

DRAFT REFERENDUM (JERSEY) LAW 200-

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by the Legislation Committee**



STATES OF JERSEY

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European Convention on Human Rights

The President of the Legislation Committee has made the following statement -

In the view of the Legislation Committee the provisions of the Draft Referendum (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

On 13th March 2001, the States, adopting a proposition of Deputy P.N. Troy of St. Brelade-

- (a) charged the Legislation Committee to bring forward for approval legislation to establish an appropriate legal framework under which referendums could be held in the Island; and
- (b) agreed that the drafting of this legislation be added to the Legislation Programme for 2002.

In briefing the Law Draftsman, the Committee had regard to legislation in the United Kingdom and the Isle of Man. Initially, the Committee found that the Isle of Man precedent was helpful. Its Referendum Act of 1979 applies in any case where Tynwald has resolved that a referendum be held in the Island on any matter specified in the resolution. The Act goes on to provide for the Deemsters, after consultation with the Attorney General, by Order to state the questions to be asked in the referendum and prescribe the form of the ballot paper to be used in the referendum and to make such provision as to the conduct of the referendum and for the announcement of the result as they deem necessary or expedient.

The Committee has considered whether a similar approach (involving a person or body other than the States to determine the form of the question etc.) would be appropriate for Jersey and has weighed various issues. It has especially directed its mind to -

- (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.

Who should set the question?

The Committee has considered whether the States, the Legislation Committee, or some other person or body, ought (perhaps in consultation with the Attorney General) to determine the question to be asked in a referendum following a resolution by the States that a referendum be held in the Island on any matter, but has concluded that Jersey should not seek to remove this function from the States Assembly.

The Committee noted that, on each occasion in which a referendum had been held in the United Kingdom (for example on membership of the European Economic Community) Parliament itself decided the wording of the question and the form of the ballot paper, as well as the procedures in connection with the referendum. In this respect, the Isle of Man Act, which provides a permanent structure for the holding of referendums, differs from those Acts of the United Kingdom Parliament relating to specific questions. The Committee believes that, rather than appoint a person or body to frame the question or questions in a referendum, the States itself, having resolved by Act that a referendum be held on any matter, should be empowered to determine by that Act both the form of the ballot paper to be used in the referendum and the text of the question or questions to be asked in the referendum (see *Article 1, paragraphs (1) and (2)(b) of the projet de loi*).

The day on which a referendum is to be held

Under existing legislation on public elections, the Royal Court appoints the day for the holding of an election. The Committee does not, however, see any need to mirror that procedure in respect of fixing the date for the holding of a referendum. Again, the Committee believes that this aspect can be determined by the States Assembly itself and, accordingly, *Article 1(2)(a) of the projet de loi* provides that the Act resolving that a referendum be held shall fix the date for the holding of the referendum.

The practical basis of management of the referendum

Again, it is proposed to entrust a wide discretion to the States Assembly itself so that the practical basis of the management of any one referendum can be determined by what is provided for in the relevant Act of the States. It may not be that one rigid formula for management of all referendums would be appropriate. The *projet de loi* therefore provides that, on each occasion the States resolve to hold a referendum, the relevant Act "may make such other provision as to the conduct of the referendum and for announcing its result as the States consider necessary or expedient" (*Article 1(3)(a)*).

The Assembly would also have discretion in each case to determine what the mechanics of the holding of the referendum

should be. Thus, the States would be empowered by *Article 1(3)(b)* to apply in relation to the referendum (with any necessary adaptations, modifications, etc.) the provisions of any enactment for the time being in force relating to public elections to the States, including any provisions creating or relating to offences. The States, under this régime, would not be constrained to hold a referendum according only to one given formula. Of course the States would not, for example, be at liberty to restrict or extend the number of persons eligible to vote short of or beyond the number of persons inscribed on the electoral register; but the States would, for example, be free to determine whether the count be, or not be, on a parochial basis.

Expenses and costs

Article 4 of the *projet de loi* provides that any expenses incurred in the holding of a referendum be defrayed in such manner as the Act of the States providing for the referendum may prescribe or, otherwise, out of the annual income of the States. Again the emphasis here is upon flexibility so that no rigid rule need prevail in relation to *all* referendums. Instead, the matter can be addressed, as it were, on a referendum by referendum basis.

Other matters

The Committee considered whether the Law should provide that a referendum only be held where there has been a two-thirds majority of the States Members voting. There appears to be no such provision in the Isle of Man Act and, in relation to the United Kingdom, each Act was approved by Parliament under its normal procedures (i.e. on a simple majority). Bearing in mind that the result of a referendum would not bind the States in any legal sense, the Committee has not sought to make provision for anything beyond a simple majority. If a preponderance of the Island's elected representatives wishes to pose a question to the electorate, it would be difficult, in the opinion of the Committee, to justify a Law that could thwart the will of the majority of those representatives.

