

# STATES OF JERSEY



## **DRAFT REFERENDUM (COMPOSITION OF THE STATES ASSEMBLY) (JERSEY) ACT 201- (P.118/2014): COMMENTS**

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**Presented to the States on 9th July 2014  
by the Comité des Connétables**

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**STATES GREFFE**

## COMMENTS

It is with disappointment that the Comité presents these comments on the [Draft Referendum \(Composition of the States Assembly\) \(Jersey\) Act 201-](#) (P.118/2014).

The Comité is disappointed that –

- the PPC has brought forward proposals for only one referendum when the States Assembly decided that 2 different questions should be asked
- the question proposed by PPC is not entirely in accordance with the recommendation of the Report of the Review Panel on the Machinery of Government in Jersey (the ‘Clothier’ Report published in December 2000)
- the way in which the question is structured means that if the overall result is a “No” vote, then there will be no obvious way of determining why – in other words, which part or parts of the question did not find favour with the public. Therefore there will be only limited information to assist in the formulation of further reform proposals

### **Referendum – or referenda?**

It was only 9 months ago that the States Assembly agreed to the holding of 2 referenda. The Hansard transcript of the debate on 5th November 2013 shows that, prior to considering the second referendum proposition, a query was raised by the Deputy of St. John as to which referendum question would take precedence if both were approved.

The Presiding Officer replied: “You have asked both questions. There will be a yes or no vote on the issue that is being put. They are not inconsistent with each other, either you have 2 or not.”

But PPC is only putting forward one question on the basis that “holding a referendum with 2 separate questions could be extremely confusing and could even lead to an unclear outcome. There would be nothing to prevent electors voting in a way which would give an incompatible response, namely that there should be a single category of member, but that the Connétables should remain as members of the States Assembly as an automatic right.”

Elsewhere in its report, PPC is at pains to emphasize that it has taken great care to design a referendum question which is easy to understand and can be answered in a straightforward Yes/No manner. It is perfectly possible that the 2 questions agreed by the States Assembly, if correctly drafted and explained, would not result in an incompatible response.

### **The “Clothier” recommendation**

In proposing a referendum question as part of P.116/2013 (Composition of the States Assembly: interim reform for 2014 and referendum on further reform), the Chairman of PPC said that the advantage was that it would perhaps settle the issue of Clothier one way or another; and the PPC felt “duty-bound to deliver this ... an opportunity to set something right, which had not been done” (Hansard of debate).

The States Assembly adopted paragraph (e) of P.116/2013 and –

“agreed that a referendum under the Referendum (Jersey) Law 2002 should be held on the day of the 2014 elections with a single Yes/No question to ask voters whether they agreed that the States Assembly should, with effect from the 2018 elections, be comprised of a single category of members elected on a parish basis in accordance with the recommendation of the Report of the Review Panel on the Machinery of Government in Jersey (the ‘Clothier’ Report) published in December 2000, and requested the Privileges and Procedures Committee to bring forward for approval the necessary Referendum Act to enable the referendum to take place.”

But the referendum question which the States Assembly is being asked to endorse, and which it could then be asked to enact, is not the Clothier recommendations as shown in the table below.

<b>Recommendations summarised in the Clothier report:</b>	<b>PPC proposal</b>
The role of Senator should be abolished	Single type of elected member of the States Assembly but abolition is not spelled out in the question
Connétables should cease to be <i>ex officio</i> Members of the States	Single type of elected member of the States Assembly but removal as <i>ex officio</i> members is not spelled out in the question
An Electoral Commission to re-assign the vacant seats amongst the Parishes	Allocation of seats within parish districts would be proportional to the population (report indicates distribution based on population rather than registered electors)
All Members of the States to enjoy the same title, “Member of the States of Jersey” (MSJ)	
There should be an assembly of between 42 and 44 Members	49 members would be elected

### **Multi-part, but single answer, question**

The proposed referendum question does ask for a Yes/No answer. But the proposal outlined on the ballot paper refers to 3 specific issues: namely type of member, number of members and distribution of seats. Whilst PPC have sought the views of focus groups to refine the question proposed, it is clear that a voter’s answer will be affected by the importance of one or more issues rather than the whole. For example, those wishing to see a reduction to 42 or 44 members, as proposed by Clothier, may vote “No”, even though other aspects of the proposal are acceptable.

Similarly, the work undertaken in the focus groups makes it clear that simply asking whether there should be a single type of Member does not necessarily mean that the implications of the question, namely that the role of Senator should be abolished and that the Connétables should no longer sit in the States Assembly, have been

understood by the respondent. This might be demonstrated if the 2 questions previously agreed by the States Assembly are put and the responses do not support each other.

So the outcome of the Referendum is unlikely to assist in developing future proposals, and whether a person votes “Yes” or “No”, there will be continual discussion as to which part, or parts, they favoured or did not favour because the question is complex.

