

---

# STATES OF JERSEY



## REFERENDUM COMMISSION REPORT: REFERENDUMS IN JERSEY

---

Presented to the States on 30th April 2019  
by the Privileges and Procedures Committee

---

STATES GREFFE

## **FOREWORD**

The Privileges and Procedures Committee (“PPC”) has received the attached report from the Referendum Commission. Following a meeting between the Chairman of PPC and the Chairman of the Commission in January 2019, it was agreed that the Commission would provide PPC with a report outlining its conclusions and recommendations on the holding of referendums in Jersey. Although the Commission was established in December 2017, it has already gained experience of the organisation of referendums in the Island due to the proposal to hold a referendum on the Bailiff’s role as President of the States (albeit that the referendum was not ultimately held). PPC is grateful to the Commission for undertaking this work and has noted the Commission’s intention for the report to serve as a ‘code of good practice’ that will help States members and the public understand the issues involved when deciding whether, and how, to hold a referendum.

## REFERENDUM COMMISSION REPORT: REFERENDUMS IN JERSEY

### Summary

Referendums are being used increasingly in many countries as an instrument of direct democracy. They make a valuable contribution together with, but never in place of, the established institutions of parliamentary democracy. However, referendums can also lead to serious and unforeseen consequences: they have resource implications, demand the investment of political capital and may cause societal fracture.

This report therefore recommends that referendums should be used wisely and with caution, and that, before any referendum is held, the following should be carefully considered –

- In the circumstances of a particular referendum proposal, whether a referendum is the best way forward or if alternative means of public deliberation, consultation or decision-making would be more appropriate.
- How civil society groups and the wider public should be involved in developing the referendum proposals.
- Whether a sufficient number of the public would be engaged, following an explanatory process, to adequately understand the issues and consequences, and to make an informed decision on the referendum question.
- Whether the referendum outcome would be sufficiently clear, credible and influential to mandate implementing any change.
- If any changes could arise from the referendum outcome, what draft legislation or policy processes would be required to effectively implement that outcome.

The above considerations are elaborated further in the following report.

### Introduction

1. This report has been produced at the request of the Privileges and Procedures Committee (“PPC”). Further to a meeting between the Chairman of PPC and the Chairman of the Referendum Commission in January 2019, it was agreed that the Commission would produce a report outlining its conclusions from the work it had undertaken to date on the holding of referendums in Jersey.

## The Referendum Commission

2. The Referendum Commission (hereafter referred to as "the Commission") was established by the Referendum (Jersey) Law 2017 ("the Law").<sup>1</sup> The Commission's principal functions under the Law are to advise on the proposed wording of the question in any prospective referendum; and to appoint the lead campaign groups in respect of any such referendum. The Law provides some ancillary functions to the Commission; and the States Assembly can also confer functions on the Commission via the Act which the Assembly has to adopt for a referendum to be held.
3. At the time of this report, the Commission comprised the following individuals, all of whom had been appointed on an honorary basis on 13th December 2017 (when the Commission was first established) –
  - Mr. Michael Entwistle – Chairman
  - Advocate Mark Boothman
  - Dr. Sandra Mountford
  - Mr. Terence Le Sueur, O.B.E.
4. Under the terms of the Law, the Commission would normally comprise 5 members. However, following the resignation of one Commissioner (owing to their having become employed by the States of Jersey and thereby becoming ineligible), a Commission of 4 members produced this report. The Law provides that the Commission can operate with a vacancy, and the quorum of the Commission is 3 members. A recruitment process to fill the vacancy commenced during the production of this report.

