

STATES OF JERSEY



Jersey

DRAFT ELIGIBILITY FOR ELECTION (AMENDMENT OF LAWS) (JERSEY) LAW 202-

**Lodged au Greffe on 15th March 2021
by the Privileges and Procedures Committee
Earliest date for debate: 11th May 2021**

STATES GREFFE



Jersey

DRAFT ELIGIBILITY FOR ELECTION (AMENDMENT OF LAWS) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chair of the Privileges and Procedures Committee has made the following statement –

In the view of the Chair of the Privileges and Procedures Committee, the provisions of the Draft Eligibility for Election (Amendment of Laws) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy C.S. Alves of St. Helier**
Chair, Privileges and Procedures Committee

Dated: 12th March 2021

REPORT

Introduction

The draft Eligibility for Election (Amendment of Laws) (Jersey) Law 202-, if passed, would amend the [States of Jersey Law 2005](#) and the [Connétables \(Jersey\) Law 2008](#). The Law has been drafted to implement the Assembly's adoption of 'Senators and Deputies: removal of citizenship requirement' ([P.75/2020](#), as amended) lodged by Deputy M. Tadier of St. Brelade.

In approving part (b) and part (d) of that Proposition, the States Assembly agreed on 23rd September 2020 that a person should have a continuous period of residence of 5 years, and be "entitled for work" under the [Control of Housing and Work \(Residential and Employment Status\) \(Jersey\) Regulations 2013](#), to be eligible to stand for election as a Senator, Connétable or Deputy.

Part (d) of the Proposition had requested the Committee to bring forward the necessary legislative changes to the States of Jersey Law 2005 (which deals with the qualification criteria for Senators and Deputies) and the Connétables (Jersey) Law 2008 (which provides the qualification criteria for Connétables).

States Members voted 22 *Pour*, 21 *Contre* with 1 abstention.

Proposed changes

The current requirement (for Senators, Deputies and Connétables) is that they have to be a British citizen who have been ordinarily resident in Jersey for a period of at least 2 years, or, ordinarily resident in Jersey for 6 months in addition to being ordinarily resident at any time for an additional period (or periods totalling) at least 5 years.

The draft Eligibility for Election (Amendment of Laws) (Jersey) Law 202-, has been drafted with the interpretation that the candidates should have *at least* Entitled for Work status rather than *only* Entitled for Work status.

States of Jersey Law 2005

The States of Jersey Law 2005 details the qualifications required for election as Senator or Deputy. Article 7(1)(b) currently states that candidates are qualified for election if he or she:

- “(b) is a British citizen who has been –
 - (i) ordinarily resident in Jersey for a period of at least 2 years up to and including the day of the election, or
 - (ii) ordinarily resident in Jersey for a period of 6 months up to and including the day of the election, as well as having been ordinarily resident in Jersey at any time for an additional period of, or for additional periods that total, at least 5 years.”.

Under this legislation this would be changed to:

- “(b) is a British citizen who –
 - (i) has been ordinarily resident in Jersey for at least 5 years up to and including the day of the election, and
 - (ii) has the following status under the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013 –

- (A) Entitled,
- (B) Licensed, or
- (C) Entitled for Work Only.”.

Connétables (Jersey) Law 2008

The Connétables (Jersey) Law 2008 details the qualifications required for election as Connétable.

Article 4B(1)(b) currently states that candidates are qualified for election if he or she:

- “(b) is a British citizen who has been ordinarily resident in Jersey –
 - (i) for a period of at least 2 years up to and including the day of the election, or
 - (ii) for a period of at least 6 months up to and including the day of the election, as well as having been so resident at any time for an additional period of (or additional periods totalling) at least 5 years.”.

Under the proposed legislation this would be changed to:

- “(b) is a British citizen who –
 - (i) has been ordinarily resident in Jersey for at least 5 years up to and including the day of the election, and
 - (ii) has the following status under the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013 –
 - (A) Entitled,
 - (B) Licensed, or
 - (C) Entitled for Work Only.”.

