

# STATES OF JERSEY



## **PUBLIC ELECTIONS (JERSEY) LAW 2002: RESCINDMENT OF ARTICLE 39A (P.18/2009) – ADDENDUM**

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**Presented to the States on 22nd May 2009  
by Deputy G.P. Southern of St. Helier**

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**STATES GREFFE**

## **PUBLIC ELECTIONS (JERSEY) LAW 2002: RESCINDMENT OF ARTICLE 39A (P.18/2009) – ADDENDUM**

### **Human Rights Questioned**

During the debate on Article 39A in June 2008, I drew attention to the possibility that Article 39A would not be human rights compliant and was open to challenge as an unfair restriction on some individuals' right to vote. Whilst such issues are ultimately to be decided by the courts, where such doubts exist, perhaps legislatures should proceed with caution.

I reproduce here the basis of my original questions along with subsequent research on the issue in support of P.18/2009.

The case starts from the premise outlined in detail below by the UK Parliamentary Joint Committee on Human Rights (Electoral Registration (NI) Bill: Comments Feb 2005) that –

**‘Registration as an elector is a precondition of exercising the right to vote.’**

It follows then that any restriction on registration constitutes a restriction on an individual's right to vote.

The questions that need to be asked are whether restrictions on the ability of those with a disability to be assisted by a candidate over registration constitutes a **disproportionate restriction** on an individual's right to vote, and the extent to which the authority has a **margin of appreciation** to pursue its legitimate and balancing aims.

The challenge to Article 39A is brought under Article 3 of Protocol No. 1: The Right to free elections, and under Article 14: Prohibition of discrimination.

Items A, B and C from Human Rights Practice clearly demonstrate the following –

- Article 3 of Protocol 1 secures the rights of individuals (Item A)
- Article 3 of Protocol 1 can apply to individual candidates and political parties (Item B)
- Disability constitutes a “status” covered by Article 14 and it permits and may even require different treatment for those with special needs (Item C).

### **The human rights implications**

In order to examine the implications of restrictions on the ability to vote, I examine a parallel issue concerning registration introduced in 2002 in Northern Ireland and corrected in 2005.

In its comments on the Electoral Registration (NI) Bill introduced in the House of Commons in February 2005, the Joint Committee on Human Rights set out a convenient summary of the protections afforded on voting rights, as follows –

- 6.6 **Registration as an elector is a precondition of exercising the right to vote.** The Bill therefore engages the right to participate in free elections and to do so without discrimination, rights which are guaranteed by all of the principal human rights treaties to which the UK is a party, including the ECHR.
- 6.7 Article 21 of the Universal Declaration of Human Rights provides that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives”, and that the will of the people “shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”
- 6.8 Article 25 of the International Covenant on Civil and Political Rights similarly provides that every citizen shall have the right and opportunity, without discrimination, to vote at genuine periodic elections.
- 6.9 Article 3 of the First Protocol to the ECHR also guarantees the right to free elections –

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

In order to examine the parallel human rights impact of Article 39A of the Public Elections (Jersey) Law 2002 on the voting process in Jersey today, one has to add the adoption of the Human Rights (Jersey) Law 2000 (commenced December 2006) containing, as it does, Article 14 (Prohibition of discrimination) and Article 3 of the First Protocol (Right to free elections).

For a further update of the human rights implications one must also have regard to Article 29 of the U.N. Convention on the rights of persons with disabilities **[Item D]**.

Whilst the UK Government has yet to ratify this Convention, it is to be noted that it began the ratification process on 3rd March 2009 by laying before Parliament the Explanatory Memorandum and Command Paper for ratification. No reservations have been expressed by the Government at this stage to Article 29; indeed much progress towards the aim of eliminating disability discrimination in the electoral process has already been made under the Disability Discrimination Act (1995) in the UK

The Bill that was the subject of the Joint Committee in effect sought to correct an unforeseen detrimental impact of a prior Act on the ability of certain groups to fully participate in free elections, as described here –