The *projet de loi* is also silent as to whether a proposition for a referendum should be signed by more than one member. The Committee has noted that this could become a requirement if the States so wished under Standing Orders (see, for example, Standing Order 18B which requires the signature of the proposer and three other members on a proposition of no confidence).

The *projet de loi* also contains provision (in *Article 3*) that no court shall entertain proceedings for questioning the numbers of any ballot papers counted, or the answer given, in the referendum. This provision is the same as that in the Isle of Man Act. It should be noted that, whilst court proceedings may not be taken, the Act of the States resolving that a referendum be held, may still apply those provisions of the Public Elections legislation which enable the *Autorisé* or *Adjoint* to adjudicate in certain disputed matters. The Act may also, as previously noted, import provisions of Public Elections legislation that create or relate to offences.

Conclusion

The Committee believes that the *projet de loi* meets the goal of the proposition adopted by the States on 13th March 2001 "to establish an appropriate legal framework under which referendums [can] be held in the Island". The draft Law makes for flexibility and gives the States latitude to determine the date of a referendum, the form of the ballot paper, the text of the question(s) to be asked and all ancillary matters relating to the referendum.

The *projet de loi* is essentially an enabling Law. The Committee is aware that, when the first Act under it comes to be drafted, many questions of detail will arise; the task of the draftsman, initially at least, will be formidable. However, once the first such Act has been adopted and a referendum held pursuant to it, that Act may become a template for subsequent referendums. The central feature of the draft Law is that it does not bind the States to a rigid formula except insofar as it stipulates that all persons entitled to vote in public elections shall be entitled to vote in a referendum. Beyond this, the States will have the widest of discretions in determining if and when to hold a referendum and the manner in which it should be conducted.

Financial/manpower statement

There are no direct financial or manpower implications arising out of this draft Law. If the States were to decide to hold a referendum in the future in accordance with the provisions of the Law it would be necessary for the financial and manpower implications to be set out for that particular referendum.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 19th March

2002 the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Legislation Committee the provisions of the Draft Referendum (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

The purpose of this draft Law is to establish a legislative framework for the holding of referendums in the Island.

Article 1 provides that the States may, by Act, resolve that a referendum be held on any matter (*paragraph (1)*). The Act will fix the date for the holding of the referendum and will specify the wording of the question or questions to be asked in the referendum. It will also set out the form of the ballot paper to be used (*paragraph (2)*).

The Act may also include other provisions regarding the conduct of the referendum and may apply to the holding of the referendum, with suitable modifications, any enactment for the time being in force in relation to elections to the States (*Article 1(3)*).

Article 2 restricts the right to vote in a referendum to persons entitled to vote in an election to the States.

Article 3 provides that no legal proceedings may be brought questioning the number of ballot papers counted, or the answer given, in a referendum.

Under *Article 4* the cost of a referendum is to be met out of the annual income of the States or in such other manner as is specified in the Act of the States that makes provision for the referendum.

Article 5 contains the citation provision for the draft Law and provides for the draft Law to commence on the seventh day following its registration.

REFERENDUM (JERSEY) LAW 200-

A LAW to provide for the holding of referendums in the Island; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

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

ARTICLE 1

Holding of a referendum

- (1) The States may by Act resolve that a referendum be held on any matter, and this Law shall apply in any case where the States have so resolved.
- (2) The Act shall -
 - (a) fix the date for the holding of the referendum; and
 - (b) set out the form of the ballot paper to be used in the referendum, including the text of the question or questions to be asked in the referendum.
- (3) The Act -
 - (a) may make such other provision as to the conduct of the referendum and for announcing its result as the States consider necessary or expedient; and
 - (b) without prejudice to the generality of sub-paragraph (a) of this paragraph, may, subject to Articles 2 and 3 of this Law, apply in relation to the referendum, with such adaptations, modifications or exceptions as may be specified in the Act, any provisions of any enactment for the time being in force relating to public elections to the States, including any provisions that create or relate to offences.

ARTICLE 2

Persons entitled to vote

A person shall be entitled to vote in the referendum if, at midday on the day that is 21 days before the date of the referendum, the person's name is on an electoral register kept for the purposes of public elections to the States.

ARTICLE 3

Exclusion of legal proceedings

No court shall entertain any proceedings for questioning the numbers of any ballot papers counted, or the answer given, in the referendum.

ARTICLE 4

Expenses

The expenses incurred in the holding of the referendum shall be defrayed in such manner as the Act of the States providing for the referendum may prescribe or, otherwise, out of the annual income of the States.

ARTICLE 5

Citation and commencement

This Law may be cited as the Referendum (Jersey) Law 200- and shall come into force on the seventh day following its registration.