Concerns

The Committee wishes to make it clear that it has lodged this legislation because it was duty bound, under part (d), to bring forward for debate the proposed changes. This change will significantly restrict the number of people eligible to stand for election as a Senator, Connétable or Deputy compared to the current position. Therefore, the Committee urges Members to consider very carefully the consequences this change would have on the eligibility criteria for those thinking about standing for election in the future.

Financial and manpower implications

There are no financial and manpower implications associated with this proposition.

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.

APPENDIX TO REPORT**Human Rights Notes on the Draft Eligibility for Election
(Amendment of Laws) (Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Eligibility for Election (Amendment of Laws) (Jersey) Law 202-, (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.

The draft Law if passed would amend the eligibility requirement for election as a Senator or Deputy under the States of Jersey Law 2005 (the “**2005 Law**”), or a Connétable under the Connétables (Jersey) Law 2008 (the “**2008 Law**”).

Article 1 amends the 2005 Law and Article 2 amends the 2008 Law. Both Articles have the same effect. They amend the existing residency requirements and introduce a new housing entitlement requirement. Specifically, in order to qualify for election as a Senator, a Deputy or a Connétable, a person must be a British citizen who has been ordinarily resident in Jersey for at least 5 years and who is ‘Entitled’, ‘Licensed’, or ‘Entitled for Work Only’ under the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013.

The draft Law engages Article 3 of Protocol 1 of the ECHR (“**A3P1**”), the right to free elections and the implied right to stand for election contained within it. While fundamental, the European Court of Human Rights has recognised that the right to stand for election is not absolute and may be subject to limitations. States are entitled to determine the conditions for the exercise of electoral freedom. For example, most states place conditions on the right to stand for office based on age, citizenship and residence.

With regard to residency requirements, the European Court of Human Rights has ruled that states have a wide margin of appreciation when establishing eligibility conditions. However, the rights protected in A3P1 must continue to be effective and any conditions imposed must pursue a legitimate aim and be proportionate to the aim pursued. The conditions proposed in the draft Law are in line with ECHR case law and are both legitimate and proportionate to the aim pursued.

EXPLANATORY NOTE

The draft Eligibility for Election (Amendment of Laws) (Jersey) Law 202-, if passed, would amend the States of Jersey Law 2005 and the Connétables (Jersey) Law 2008. In each case, the requirement for a candidate for election to have been resident in Jersey for 2 years prior to the date of election will be replaced with a requirement that the candidate is resident in Jersey for 5 years prior to the date of the election; and holds Entitled, Licensed, or Entitled For Work Only status under the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013.



Jersey

DRAFT ELIGIBILITY FOR ELECTION (AMENDMENT OF LAWS) (JERSEY) LAW 202-

A LAW to amend the eligibility requirement for election as a Senator or Deputy under the States of Jersey Law 2005, or a Connétable under the Connétables (Jersey) Law 2008

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 States of Jersey Law 2005 amended

For Article 7(1)(b) of the States of Jersey Law 2005¹ there is substituted –

“(b) is a British citizen who –

- (i) has been ordinarily resident in Jersey for at least 5 years up to and including the day of the election, and
- (ii) has the following status under the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013² –
 - (A) Entitled,
 - (B) Licensed, or
 - (C) Entitled for Work Only.”.

2 Connétables (Jersey) Law 2008 amended

For Article 4B(1)(b) of the Connétables (Jersey) Law 2008³ there is substituted –

“(b) is a British citizen who –

- (i) has been ordinarily resident in Jersey for at least 5 years up to and including the day of the election, and

- (ii) has the following status under the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013⁴ –
 - (A) Entitled,
 - (B) Licensed, or
 - (C) Entitled for Work Only.”.

3 Citation and commencement

This Law may be cited as the Eligibility for Election (Amendment of Laws) (Jersey) Law 202- and comes into force 7 days after it is registered.

ENDNOTES

Table of Endnote References

1	<i>chapter 16.800</i>
2	<i>chapter 18.150.70</i>
3	<i>chapter 16.250</i>
4	<i>chapter 18.150.70</i>