- 6.10 The Bill is a response to the significant fall in the number of registered voters in Northern Ireland. It has been established by the Electoral Commission that this fall in the number registered is due at least in part to the impact of the Electoral Fraud (Northern Ireland) Act 2002. [\[166\]](#) The main reason for the reduction in names was found to be the removal of the “carry forward” facility which applies to the rest of Great Britain. The Electoral Commission’s research also

found that the switch from household to individual registration had “tended to have an adverse impact on disadvantaged, marginalised and hard-to-reach groups. Young people and students, **people with learning disabilities and other forms of disability**, and those living in areas of high social deprivation were **less likely to be registered and encountered specific problems with the new registration process.**”

- 6.11 **In light of the findings of the Electoral Commission about the impact of the Electoral Fraud (Northern Ireland) Act 2002 on the registration of voters, we welcome the Bill as a measure which positively enhances human rights. The impact of the Electoral Fraud legislation on the right to vote generally, and in particular on the right of disadvantaged and marginalised groups, raises concerns about compatibility with the UK’s obligations both under Article 3 Protocol 1 ECHR and Article 14 taken in conjunction with the right to free elections. By providing for the restoration of names to the register the Bill allays the risk of incompatibility with those guarantees.**

In a similar way, it is contended that the introduction of Article 39A to the Public Elections (Jersey) Law in curtailing the ability of candidates to assist voters in applying for a postal vote raises concerns over its compatibility with Jersey’s obligations under Article 3.

### **Disability and voting in the UK**

It is significant that UK public authorities in carrying out their functions are already required under that act to have due regard to the need to –

- Encourage the participation of disabled people in public life; and
- Take steps to meet disabled people’s needs, even if that requires more favourable treatment.

This section examines developments in voting rights for people with disability in the UK, many of which are paralleled in Jersey, and examines the most recent moves to ensure compliance with HR conventions.

### **Article 1 Protocol 3 – Right to vote and election rights**

The European Court in Strasbourg has held (in *Mathieu-Morin -v- Belgium* 1988) that this provision includes ‘the principle of equality of treatment of all citizens in the exercise of the right to vote and to stand for election.’ However, in the 2001 General Election in the UK, research showed that over 70% of polling stations had accessibility problems and in consequence, amendments were made to the Representation of the People Act 1983 to require polling stations to be accessible. **(Disability Rights Commission, Helen Mountfield, DDA Masterclass, Matrix Chambers: 4th May 2006.)**

Colin Barnes, in ‘Disabled People in Britain and Discrimination: A case for anti-discrimination legislation’ (1991) points to a number of studies of what happens in elections which have found that many disabled people are not eligible to vote, simply

because they do not appear on the electoral register (Fry 1987; MIND 1989; Ward 1987).

There are many reasons for this:

Historically, people with mental illness or learning difficulties resident in hospitals (and some in the community) were excluded by the Representation of the People Act 1949, Section 4(3), as being patients and not residents. This ruling was successfully challenged by the 'patients' of Calderstones Hospital in 1979–81. The Representation of the People Act 1983 allowed residents in such hospitals to vote, but only under certain narrowly defined conditions.

Following the Disability Discrimination Act (1995), and under the associated Disability Equality Duty, opinion and practice in the assessment of the capacity to vote of people with learning difficulties has moved substantially away from an automatic assumption that they do not have the capacity. Nevertheless, in its written evidence to the UK Parliamentary Joint Committee on Human Rights in 2008, Scope was still able to give many examples of continuing bad practice.

Recent research confirms that people with learning disability are substantially under-represented at the polls, with fewer of them registered to vote, and proportionally voting than the general population. Keeley reports that lack of information from public authorities and difficulties with assistance for people with disabilities at polling booths may disadvantage people with learning difficulties.