## Purpose and structure of the report

5. Although the Commission was only established in December 2017, it has already gained some experience of referendums in Jersey through the proposed referendum on the Bailiff's role as President of the States (although the States subsequently decided not to proceed with that proposal). The Commission has been mindful of the intention of the States Assembly to be guided by international standards, as set out by the Council of Europe Commission for Democracy through Law (the "Venice Commission") in a Code of Good Practice on Referendums.<sup>2</sup> The Commission has also undertaken research into the principles that underpin the holding of referendums.
6. In particular, the Commission has noted the publication in July 2018 of the 'Report of the Independent Commission on Referendums' in the United Kingdom ("UK").<sup>3</sup> This report presented the evidence of extensive international research and recommendations from the UK Commission on how referendums should be approached and dealt with in the UK. It

---

<sup>1</sup> [Referendum \(Jersey\) Law 2017](#)

<sup>2</sup> [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)008rev-cor-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)008rev-cor-e)

<sup>3</sup> [https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/182\\_-\\_independent\\_commission\\_on\\_referendums.pdf](https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/182_-_independent_commission_on_referendums.pdf)

---

also included a check-list of matters to be considered when determining whether a referendum should be held on any given topic.

7. The Commission is of the view that the report of the UK Commission effectively provides a 'code of good practice' in respect of referendums. In light of the request from PPC that the Commission produce a report with its own conclusions, the Commission has agreed that it would be beneficial to establish a similar 'code of good practice' for referendums in Jersey.
8. This report is, therefore, intended to provide Islanders (both States members and the wider public) with an understanding of the main issues involved in deciding whether, and how, a referendum should take place. The Commission has interpreted the 2018 report from the UK Commission as a guide and model in order to identify the areas that should be covered in any 'code of good practice'. However, as this report is concerned directly with the Jersey context it, therefore, addresses the following areas –
  - Proposing a referendum
  - Identifying the right question
  - Preparing for a referendum
  - Managing the referendum campaign
  - Dealing with the results of the referendum.

The report also provides some historical context for referendums in Jersey.

9. From the experience it has gained to date, the Commission is able to draw firmer conclusions in some areas than it can in others. It is therefore the Commission's intention to keep this 'code of good practice' under review.
10. Where appropriate, the Commission has made reference to the provisions of the Law, although nothing in this report should be taken to derogate from those provisions. The Commission has also made no comment on whether the Law's provisions should be changed.
11. Taking its lead from the UK Commission's report, the Commission has agreed a check-list that could be used by States members and the public to determine whether a referendum should be held in Jersey, and if so, how such a referendum should be administered. The check-list can be found in the **Appendix** to this report.

### **The use of referendums**

12. Referendums have been – and are – used across the globe. How extensively they are used depends on the jurisdiction. In some jurisdictions (such as Switzerland), there is a strong cultural tradition of frequently using referendums; in others, they are used more sparingly. As the UK Commission has reported, however, where they are used they "*constitute an important part of how democracy functions.*" The UK Commission has also highlighted that "*international thinking about best*

*practice in referendums has moved on considerably*” since the turn of the Millennium. But ultimately, in the Commission’s view, the following comment from the UK Commission in respect of the UK also holds true for Jersey. As referendums form a part of the democratic system in the Island, *“we should therefore consider how these can best coexist with our system of representative democracy.”*

13. From recent experience in the UK, Islanders will have some awareness of the issues that can surround the holding of a referendum. Whatever one thinks of the result of the referendum regarding the UK’s membership of the European Union (“EU”), this referendum has no doubt affected people’s understanding and views of referendums in general. Indeed, the UK Commission has reported that there *“appears to have been a drop in support for holding referendums following [that] EU referendum of 2016.”*
14. The UK Commission has reported that, due to the lack of a codified constitution, *“decision-making through referendum is itself far less regulated and protected [in the UK] than in many other democracies.”* Nevertheless, other referendums have been held in the UK in recent years, perhaps without the same controversy. For example, in 2014 a referendum was held in Scotland on the question of Scottish independence; this followed referendums held 17 years earlier in both Scotland and Wales on the question of devolution. In 1998, a referendum was also used to endorse the Good Friday Agreement in respect of the Northern Ireland Peace Process. Referendums have also been held closer to home, when in 2018, a referendum was held in Guernsey on the Island’s electoral system and composition of the States of Deliberation.
15. Having noted the proposals in the UK Commission report in respect of referendums, the Commission recommends that many are relevant to Jersey. In particular, the UK Commission’s finding that *“until effective ways of ensuring the democratic quality of referendums have been found, they should be used with caution.”* The UK Commission has therefore recommended that, *“significant changes in the UK’s collective political norms and expectations are needed, to ensure that referendums are embedded in decision-making processes that promote careful development and discussion of options, and take place only when they are likely to enhance decision-making.”* Whilst the political context in Jersey differs from that found in the UK, the Commission believes that such recommendations are also noteworthy when considering the use of referendums in the Island.

