

STATES OF JERSEY



SENATORS AND DEPUTIES: REMOVAL OF CITIZENSHIP REQUIREMENT (P.75/2020): THIRD AMENDMENT

Lodged au Greffe on 14th September 2020
by Senator I.J. Gorst

STATES GREFFE

SENATORS AND DEPUTIES: REMOVAL OF CITIZENSHIP REQUIREMENT
(P.75/2020): THIRD AMENDMENT

1 PAGE 2, PARAGRAPH (a) –

For paragraph (a) substitute the following paragraph –

“(a) that the requirement that Senators, Connétables and Deputies must be British citizens should be replaced by a requirement that they must be British or Irish citizens, or qualifying citizens of a Commonwealth or European Union country;”.

2 PAGE 2, PARAGRAPH (b) –

After the words “States of Jersey Law 2005” insert the words “and the Connétables (Jersey) Law 2008”.

SENATOR I.J. GORST

Note: After this amendment, the proposition would read as follows –

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

- (a) that the requirement that Senators, Connétables and Deputies must be British citizens should be replaced by a requirement that they must be British or Irish citizens, or qualifying citizens of a Commonwealth or European Union country; and
- (b) to request the Privileges and Procedures Committee to bring forward the necessary legislative changes to the States of Jersey Law 2005 and the Connétables (Jersey) Law 2008.

REPORT

Introduction and context

This amendment seeks to provide States Members with an additional option to that put forward by Deputy Montfort Tadier.

As Deputy Tadier acknowledges, he has twice previously proposed the removal of the requirement that Senators and Deputies must be British citizens, once in 2017 and again in 2018. [‘Senators and Deputies: Candidates’ Qualifications’ \(P.1/2017\)](#) was supported by 8 Members; and [‘Senators and Deputies: removal of citizenship requirement’ \(P.3/2018\)](#) was supported by 17 Members.

It is worth noting that the only significant change in recent years with respect to citizenship requirements for States Members has been to require those standing for election as a Connétable also to be British citizens. This was a provision of the Connétables (Amendment No.2) (Jersey) Law 2018 and had not previously been a requirement. This amendment was itself meeting a decision of the Assembly made through the adoption of Part (a) of [‘States of Jersey Law 2005: proposed amendment – States Members’ qualifications for election’ \(P.138/2016\)](#).

The current Assembly has not yet expressed its view on this subject, and it might be that Deputy Tadier now has a majority of Members in favour of his proposal. If that is the case, then the need for this amendment will fall away.

Given this recent history, however, I thought it worthwhile to present this additional option to Members, which I hope will be seen as a logical proposal for change. I have also set out some of the considerations around a person’s immigration status, which I believe will need to be taken into account if either this amendment, or indeed Deputy Tadier’s original proposition, were to be adopted.

The position elsewhere

Jersey finds itself in a somewhat anomalous position in only permitting British citizens to stand for election to our legislature. This is not an arrangement which is mirrored in any of the countries that constitute the United Kingdom (UK), or in the other Crown Dependencies.

A person can stand for election to the UK Parliament if they are a British citizen, a citizen of the Republic of Ireland or a citizen of a Commonwealth country who does not require leave to enter or remain in the UK, or has indefinite leave to remain in the UK (known as a “qualifying Commonwealth citizen”).

The same nationality requirements are in place for persons wishing to stand for election to the Scottish Parliament, Welsh Parliament and Northern Ireland Assembly, with the addition that citizens of any European Union (EU) country are also eligible to stand for election to those legislatures.

In Guernsey, there are no specific citizenship requirements to meet in order to be eligible for election to the States of Deliberation.

To qualify for election to the House of Keys, a person must be a British citizen or have indefinite leave to remain in the Isle of Man, or not require leave to enter or remain in the Isle of Man.

Whilst the nature and extent of the citizenship requirements vary throughout our fellow British jurisdictions, it is only in Jersey that a person must be British in order to be eligible to serve their community in the national legislature.