**(Participation in the 2005 general election by adults with intellectual difficulties, Keeley H et al. *Journal of Intellectual Disability Research*, (52) (3), pp.175–181.)**

**The Electoral Office for Northern Ireland produces a clear Information Guide on voting which outlines recent progress in electoral law and practice in the UK. The key points are summarized here:**

Persons with a disability are just as entitled to register as electors and to vote as people without a disability. Their right to do so has increasingly been recognised and on 1st July 2008 **the last remaining legal barrier, the out-of-date law which restricted registration and voting to those with the required mental capacity, ceased to apply.**

Individuals, whatever the effects of their disability, are now **equally entitled to register and to vote and can be assisted to exercise these rights by the provision of the reasonable adjustments** described in this booklet.

If you are resident in Northern Ireland, aged 17 years or over and meet the nationality requirements, you are entitled to register as an elector irrespective of any disability you have. **The electoral registration form is now straightforward and is available in a range of languages other than English. It is also available, on request, in large print and in other accessible formats.** If because of the effects of your disability you are unable to sign the form it can be signed by a witness on your behalf. When this is done you will be registered in exactly the same way as any other elector.

**If you are blind or have a disability which makes it unreasonable to expect you to go in person to your allotted polling station or to vote unaided you are entitled to a permanent absent vote.**

**There are two types of absent vote** and you must decide which is most suitable for you. Where the application is for a **postal vote**, a ballot paper will be posted to you before the election. Alternatively, you can appoint another person to vote on your behalf. This is known as a **proxy vote**.

**If because of blindness or any other disability you cannot mark the ballot paper yourself you are entitled to have it marked for you** either by the presiding officer or by a companion. A companion must be your father, mother, brother, sister, husband, wife, civil partner, son or daughter or a person entitled to vote at the election.

**A large print version of the ballot paper will be displayed** at each polling station to help you if your eyesight is poor. **If you are visually impaired, a device is available at every polling station to help you mark your ballot paper.** If you wish to use it please tell the polling staff when they give you your ballot paper.

Further adjustments currently under consideration include the **colour printing of party emblems on ballot papers** which would be of particular benefit to some visually impaired people.

#### **Article 39A**

In the debate on Article 39A on 10th June 2008, I publicly questioned whether the Article was human rights compliant. Information on the depth and breadth of any HR check performed by the Law Officers' Department and given to a member of the executive (or in this case the Chairman of P.P.C.) is treated as subject to legal privilege, as the Chairman stated in the Assembly (**SoJ Hansard 24th February 2009**) –

**The Deputy of St. Martin of the Chairman of the Privileges and Procedures Committee regarding Article 39A of the Public Elections (Jersey) Law 2002:**

*'Will the Chairman inform Members which, if any, Convention rights are potentially affected by Article 39A of the Public Elections (Jersey) Law 2002 and the reasoning behind the statement of her predecessor in P.65/2008 that the provisions of that Law are compatible with Convention rights?'*

**Connétable J. Gallichan of St. Mary (Chairman of the Privileges and Procedures Committee):**

*'While I am surely not in a position to comment on the reasoning of a previous Chairman of the P.P.C., before my predecessor signed the statement of compatibility, advice was received from the Law Officers' Department that enabled him to be satisfied that the projet was compatible with Convention rights, and that he could therefore sign the statement that appeared in the projet. As Members know, it is usual practice not to disclose the content of legal advice received, and so it would not, therefore, be appropriate for me to do so in this case. I am not aware that any of the Convention rights are potentially affected by this Article, but would remind the questioner that Deputy Southern has lodged a proposition which seeks to repeal the Article in question, and this will be considered in due course by the new P.P.C. which will, I feel sure, seek appropriate advice before commenting on that proposition.'*

Article 39A was brought to the States for debate on 10th June 2008 by the Privileges and Procedures Committee under the Chairmanship of Connétable Derek Gray of St. Clement. The rapporteur in the States was the then Deputy of St. Mary, Juliette Gallichan. It came into force on 31st October 2008, between the senatorial elections and those for Deputies. The Article is as follows –

**39A Candidate or representative not to interfere with application for registration**

- (1) A candidate, or a representative of a candidate shall not –
  - (a) complete, on behalf of a person entitled under Article 38, or assist such a person in completing, any form required to be completed for the purposes of an application under Article 39(4);
  - (b) deliver, or cause to be delivered, to the Judicial Greffier, on behalf of a such a person, any form or supporting documents required for the purposes of an application under Article 39(4); or
  - (c) provide transport for such a person so as to enable the person to make an application in person under Article 39(4).
- (2) Paragraph (1) shall not prohibit a candidate or representative of a candidate providing a person entitled under Article 38 with the form (if any) required to make an application under Article 39(4)(a).