### **The use of referendums in Jersey**

16. The Commission is aware of 3 referendums which have been held in Jersey since 2000 –
  - On 15th October 2008, a referendum was held on the question of whether Jersey should adopt Central European Time. This was held on the same day as elections for Senator and Connétable.

- On 24th April 2013, a referendum was held on the question of whether (and, if so, how) the constitution of the States Assembly should be reformed. This multi-option referendum was not held on the same day as any elections.
  - On 15th October 2014, a referendum was held regarding the composition of the States Assembly (specifically whether Connétables should remain members of the Assembly as an automatic right). This was held on the same day as the election for Senator, Connétable and Deputy.
17. All of these referendums were held under the provisions of the Referendum (Jersey) Law 2002. The adoption of that Law was the first time that a legislative framework was established in Jersey for the holding of referendums in the Island. In addition to the 3 referendums ultimately held, the Commission is aware that referendums have been proposed on other occasions, mainly in respect of proposed reform of the composition of the States Assembly or the Island's electoral system.
18. The 2002 Law was replaced in 2017 by the Referendum (Jersey) Law 2017. As of yet, no referendums have been held in accordance with the 2017 Law; but one has been proposed. In 2017, the Assembly agreed, in principle, that a referendum should be held on the question of whether the Bailiff should remain President of the States – or whether a Speaker should replace the Bailiff in that role, elected by States members. However, in 2018 the Assembly rejected the draft Act, which would have seen the referendum take place, and no referendum was therefore held on the matter.

### **Proposing a referendum**

19. A referendum cannot be held in Jersey without the agreement of the States Assembly. Under the terms of the Law, the Assembly is required to adopt a Referendum Act, which sets the date of the referendum, as well as the question to be used on the ballot paper. It also prescribes the administrative arrangements that should apply. Any such Act cannot be lodged "au Greffe" for debate unless the Commission has given its opinion on the proposed wording of the question.
20. There is no provision under the Law at present for referendums to be held directly on the basis of requests from private groups or Islanders. Nevertheless, the Commission has noted that the petition and e-petition processes that exist in the Island allow for the public to call for a referendum. An e-petition has been created in recent months seeking the holding of a referendum on the Bailiff's role in the States Assembly. Furthermore, the Venice Commission Code of Good Practice on Referendums (section III. 4.) specifically envisages the possibility of referendums held at the request of a section of the electorate.
21. The Commission notes that, in the Jersey context, referendums can be proposed by States members in an independent capacity. Of the 3 referendums held in Jersey, an independent member proposed one,

and the question of another was the result of a member acting independently. It has also often been the case that proposals for a referendum come from members acting in an individual capacity – rather than as a result of government policy. Culturally, the context for referendums in the Island differs at present from that found in the UK, where referendums have been held as a consequence of agreed government policy.

