene an Assembly within a fortnight after being requested to do so by 10 or more Principals of the Parish, provided that the request is made to him or her in writing, is dated, and mentions the subject for which the convening of the Assembly is sought.”

Hence another six electors would need to join in the request and would need to give the requisite longer period of notice. However, as the Parish Assembly consists of the entire electorate of the Parish, ten people remains a very small number of people to support the convening of an Assembly and such a number is not considered to be unreasonable. Equally, a fortnight is not thought to be an unreasonable period of notice for the convening of a public meeting. Furthermore, even if an individual were unable to convene a Parish Assembly (which itself has only a limited remit as noted above) this would not mean that individual could not exercise his or her wider right to hold opinions and to receive and impart information and ideas – he or she would remain free to do so in other ways. There is not therefore an interference with the freedom guaranteed by A10; and A10 is therefore not engaged.

Consideration has been given to whether Article 9 engages Article 11 of the ECHR (“A11”) which guarantees freedom of assembly and association.

A11 provides –

“Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

As with A10, even if an individual were unable to convene a Parish Assembly (which has only a limited remit anyway, as noted above) this would not mean that such individual could not exercise his or her wider right to peaceful assembly and association with others – he or she would remain free to do so in other ways. There is not therefore an interference with the freedom guaranteed by A11; and A11 is therefore not engaged.

Explanatory Note

This Law revises the right to call a Parish Assembly.

Article 1 substitutes Article 9 of the Loi (1804) au sujet des assemblées paroissiales.

Article 9 currently requires the President of a Parish Assembly to call an assembly when required to do so by at least 4 Principals of the Parish. The assembly must be convened within 8 days. The amendment has the effect that a parish assembly may only be required by at least 10 Principals of the Parish and the assembly must be convened within a fortnight.

The Rector or Vicar of a parish is the President of a Parish Assembly convened to consider an ecclesiastical matter. For any other matter, the Connétable is the President of the Parish Assembly.

Article 9, translated, will read as follows –

Article 9

The President of a Parish Assembly shall be required to convene an Assembly within a fortnight after being requested to do so by 10 or more Principals of the Parish, provided that the request is made in writing, is dated, and mentions the subject for which the convening of the Assembly is sought.

The 1804 Loi uses the term “Principal” in Articles 1, 9 and 10. The expression nowadays refers to a member of a Parish Assembly.

Article 2 sets out the name of this Law and provides for its commencement 7 days after it is registered.



Jersey

DRAFT LOI (201-) (AMENDEMENT) AU SUJET DES ASSEMBLÉES PAROISSIALES

LOI pour modifier la Loi (1804) au sujet des assemblées paroissiales

Adopté par les Etats [date à insérer]

Sanctionné par Ordre de Sa Majesté en Conseil [date à insérer]

Enregistré par la Cour Royale [date à insérer]

LES ETATS, moyennant la sanction de Sa Très Excellent Majesté en Conseil,
ont adopté la Loi suivante –

1 Article 9 de la Loi (1804) au sujet des assemblées paroissiales substitué

À l'Article 9 de la Loi (1804) au sujet des assemblées paroissiales¹ sera substitué l'Article suivant –

“Article 9

Chaque Président d'Assemblée Paroissiale sera tenu de convoquer une Assemblée dans l'espace d'une quinzaine de jours qu'il en aura été requis par 10 Principaux de sa paroisse ou plus, pourvu que la demande lui en soit faite par écrit, portant date, et mentionnant le sujet pour lequel telle convocation est requise.”.

2 Citation et entrée en vigueur

- (1) La présente Loi pourra être citée sous le titre de “Loi (201-) (Amendement) au sujet des assemblées paroissiales”.
- (2) Elle entrera en vigueur 7 jours après son enregistrement par la Cour Royale.

¹ *chapter 16.100*