Article 39(4) refers to applications by those eligible under Article 38 (on grounds of disability, absence or commitment) to apply for their name to be included on a register of a postal or pre-poll voters in order to take part in an election.

**What actions were taken by the authorities to mitigate the potential restriction on the ability to vote of people with disability?**

The first point to take into account is that there are 3 bodies who share responsibility for elections –

- PPC – devise the rules, encourage registration and participation through campaign publicity
- Comité des Connétables – keep electoral register, organize polling on the day, collect sick votes, offer advice
- Judicial Greffe – keep postal voting register, publicize postal voting, organize autorisés.

The second point to note is that Article 39A came into force on 31st October 2008 in the short interval between two sets of elections. It restricts the assistance that can be given to potential electors to obtain a postal or pre-poll vote by making assistance rendered by a candidate or his representative illegal. No additional measures were taken in the second of these elections to mitigate for this additional difficulty (SoJ Hansard 10th March 2009) –

**Deputy G.P. Southern of the Comité des Connétables regarding measures to increase postal voting and the investigation of on-line voting in the 2011 elections:**

Will the Chairman outline whether any additional measures were put into place to assist the housebound or elderly to vote by post in the most recent elections for Deputies; whether any measures to increase postal voting are under consideration for the next elections and, if not, why not? Will he further undertake to engage with the Privileges and Procedures Committee to investigate using online voting in the 2011 elections?

**Connétable K.P. Vibert of St. Ouen (Chairman, Comité des Connétables):**

*“No changes were introduced to the established practices for assisting the household or elderly to vote by post in the last elections. No mitigation was in place to counter any potential difficulties with postal voting following Article 39A.”*

Publicity for postal voting arrangements is notoriously poor. Despite the apparently full answer given by the Chairman of PPC, the Constable of St. Mary to the States (SoJ Hansard, 10th March 2009) as follows –

**Deputy G.P. Southern of St. Helier of the Chairman of the Privileges and Procedures Committee regarding the encouragement of postal voting:**

**Question**

Will the Chairman inform members whether additional measures were considered following the enactment of Article 39A of the Public Elections (Jersey) Law 2002 on 31st October 2008 to –

- (a) encourage voting by post especially by the housebound and those with a learning disability;
- (b) inform constituents of the new regulations concerning postal voting;
- (c) display posters advertising a telephone number for those who wished to vote by post,

and if not, why not?

**Answer**

*‘An extensive advertising campaign was undertaken in 2008 to ensure that Islanders were aware of the elections and to encourage them to vote. The campaign, which included 2 inserts in the Jersey Evening Post, drew attention to the facility for postal and pre-poll voting and gave relevant contact information. Adverts also encouraged Islanders to phone their parish hall should they have any questions, and informed them that further information was available at [www.vote.je](http://www.vote.je). Although not all of the points raised by Deputy Southern were necessarily specifically addressed, measures have been in place since the 2002 Law was brought into force for postal votes to be cast by persons unable to attend the polling station. The question is concerned with only Article 39A of the relevant Law and the changes made by that Article were communicated to every candidate in the Elections for Deputy.*

*Staff at the Island’s parish halls were available to answer any queries, and would have been able to assist anyone who was not aware of the regulations concerning postal voting. They would also have notified interested parties of*



*the provision under the law for anyone to request a 'sick' vote on the day of the poll and receive a personal visit from the Autorisé or his designated assistant.*

*All candidates were notified of relevant postal voting procedures by the Deputy Judicial Greffier in a letter dated 6th November 2008. That letter contained the following information relating to Article 39A –*

*If you have any queries in relation to postal or pre-poll voting, please do not hesitate to contact [NAME], the Postal & Pre-Poll Voting Officer, on 441314, or myself on 441383.*

*As a result of this letter all candidates were fully aware of the statutory procedures relating to postal voting and were therefore in a position to advise voters accordingly if asked.*

*I would like to inform members that, the Privileges and Procedures Committee will be considering all voting procedures in the Public Elections Law 2002 in the coming months.'*

**It is clear that there were no additional measures taken to the specific questions in (a), (b) and (c). Candidates were given a contact number for postal voting queries; voters were not.** No mitigation was in place to counter any potential difficulties with postal voting following Article 39A.

