



## Referendums in Jersey

### Overview

This briefing paper sets out an introduction to referendums in Jersey, what they are and how they have developed, along with details of previous Jersey referendums.



### What is a Referendum?

A referendum is a direct vote by the electorate on a specific question which is of public interest and is an example of direct democracy. It provides the Government of the day with a sense of the public mood on a particular topic but the extent to which Government takes on board that sentiment is dependent on whether a referendum is binding or non-binding.

In some countries referendums are mandatory – for example in Switzerland in respect of constitutional amendments or certain laws.

### The Principle in Jersey

In 1997 a proposition was brought to the States to decide whether they agreed “in principle” to the holding of referendums and the accompanying report provides a brief description/history of referendums.

P.131/1997 Part 1 was adopted to allow referendums to be held, with the States having to agree the referendum question. It further established that the wording of the ballot and the date of the referendum were also as agreed by the States.

However, Part 2 of the proposition, which was to allow the public to initiate referendums was rejected.

### PROPOSITION

**THE STATES are asked to decide whether they are of opinion -**

**Part 1.**

- (a) to agree in principle to the holding of referendums;
- (b) that a referendum shall be held when the States agree -
  - (i) to the principle of a referendum on the subject in question;
  - (ii) the wording of the ballot;
  - (iii) to the date of the referendum.



## Advantages and Disadvantages of Referendums

P.131/1997 examined the advantages and disadvantages of referendums which are summarised below –

### Advantages

- Maintaining the democratic ideal
- Maximising the authority and legitimacy of decisions
- Encouraging a sense of community
- Simplifying and speeding the resolution of controversial issues

### Disadvantages

- Complexity of issues and public ignorance
- Tyranny by majority
- Bureaucracy and complexity

## Creation of a Legal Framework

No progress was made to implement P.137/1997 until [P.188/2000](#) Referendums: Creation of Legal Framework was lodged and adopted. The Legislation Committee was tasked with bringing forward a mechanism for holding referendums for approval by the States.

As a result [P.40/2002](#) the Draft Referendum (Jersey) Law 200- was lodged on 26 March 2002, debated and adopted. The report accompanying the draft dealt, specifically, with the following questions in relation to any referendum –

- (a) who should set the question(s);
- (b) who should appoint the day on which a referendum is to be held;
- (c) what should be the practical basis of its management; and
- (d) how should expenses and costs associated with a referendum be borne or apportioned.

The resultant short [Referendum \(Jersey\) Law 2002](#) (“2002 Law”) provided that the States may, by Act, resolve that a referendum be held, determine the date of the referendum, provide the specific wording and form of the ballot and any other provisions regarding the conduct and mechanism of holding a referendum. The 2002 Law, by not establishing a rigid formula for the practical management of referendums, allowed the States wide discretion to determine the best mechanics for the holding of, and conduct of, each referendum on an individual basis.

## How to initiate a referendum (under the 2002 Law)

The 2002 Law procedure to initiate the holding of a referendum is best illustrated by looking at the first referendum to be held in Jersey which took place on 15th October 2008.

An individual States Member lodged a proposition ([P.62/2008](#)) entitled “Central European Time: Referendum” requesting the States to agree to the holding of a referendum and set out the wording of the referendum question and the date on which it should be held.



The Council of Ministers provided their comments ([P.62/2008 Com](#)) and further published a Report on the “Benefits and Disadvantages of Adopting Central European Time in Jersey” to help inform public debate.

P.62/2002 was adopted and the Chief Minister subsequently lodged the Draft Referendum (Adoption of Central European Time ) (Jersey) Act 200- ([P.110/2008](#)) which was adopted on a standing vote. The [Referendum \(Adoption of Central European Time\) \(Jersey\) Act 2008](#) confirmed that the Referendum be held on the 15 October 2008 with a very straightforward question “Do you think Jersey should adopt Central European Time” with Yes/No as the answer options.

The outcome of the referendum was a rejection of the move to Central European Time by 17,230 to 6,564 votes requiring no further action to be taken.