22. The Law makes no provision in respect of the topics on which a referendum may be held. The Commission understands that, whilst in the UK, *“referendums are already required by law in certain circumstances”*, this is not the case in Jersey. However, the UK Commission report recommended that, beyond those specific circumstances, it would not be *“appropriate to attempt to legislate for all the topics on which referendums should be required.”* This holds true for Jersey, as the question of whether a referendum should be held on a given topic is ultimately one of political judgement by the States Assembly.
23. The Commission has noted findings in respect of the UK that, according to the UK Commission, *“there is a lack of cross-party agreement on what should be considered a ‘constitutional issue’ and whether all ‘constitutional issues’ are appropriate to be put to referendum.”*. Nevertheless, the UK Commission reported that *“conventions have become established about the use of referendums to decide certain categories of constitutional matters, and, where a referendum has been used once, it often becomes established that this same mechanism should be used again.”* An example of the latter is the question of Scottish independence mentioned earlier.
24. The question of ‘constitutionality’ has also arisen in Jersey in relation to the proposed referendum on the Bailiff’s role as President of the States and whether that is a ‘constitutional’ matter. The Commission is not seeking to recommend that any given subject, or indeed type of subject, should be subject to a referendum, as it is strongly of the view it is for the States Assembly to decide whether an issue is of such significance that it should be the subject of a referendum. However, what it considers more pressing to recognise (in order to avoid a scenario in Jersey, which the UK Commission has described occurs in the UK) is that *“the use of referendums in UK politics has often been driven by political pragmatism, not constitutional principle.”*.
25. From the UK Commission’s perspective it considers *“when referendums have been used most successfully in UK politics, it has been to legitimise and provide a degree of entrenchment for key decisions, in the absence of a codified constitution.”*. The UK Commission has also found that *“referendums work best when they are held at the end of a decision-making process to choose between developed alternatives.”*. Significant preparatory work is therefore required before a referendum is held or considered. In the Commission’s view, this is equally applicable to Jersey. Whilst it is for the Assembly to agree whether a topic is of such importance that a referendum should be held, such decisions should



consider where the referendum will fit into the cycle of decision-making, and ensure that appropriate time and opportunity is given for exploration and understanding of the topic in question prior to any referendum question being framed.

### Identifying the right question

26. The question to be used in a referendum in Jersey is agreed by the States Assembly when it adopts the relevant Referendum Act. However, the Act cannot be lodged for debate unless the Commission has provided its view on the proposed question. Wherever practical, the Commission is expected to provide its view on any proposed amendment to the wording of the question as well. However, the final decision is one for the Assembly. This reflects the position in the UK where the wording of a proposed question is considered by the Electoral Commission, but the final decision is for Parliament.
27. This process has already been used once in Jersey. In late 2017, the Assembly agreed that a referendum should be held on the Bailiff's role as President of the States. It was agreed with PPC that the Commission would work up the wording of a question as a recommendation to PPC. PPC accepted the recommendation and the wording, as identified by the Commission, was included in the Referendum Act. In working up the wording of the question, the Commission arranged for focus groups to be held to discuss their understanding of the referendum topic, and to inform how the referendum question should be formed.
28. The Commission found this process it followed early in 2018 to be of benefit. The process highlighted the following which, whilst specifically relating to the proposed referendum on the Bailiff's role, could be applied to the holding of referendums generally –
  - (a) The public wishes to understand the implications of their vote (regardless of which way they vote).
  - (b) There should be clarity and consistency of terminology within the question so that it can be readily understood.
  - (c) Questions should be structured simply and be accurate, but not leading.

These findings are supported by the guidelines of the Venice Commission Code of Good Practice, which states "*the question put to the vote must be clear; it must not be misleading; it must not suggest an answer; electors must be informed of the effects of the referendum; voters must be able to answer the questions asked solely by yes, no or a blank vote.*" (section I. 3. 1c).

29. From its experience with the proposed referendum on the Bailiff's role in the States, the Commission has concluded that a formal process for developing and identifying a proposed question would be beneficial. This process should allow for exploration of both the issue at hand and of

prospective wording, in order that the wording of a question may be tested, before the Assembly is asked to make a final decision on which question to be used. Such testing should involve engagement with the public in some form.

30. In relation to the proposed referendum on the Bailiff's role, the Commission started working on the matter once the Assembly had agreed, in principle, that a referendum should take place. There was no alternative as the Commission did not exist before December 2017 and the Assembly had made that decision in November 2017. However, in future, it is recommended that the Commission and public involvement in developing a suitable referendum question should take place before a referendum Proposition is presented to the States.
31. The Law allows for the possibility of multi-choice referendums to be held (i.e. where the voter is presented with more than 2 options from which to choose). The Commission has noted the recommendation in the UK Commission's report that, "*when a referendum is proposed, the possibility of presenting voters with multiple options should be borne in mind.*". The referendum held in Jersey in 2013 was a multi-option referendum. The Commission does not recommend any changes to the legislative provisions in Jersey, which allow for multi-choice referendums to take place. Nevertheless, the Commission is aware that such referendums increase the risks that a referendum question will not be clear for the voting public, and will not provide clarity as to what will happen as a result. Whilst a multi-choice referendum might be appropriate, depending upon the circumstances, it should be approached and used with caution.