The notice of postal voting arrangements which were published in the Jersey Gazette is reproduced in **Item E**.

Paragraph 3 in tiny print requests those who wish to register to obtain a postal vote to **apply by post or in person to the Judicial Greffe**. I consider that this is an inadequate response for those with a mobility problem, those with a learning difficulty, those for whom English is a second language and those with a visual disability.

For those with a mobility problem, it is just as difficult to present yourself at the Judicial Greffe as it is to go and vote in person. If you can get to the Greffe you don't need a postal vote. It is self-negating. Application by post is equally difficult for those with a learning difficulty or intellectual disability, and suffers from the added difficulty that the right to vote costs 32 pence. Those who are visually impaired will in any case not be able to read this notice.

In St. Helier, despite an electoral officer being appointed to assist in the electoral process, he was given no remit to seek or promote postal vote applications. Only in the last week of the Deputies' elections, following a request from candidates, was he permitted to visit the housebound to help with postal voting applications. In total, he assisted with 5 or 6. The Connétable of St. Helier has confirmed in writing (**Item F**) that he would not have been able to cope with a significant proportion of the 291 requests for postal ballots that were requested in total in St. Helier.

*“with one further temporary member of staff for the period following a Nomination Meeting we would be able to visit all those requiring assistance”.*

This additional member of staff was not employed. No mitigation was in place to counter any potential difficulties with postal voting following Article 39A.

Despite the following request from **Deputy R.G. Le Hérissier of St. Saviour** in the debate on Article 39A on 10th June 2008 (SoJ Hansard) –

*'I would like to see much more publicity. I see a programme is being organised at the moment which might eclipse those awful advertisements about Procureurs' elections. I would like to see much more publicity from P.P.C. and the Parishes as to how to go about postal voting because I think the public are going to be rather confused now. They are going to be presented with this form and candidates are going to have to go through this procedure of: "I cannot touch you; I cannot get involved." It is all going to sound terribly sanitised and everything. There really has to be some attempt to (a) publicise the process, and (b) if at all possible, to simplify it; but it must really be pushed home because I think that has to be what will replace the assertive electioneering by Deputies.'*

**It is clear that no such additional publicity was put in place by any of the authorities involved in the electoral process to promote or to assist the disabled or housebound to vote by post following the introduction of Article 39A.**

**How serious an impact does Article 39A have on the ability of people with a disability to vote?**

Here I refer to the speech drafted by Deputy A.K.F. Green of St. Helier which is attached as **Item G**. Deputy Green is the Chairman of Headway, the Brain Injury Charity in Jersey.

He quotes the Danish representative of the Confederation of Brain Injured Families in Europe as stating categorically **that the single biggest obstacle to voting, for those with a brain injury, was the inability to complete forms.**

Deputy Green's speech neatly sums up the problems that Article 39A engenders. Colin Barnes (*op cit*) points to the need for assistance highlighted by some of the research on postal voting for those with a disability –

*'Research shows that some find applying for postal or proxy votes a daunting prospect, others do not know how to go about it, find that the process of application is too complex' (Fry 1987).*

As pointed out above, 'registration as an elector is a precondition of exercising the right to vote.' In effect, a person with disability, who needs to vote by post, has to ensure that his name is on 2 registers.

The fact is that for those who need to vote by post for reason of disability or otherwise, their ability to receive legitimate and timely assistance in getting their name inscribed on the required register is curtailed by Article 39A.