### *In summary*

- Proposition to hold a referendum lodged (with proposed details) [by an individual States member/a Minister/a Committee]
- Amendments (if any) lodged
- Comments (if any) [published]
- On adoption, draft referendum act lodged (with confirmed details and any other factors considered necessary)
- On adoption, referendum campaigns may commence and/or Government provides additional information

## **Further Referendums under the 2002 Law**

Two further referendums were held under the 2002 Law – one on the 24th April 2013 and the other on 15th October 2014 – with the procedure remaining the same as summarised above.

### *Referendum on Reform of the States Assembly – 24th April 2013*

[P.5/2013](#) Draft Referendum (Reform of the States Assembly) (Jersey) Act 201- was lodged by the Privileges and Procedures Committee and resulted from the recommendations of the report by the Electoral Commission [R.2/2013](#). The Report at Section 8.5 provided the form and draft for the referendum question.

Unlike the first referendum held, the question was not simplistic but involved three different options (A, B & C) from which the public could choose two and required a two-round ballot.

Voters chose option B and an explanation as to how this result was reached is provided on the Government website entitled at [Referendum on the States Assembly composition](#).

Unlike the outcome of the previous Referendum, the public had indicated a desire for change, and it was incumbent on the Privileges and Procedures Committee to bring forward a proposition to implement the change notwithstanding that the results of the referendum were not binding.

The Privileges and Procedures Committee lodged [P.64/2013](#), Draft States of Jersey (Amendment No.7) (Jersey) Law 201-, to implement the recommendations of the Electoral Commission which included the option chosen by the public in the referendum [Option B]. An extract from the report accompanying the proposition states –



*“The Electoral Commission’s recommendations were supported by almost exactly 80% of those voting in the referendum that was held on 24th April 2013. Option B, which included the 12 parish Connétables, was supported by a majority in the referendum and PPC has therefore concluded that it is correct to ask the States to implement that option of the Electoral Commission. Despite the disappointing turnout in the referendum, PPC believes it is important to respect and implement the views of the majority of those voting in the referendum as to do otherwise would no doubt increase further the scepticism of the electorate, as it would be perceived that the States were not willing to take note of the views of the public”.*

Various amendments were lodged and, after a lengthy debate, the main proposition was rejected [votes - Contre 28, Pour 21 & Abstention 1].

### Referendum on the Composition of the States – 15th October 2014

Further to the above result, [P.74/2013](#) Referendum of States Reform: Outcome was debated and part (b) requesting that PPC “seek alternatives for reform of the Assembly” was adopted. PPC lodged [P.116/2013 Composition of the States Assembly- interim reform for 2014 and referendum on further reform.](#)

Only paragraph (e) was adopted seeking a referendum in respect of the recommendations of the Clothier report in 2000 and tasking PPC to bring forward for approval the Referendum Act.

However PPC’s proposition [P.118/2014](#) for reform was amended by [P.118/2014 \(Amd\) \(2\)](#), with the question on the ballot paper being “should the Constables remain members of the States as an automatic right?”.

The results were 15,068 for Yes, 9,061 for No.

## **Referendums: Revised Procedure**

Following the decision of the Assembly not to support the outcome of the referendum on 24th April 2013, [P.153/2013](#) was lodged requesting the Privileges and Procedures Committee (PPC) to review the provisions of the 2002 Law and better define the conditions applicable to any future referendum.

PPC subsequently published [R.80/2014](#) which addressed what they believed to be the 4 main issues to be considered in relation to the holding of referendums, namely:

- (i) should a referendum be ‘binding’?
- (ii) should there be a minimum turnout threshold?
- (iii) how should referendum questions be framed? and
- (iv) how should campaigns be funded? The report contains their recommendations regarding each issue and should be read in full.

Regarding not making a referendum binding PPC recommended that in general a referendum should not be held in Jersey unless the States have already passed the legislation required to implement the proposal with a commencement provision which links the coming into force of



the legislation to a ‘Yes’ vote in the referendum. In this way the referendum would, in practice, be binding and the public would be reassured that the referendum result would be implemented.