An appropriate change for Jersey

When reviewing the approach taken by other British jurisdictions, it is understandable as to why some Members might argue that a complete abolition of all citizenship requirements for persons seeking election to the States Assembly might not be necessary or appropriate.

The option proposed by this amendment, however, both has precedent within the British family and, for the reasons set out below, is appropriate for Jersey.

Irish citizens

There is a very clear and strong argument in favour of specifically permitting Irish citizens to be eligible for election to the States Assembly.

Members will be aware that Jersey and the Republic Ireland have long been fellow members of the Common Travel Area, giving the right of free movement between Jersey and the Republic of Ireland for people in both jurisdictions. Immigration Law in Jersey makes specific provision to ensure that Irish citizens are deemed as being settled immediately upon their arrival in the Island. This will continue to be the case post-Brexit.

Jersey and the Republic of Ireland are both equal members of the British-Irish Council and are both represented in the British-Irish Parliamentary Assembly.

It is also important to keep in mind that, by virtue of the Good Friday Agreement, a person born in Northern Ireland may choose to be an Irish national only. We are therefore, at present, potentially preventing persons who were born in the United Kingdom and have the right under an international agreement signed by the British Government (and supported by Jersey) to opt for Irish citizenship only, from standing for election in Jersey. This is inequitable.

Accordingly, the current position does not reflect the historic context of Jersey's relationship with Ireland. It fails to take into account the developments of recent decades, or the status of the current and ongoing relationship between our jurisdictions. Consequentially, it is not fit for the present day.

The Commonwealth

There is a similarly strong argument to be made to permit qualifying citizens of Commonwealth countries to be eligible to stand for election to the States.

The Commonwealth is an organisation with which Jersey enjoys a very close and special relationship. Queen Elizabeth II, Jersey's Head of State, is the Head of the

Commonwealth. Jersey is a member of various Commonwealth bodies, including the Commonwealth Parliamentary Assembly and the Island is represented in the Commonwealth Youth Parliament.

Jersey participates in the Conference of Speakers and Presiding Officers of the Commonwealth and the Commonwealth Magistrates' and Judges' Association. We participate in the Commonwealth Games in our own right. Jersey recognises and enthusiastically participates each year in the celebration of Commonwealth Day.

The Government of Jersey is continually developing its links with the Commonwealth and its member countries. Fundamentally, Jersey shares the values and principles of the Commonwealth, as set out in the Commonwealth Charter, including to democratic processes.

It is therefore both logical and appropriate that Jersey recognises its links with the Commonwealth when setting the citizenship criteria for persons wishing to stand for election to the States Assembly. There is no other international organisation with which Jersey enjoys such a broad and deep political and cultural relationship.

'Qualifying citizens'

As mentioned above, the arrangement throughout the UK and in the Isle of Man is to permit "qualifying Commonwealth citizens" to stand for election. In practice, this means citizens of Commonwealth countries who do not require leave to enter or remain or have indefinite leave to remain. This is an arrangement that will, in my view, very likely need to be mirrored in Jersey.

I consider it important that persons who are permitted to stand for election to the States have indefinite leave to remain in Jersey, or for a specific reason don't require that leave (by way of example they may, for a specific reason, have the right of abode in Jersey which means they are treated as a British citizen). Persons with indefinite leave to remain are free of immigration restrictions as regards their stay in Jersey and their employment.

By comparison, those with leave to remain are subject to greater limits – their leave will be for a specific purpose and, by its nature, leave to remain needs to be renewed. It is important to avoid a scenario where someone elected to the States risks finding themselves in breach of their leave to remain, because serving as a States Member was not the reason for which they were granted their leave.

It is also worth noting that a person with indefinite leave to remain will have taken and passed the citizenship test. This includes demonstrating knowledge of language and life in the UK (and Jersey if the test is taken here).

Ultimately, should this amendment be adopted, the decision as to which Commonwealth citizens should be able to stand for election in Jersey is a matter for consideration by PPC, with the final approval of the States required when the legislation is lodged and debated. Nevertheless, I thought it important that I set out my views and rationale in this respect, and to also explain why I have used the term "qualifying citizens of a Commonwealth country" in my amendment.