## **Second question**

The second question which the States Assembly agreed should be asked was part of P.117/2013 (Composition and election of the States Assembly: reform – proposal 4). The States Assembly –

“agreed that a referendum under the Referendum (Jersey) Law 2002 should be held on the day of the 2014 elections with a single Yes/No question to ask voters whether they agreed that the Constables should remain as members of States Assembly as an automatic right, and requested the Privileges and Procedures Committee to bring forward for approval the necessary Referendum Act to enable the referendum to take place.”

An answer to this question, one way or another, would at least provide a basis on which to progress with reform of the composition and election of the States Assembly.

The Comité is therefore extremely disappointed that if there was deemed to be a conflict between the 2 questions agreed by the States Assembly, this straightforward question was not chosen in order to finally lay one perennially controversial question to rest, and to give the States Assembly a clear instruction on one aspect of the composition of the States Assembly, going forward.

## **Other questions**

If the States Assembly is intent on seeking the Public’s view by means of referenda on the specific composition of the States Assembly, then in reality a Yes/No vote is required on other key aspects. This includes whether the electorate wish to retain the role of Senator as an all-Island election (even though there is no incentive to stand for such a position when the terms of election are exactly the same as those of a Deputy); support ‘super-constituencies’ as an alternative to an all-Island mandate (81% of those voting in the 2013 referendum were supportive) and, indeed, whether the role of Deputy should continue to be linked to a Parish or district boundary.

On the latter issue, and whilst not wishing to stray into the merits or otherwise of the Connétables remaining as members of the States Assembly, the electorate needs to understand that the Connétable, as the elected head of the Parish administration, is able to provide ‘joined-up’ government at Island and parochial level in a way that the Deputy cannot do. For example, the States Assembly recently endorsed amendments to the Public Elections Law which were brought by the Comité to ensure that the Law was administratively practical and workable; and the Connétables seek to protect the interest of ratepayers by ensuring the Annual Island-wide Rate Figure is not increased beyond that provided for in law. Removing the Connétables from the States Assembly is ultimately likely to lead to the weakening of the parish system and parochial identity to the detriment of the Island as a whole.

The Clothier report (at 7.4) commented: “*There is a tendency in the States to spend too much time on matters of only local importance, at the expense of more demanding considerations affecting Jersey as a whole.*” If this is the desire of the electorate, then the mechanism for electing States members should be such as to ensure the candidates elected are those endorsed by a wide constituency.

### **Result of referenda**

In its report “Referenda: review of procedures” (R.80/2014), the PPC addresses the issue of voter turnout in a referendum.

The turnout in the (autumn) 2008 referendum (the first ever held in Jersey) was 43.15%, marginally lower than the all-Island election for Senators held on the same day (turnout 44.1%).

By comparison, the turnout in the (spring) 2013 referendum, which was not combined with any other election on the same day, was 26.2%. However, the turnout was approximately the same as the turnout for the (spring) 2010 Senatorial by-election, which was 26.3%.

So the turnout in both referenda held to date is consistent with the turnout for Island elections held at a similar time of year or on the same day.

PPC, in R.80/2014, recommends a procedure whereby the referendum would, in practice, be binding, and the public would be reassured that the referendum result would be implemented. It further recommends no threshold be used to decide whether to adopt the decision of the referendum.

### **Concluding comments**

The Comité appreciates the efforts made by PPC to bring forward this draft Act, but remains concerned that, with the other work it has had to address, PPC has not had time to address issues of the reform of the States Assembly as fully as it might.

In particular, the report of PPC does not explain why some Islanders should have more votes than others (a fundamental principle of the Electoral Commission’s proposals), and offers little equity for some parishioners, such as those in St. John, where the deviation from target residents per States members is -45.8%.

The States Assembly feels duty-bound to offer another referendum to keep its promise to the electorate. So a vote against P.118/2014 may be seen as renegeing on that promise to the electorate. But if any referendum is to be held and results are not to be ignored again, then the question needs to be clear – the Comité’s opinion is that the question proposed does not achieve the clarity required.

Regrettably, the amendment of the Deputy of St. John, which substitutes 3 questions on the ballot paper, also does not cover sufficient aspects of the composition of the States Assembly to assist in the formulation of further reform proposals. The amendment of Deputy A.K.F. Green of St. Helier does ask whether “the Constables should remain as members of the States as an automatic right”, but not the other questions which are also of concern to the electorate.

The danger of going forward with a referendum when not fully prepared is that the Public will lose further trust/faith in the States Assembly and, in particular, with the referendum process. Given that the 2013 results were discounted by the Assembly, despite turnout being consistent with a by-election held at a similar time of the year, some suggest the electorate may be disinclined to engage in any further referendum on this issue.