## Legislative Reform

[Referendum \(Jersey\) Law 2017](#) (the 2017 Law) repealed and replaced the 2002 Law and came into force on 29th July 2017. The 2017 Law, in addition to providing for the holding of referendums, established a Commission to advise on referendum questions, designate lead campaign groups, and address the control of referendum expenses.

The Explanatory Note accompanying the proposition for the draft law ([P.4/2017](#)) details the reasoning behind the Articles within the 2017 Law and what they are seeking to achieve.

### The Referendum Commission (the Commission)

The Commission, established by the 2017 Law, produced a report entitled “Referendum Commissions Report: Referendums in Jersey” ([R.49/2019](#)) which was presented to the States by the Privileges and Procedures Committee on 30th April 2019.

A Check List is provided in the Appendix to the Commission’s report highlighting matters which it recommends should be taken into account when considering the holding of a referendum.

The Commission’s report referenced the [Report of the Independent Commission on Referendums July 2018](#) as effectively providing a “code of good practice” in respect of referendums and considered it would be beneficial to have a similar “code of good practice” in Jersey. Given that both reports contain a substantial amount of information regarding the overall use of referendums, it is recommended that both the above reports are read in full.

#### Check-list

The decision to hold a referendum in Jersey is taken by the States Assembly. It is ultimately for the Assembly to decide what topics should be subject to a referendum and, once a referendum is agreed, what the question should be and when the referendum should take place.

Nevertheless, from its experience to date and from its research and understanding of the principles underpinning the use of referendums, the Commission highlights the following matters which it recommends should be taken into account when consideration is given to holding a referendum.

1. The subject matter should be suitable for a referendum – of constitutional significance or of great importance to Jersey.
2. The referendum should be the best way of involving citizens in the decision in question (rather than some other means of public consultation).
3. There should be sufficient public interest in the subject to ensure a high level of turnout (if not before the provision of information, then certainly afterwards).
4. There should be the opportunity for considerable public debate and deliberation, if not before it is agreed to hold the referendum, then certainly before the referendum itself is held.
5. There should be the opportunity for adequate consideration of the subject matter by the States Assembly (including within its Committees and Panels) before a decision to hold a referendum is taken.
6. There should be an opportunity for Islanders to be engaged in the development of proposals (for example, through focus groups).
7. The alternatives presented in the potential outcomes of the referendum should be clear to Islanders – without the need for further elaboration.
8. The detailed proposals of any change arising from the referendum should be clearly set out for Islanders prior to the referendum being held.
9. It should be clear to the States Assembly (and thereby to Islanders) what should be enacted as a result of the referendum, if anything, to uphold the public’s vote and the credibility of the referendum.



## The Wording of the Referendum Question

The adoption of [P.84/2017 Amd.\(3\)](#) (Elected Speaker and Deputy Speaker of the States Assembly: Selection and Appointment) lodged by Senator Sir Philip Bailhache, required that a referendum be held. The referendum question was whether the Bailiff should remain President of the States and, unless the majority of the people voting in the referendum voted against the Bailiff remaining the President of the States, then paragraphs (1) and (2) of [P.84/2017](#) became null and void.

Further to the 2017 Law, the Commission must consider and give their opinion on the referendum question. [The Referendum Commission Report: Referendum on the Bailiff as President of the States](#) (R.46/2018) highlighted the importance of clarity and consistency of terminology to ensure that the referendum question is easily understood and also there needs to be clarity in respect of the implication(s) of voting yes/no. R.46/2018 examined the issues arising from the terminology of the original question as found in P.118/2017 Amd (3) i.e. Should the Bailiff remain the President of the States”.

Based on their own research as well as the outcomes of focus groups, the Commission recommended the following as the referendum question –  
*“Should the Bailiff as President of the States Assembly be replaced by a Speaker elected by States members?”*