I should add that, even if Deputy Tadier's proposal to remove the citizenship requirement entirely were adopted, I believe that, in order for this to work in practice and to avoid potentially embarrassing scenarios, persons should still be required to have indefinite leave to remain (or not require leave to enter or remain) to be eligible for election to the States.

EU Citizens

The arguments in favour of permitting qualifying European Union (EU) citizens to be eligible for election to the States are also profound. Jersey has had a constitutional relationship with the EU (and its earlier incarnations) since 1973. We will continue to have an ongoing relationship of some form in the years to come. Jersey's relations with the EU are of great significance and importance to the Island.

The EU is a geographical neighbour of Jersey, and indeed the external relations common policy sets out that Jersey will be a good neighbour to European states.

More specifically, the EU includes several countries with whom Jersey has very close and important bi-lateral relationships, be these due to history or based on cultural, political and economic links. Some of Jersey's most important friends and partners are member states of the EU.

The Island also has a number of emerging relations with EU countries and we are focusing on broadening and deepening our bi-lateral links with EU countries, as well as maintaining positive links with the multilateral institutions.

It would therefore again be both reasoned and rational to permit qualifying EU citizens to stand for election in Jersey.

'Qualifying citizens'

Members will note that I have used the term "qualifying citizens of an EU country" in my amendment and this report. This is to reflect the fact that, from 1st January 2021, EU citizens (excluding Irish citizens) who are new to Jersey for the purposes of residing and working in the Island will be subject to the same immigration requirements as a citizen of a Commonwealth country, or indeed any other country.

To allow EU citizens to stand for election to the States without any qualification risks the same issues as highlighted above for Commonwealth citizens who do not have indefinite leave to remain.

Again, it is a matter for PPC as to how they approach this matter. For my part, I would hope that a "qualifying EU citizen" would include those with pre-settled status, settled status, and indefinite leave to remain (or who don't require leave to enter or remain). This ensures that any EU citizen living and working in Jersey prior to 31st December 2020 would meet the citizenship requirement to stand for election to the States and provides parity between citizens of Commonwealth countries and EU citizens who arrive in Jersey from 1st January 2021 onwards.

The residency requirement

As Members will be aware, there is already a residency requirement that must be met before a person can stand for election to the States, in addition to the current citizenship requirement. Deputy Tadier and Deputy Michael Higgins are proposing in their amendments that this residency requirement also be altered.

It is important that Members maintain a separation between the citizenship and residency requirements. Whilst there may be occasions where there is an interaction between the two, they are largely separate matters, just as a person's immigration status is different from their status under the Control of Housing and Work legislation.

Whether the Assembly decides to maintain the current residency requirement, or adopt the new proposals from Deputy Tadier and Deputy Higgins, this should not impact on the considerations that need to be given to citizenship requirements.

Conclusion

I believe that this amendment provides Members with a logical and workable alternative to the proposal of Deputy Tadier. It ensures that we can achieve change to the current citizenship requirement for States Members by including citizens of countries and organisations with whom Jersey has well-established, broad and deep links. It reflects the positions taken in most other British jurisdictions.

An element of this report is technical in its nature, but this is intended to ensure Members have the precise detail as to how my proposal could work in practice, and to highlight the relatively complex nature of this subject, which would likely also apply were Deputy Tadier's initial citizenship proposal to be adopted.

If Members agree with the principle and basis of my proposal, the details will be worked through by PPC, and an operational legislative solution presented for consideration by the Assembly.

It is important that Jersey, and in particular this Assembly, demonstrates a commitment to greater inclusivity and diversity. Supporting this amendment, if Members are still not able to support the initial proposition, allows us to take an important step forward in this regard.

I very much hope that Members will feel able to support this amendment.

Financial and Manpower implications

There are no additional resource implications that would arise from the adoption of this amendment.