### **Preparing for a referendum**

32. Although the Commission is dealing with preparation as a separate matter within this report, preparation for a referendum begins when the idea to hold one is first mooted. The Commission considers that its conclusions in respect of preparation should also apply to the stages during which the Assembly is considering whether to hold a referendum; and when it is due to debate a Referendum Act and agree the wording of the referendum question.
33. Preparation is key in respect of the period before a referendum is held and in relation to what is provided to the voting public. The Commission agrees with comments made by the UK Commission that "*it is of utmost importance for the proposals put to a referendum to be clear and for voters to know what will happen in the event of a vote for change.*". This is why the UK Commission has recommended that referendums should be held (wherever possible) 'post-legislatively' (i.e. once Parliament or the relevant Assembly has agreed the draft legislation that would be required to implement the decision of the referendum).
34. The Commission questions whether such an approach would always be culturally acceptable in Jersey, as this would require the dedication of resources, such as law drafting, for a project that might ultimately not

come to fruition. However, the principle of ensuring that the public is provided with sufficiently clear information to allow it to make an informed decision, is one to which the Commission subscribes. It might not always be feasible for a referendum in Jersey to be held ‘post-legislatively’; but the principle should apply that the implications of voting in a referendum should be made abundantly clear. This could be done by means of a ‘White Paper’ or equivalent.

35. The Commission places great emphasis on the issue of effective communication, and is in absolute agreement with the Venice Commission’s Code of Good Practice on Referendums, which states *“the authorities must provide objective information. This implies that the text submitted to a referendum and an explanatory report or balanced campaign material from the proposal’s supporters and opponents should be made available to electors sufficiently in advance...”* (section I. 3. 1d).
36. The Commission strongly agrees with the finding of the UK Commission, which states *“it should be possible for voters [in a referendum] to find the information that they want from sources that they trust”*, and there needs to be appropriate information made available to the public in order that people may understand what they are being asked; and what the consequences of their decision would be.
37. This reflects findings the Commission itself made in respect of the proposed referendum on the Bailiff’s role as President of the States. Feedback from focus groups clearly showed that members of the public did not have sufficient information about how the referendum result might actually be implemented. Whilst the referendum was not ultimately held, this was apparent to the Commission from its work, and it advised PPC accordingly.<sup>4</sup>
38. In other jurisdictions, publicly-funded independent bodies are tasked with producing, and providing, such information to the public. In Jersey, the Commission is obliged under the Law to publish information on behalf of the lead campaign groups it has appointed for any given referendum. The Law makes no specific provision for the dissemination of information beyond that provided by the campaign groups. Moreover, it is the Commission’s view that, as well as campaign material, arrangements must be made for the public to be provided with clear and unbiased information that allows them to understand the issues underpinning the referendum; to make an informed decision; and to understand the implications of any possible outcome in the referendum.
39. The UK Commission has highlighted that such information *“is best delivered with citizen involvement”* and has cited the example of Oregon, where *“citizens’ assemblies produce statements setting out the issues as members see them, to be included in the official information booklet.”* The Commission is not aware of any current provision for such assemblies to operate in Jersey; but the principle of public engagement

---

<sup>4</sup> [Referendum Commission Report: Referendum on the Bailiff as President of the States \(R.46/2018\)](#)

in helping to determine what information should be provided ahead of a referendum is sound. This could feasibly be achieved by other means. Again, for instance, through the use of focus groups.

40. Information should be provided from a source that can be trusted by the public and is independent of the campaign groups. The Commission anticipates that some people might suggest this is a responsibility for the Commission itself; or alternatively it might be a role taken by the States Greffe under the auspices of PPC, as occurs at present with public elections. The circumstances whereby a decision about responsibility needs to be taken have not yet arisen, so this is a matter that PPC would need to consider further.

### **Managing the referendum campaign**

41. The Commission does not yet have experience of a referendum campaign under the provisions of the Law. The proposed referendum on the Bailiff's role as President of the States was aborted before the campaigning stage was reached.
42. The UK Commission addressed a number of areas relating to the campaign in its report; including the registration of campaigners, campaigners' expenses and registration of online campaigning, not all of which are of direct relevance to the Jersey context. The provisions of the Law merit being highlighted, however, and the Commission would encourage States members and the public to acquaint themselves with those provisions.
43. Under the Law, the Commission is responsible for the appointment of lead campaign groups in relation any referendum to be held, but a number of conditions apply to the ability of the Commission to appoint such groups –
  - Lead campaign groups can only be appointed if there is a lead campaign group for each option on which the public can vote in a referendum.
  - Lead campaign groups must convince the Commission that they would be able to represent adequately those people who support the referendum outcome, for which the groups are designated.
  - Every referendum outcome must have a lead campaign group.
  - A lead campaign group cannot be designated for more than one referendum outcome (unless it is a multi-choice referendum).
44. The Commission understands the purpose of these criteria is to ensure that, ahead of the referendum, there is the opportunity for a balanced discussion of the reason for the referendum and the options presented to the public. In the event that lead campaign groups could not be appointed (for whatever reason), this would raise the question again of

how information would be made available to the public, and who should be responsible for the provision of such information.

45. The Commission has noted the recommendation of the UK Commission that the relevant legislation in the UK *“be amended so that the [UK] Electoral Commission can designate a lead campaigner for one side if no suitable application has been submitted to the other side. In this circumstance, the single lead campaigner should have reduced entitlements to public benefits, as was provided for in the legislation enabling the E.U. referendum.”*. To make such provision in Jersey, however, would require a change to the Law.
46. There are limits to the expenditure that lead campaign groups can incur, and can be incurred by others, called ‘third parties’ in the Law. Whilst the Law refers to these as ‘expenses’, lead campaign groups do not receive public funds to assist with their work. The context in Jersey is, therefore, different from that found in the UK, where campaigners can access public funds; and where, perhaps unsurprisingly, the UK Commission has made greater comment on the regulation of campaign activities. The Law in Jersey allows the States Assembly a degree of flexibility in respect of expenditure when the Assembly adopts a Referendum Act: so that the Assembly can introduce greater, or lesser, rigour in the application of expenditure limits and controls, depending on the referendum in question.
47. For those who incur expenditure in relation to a referendum in Jersey, declarations must be made in respect of that expenditure. However, it is not the Commission’s responsibility to police expenditure incurred by lead campaign groups and third parties. This role is taken by the Judicial Greffe (or States Greffe, depending on the referendum in question). The provisions regarding expenditure and its regulation resemble provisions made in the Public Elections (Jersey) Law 2002 in relation to the expenditure of election candidates. The Commission is aware that the States Assembly has recently agreed for the provisions in respect of public election expenses to be reviewed; it would make sense that any such consideration includes an examination of any knock-on effect on the provisions of the Law in relation to expenditure.

### **Dealing with the results of the referendum**

48. Again, this is an area in which the Commission and the Island as a whole does not have experience under the provisions of the Law. The Law does not make provision for how the Assembly and the public should deal with the results of a referendum. It is also an area in which the Commission does not expect to play a role, once a referendum is held.
49. Nevertheless, consideration of the results of a referendum raises the question of turnout – and whether thresholds should be applied to implementation of the outcome of a referendum. The Venice Commission Code of Good Practice on Referendums (section III. 7) considers *“it is advisable not to provide for a turn-out quorum (threshold or minimum percentage) because it assimilates abstentions to those*

who vote 'no'; or an approval quorum (approval by a minimum percentage of registered voters), since it risks involving a difficult political situation if the draft is adopted by a simple majority lower than the necessary threshold.”.

50. No such threshold has been applied in any referendums held in Jersey; but the Commission is aware that the use of thresholds has been proposed in the past, and is likely to be subject to political debate should referendums be proposed in the future. A threshold was used in the referendum held in Guernsey in 2018, and as the threshold for turnout was achieved, the outcome of the referendum is in the process of being implemented.
51. The Commission has noted the comments of the UK Commission in respect of turnout: namely, “for UK referendums, the default threshold is 50% of total votes cast [although] it is often argued that this is insufficient to mandate major change.”. As parliamentary elections in the UK only require a simple majority, the UK Commission found that “it would be inconsistent to require supplementary thresholds for referendums only.”. The Commission considers the same argument could be applied to Jersey. The UK Commission also reported “supermajority requirements are extremely rare in other mechanisms for political decision-making the UK.”. Again the same could be said for Jersey. Although the Commission is aware of a proposal that the Assembly agree changes to its Standing Orders to require a two-thirds majority in order for changes to the composition of the Assembly to be implemented. The UK Commission has not recommended the use of turnout thresholds in the UK as “there are a number of problems with the use of turnout and electorate thresholds [...]”.
52. From the Commission’s perspective, it would not encourage the use of turnout thresholds, though it understands why the argument is made for their use. Those in favour of thresholds wish to ensure the credibility of the referendum and any outcome that is achieved. It is the Commission’s view, however, that if the work has been done properly in selecting an appropriate topic for the referendum, and the public informed accordingly, the turnout should be high enough to provide a proper indication of the referendum’s result and its credibility. The Commission recommends not holding referendums on topics that are unlikely to generate sufficient public interest. In the words of the UK Commission, “an issue that is suitable for a referendum should inspire significant public engagement, rendering turnout thresholds unnecessary.”.
53. The Commission recognises that thresholds are, ultimately, a matter of political judgement for the States Assembly. It also recognises that voter turnout in general is a political issue as turnout levels are not as high as members would wish them. This raises the question of when a referendum should be held in the Island.

54. The Commission is aware of the argument that it would be preferable for a referendum in Jersey to be held on the same day as the election of States members. This is what happened for 2 of the 3 referendums that have been held in the Island; and it was the view of some people that this should be the case for the proposed referendum on the Bailiff's role as President of the States. The argument for this is that holding a referendum on 'election day' will increase the likelihood of voter turnout.
55. From the Commission's research into this matter, it is aware that there is no hard-and-fast rule as to when a referendum should be held. What is paramount is that it must be clear to the voter what they are voting on. However, there is a risk when holding a referendum on 'election day' that the issues of the election and those of the referendum can merge, thereby reducing or removing the clarity. The UK Commission, when commenting on this point, agreed with the UK Electoral Commission that "*referendums should not normally be held on the same day as other electoral events*", as does the Venice Commission mentioned earlier. It is, therefore, the Commission's view that if an issue is of such importance that it merits a referendum being held, then it should take place separately from an election.

### **Conclusion**

56. The Commission trusts that this report will be of use to States members and the public when considering whether to hold a referendum in Jersey and, if so, how it should be organised. As previously stated, the Commission will review and update the report as it gains further experience and knowledge of referendums both in Jersey and elsewhere.
57. Ultimately, the Island has yet to experience a referendum held under the provisions of the Law. Nevertheless, it is apparent to the Commission from its experiences to date and from its examination of best practice elsewhere that, in the words of the UK Commission, "*careful consideration be given to how [referendums] operate and how they fit within the rest of the democratic system.*". The UK Commission also concluded "*referendums are mechanisms through which final decisions on matters of great importance can be made. They are not in themselves appropriate mechanisms for working out what options should be considered in order to address the widest possible range of concerns and perspectives.*".
58. The UK Commission says referendums "*cannot replace the institutions of representative democracy*". The Commission concurs with that view and would highlight that fundamentally, a decision to hold a referendum should, therefore, not be taken lightly, but after full and careful consideration of the process.

**APPENDIX****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.