Both application forms for the electoral register and the postal voting register are included as **Items H and I**. Both forms are of a similar standard in terms of legibility and comprehensibility; and yet following Article 39A, each is treated very differently in terms of the assistance that can be offered by a candidate, or potential candidate.

In order to be able to *vote in person* in the election, a constituent must be **on the electoral register of their parish or district** when the election is called. Registration can take place up to midday of the day on which an election is called. For a potential candidate or political party –

- ❖ **Assistance in completing the voter registration form** is *legal* and positively encouraged.
- ❖ **Delivering or causing the delivery of voter registration forms to the Parish Hall** remains legal and is seen as helpful.
- ❖ **Provision of transport to enable a voter to attend the Polling Station** on election day **remains perfectly legal**.

In order to vote *by post* in an election, the constituent must be **on the register of postal and pre-poll voters**. The registration process only starts on the day after an election is called. For a candidate, or political party –

- ❖ **Assistance in completing the postal voting application form** is *illegal* under Article 39A(1)(a).
- ❖ **Delivering or causing the delivery of forms to the Judicial Greffier** is *illegal* under Article 39A(1)(b).
- ❖ **Provision of transport to enable a voter to attend the Judicial Greffe** to register their pre-poll or postal vote is *illegal* even on election day before noon.

#### **Sick votes**

Finally, to demonstrate the folly of this particular Law, one only has to examine what happens in the few days after applications for postal voting close. Then, a candidate can happily and legally phone up the Town hall, in front of the voter, and request a ‘sick vote’ on polling day. A parish official will arrive in person to administer the ballot at home. My understanding in the smaller parishes is that candidates do not bother with postal votes; they just call up for sick votes. Such provision in St. Helier with 291 postal votes would not have been possible.

For those who wish to vote by post, the fact that the rules on obtaining assistance are different for each of the 2 registers is not of itself discriminatory. However, for those with a disability who can **only** vote by post, the placing of additional barriers to the registration process by rendering assistance by the candidate illegal is discriminatory. It runs completely contrary to the moves being taken in the U.K. to increase the accessibility of the voting process.

The Disability Equality Duty contained within section 3 of the Disability Discrimination Act 2005, which came into force in December 2006 requires that public authorities have due regard in carrying out their functions, inter alia, to –

- The need to promote equality of opportunity between disabled persons and other persons.
- The need to take steps to take account of disabled persons' disabilities even where that involves treating disabled persons more favourably than other persons.
- The need to encourage participation by disabled persons in public life.

(Source: Voting and the Disability Discrimination Act, 25th October 2005, Sense, RNIB & Scope)

The first factor in this margin of appreciation might be the level of mitigation adopted to create parity by other means. As has been demonstrated above, there was no such mitigation.

Whether this discrimination is judged to be **disproportionate** depends on the **margin of appreciation** permitted to the authority in pursuit of other legitimate aims.

### **Margin of appreciation**

In justification of the limitation of the right to vote contained in Article 39A, the Jersey authorities, especially PPC, appear to claim that it has done so in pursuit of three other legitimate aims in relation to the integrity of the voting process –

- To prevent undue influence in voting.
- To ensure the secrecy of the ballot.
- To prevent fraud.

Since these aims are common to all democratic jurisdictions, one might legitimately ask whether similar Regulations exist elsewhere. Following a statement to the States of Jersey on 28th April 2009, explaining his decision not to call for a fresh election in St. Helier No. 2 District (**Item J**), the Attorney General had the following to say in response to questions (SoJ Hansard) –

#### **Deputy S. Pitman:**

*'The Attorney General said in his statement that the United Kingdom legislation does not have provisions similar to Article 39A. Could he confirm if he knows this is the case for any Commonwealth country?'*

#### **The Attorney General:**

*'I rather suspect this is an area where I have been asked questions or Members have tried to ask me questions previously and I have said it would not be appropriate, but I will answer in this case to say **I am not aware of other Commonwealth countries which have similar legislation.**'*

The Law Draftsman also confirmed that she was not aware of any other similar legislation –

*'Any consideration or research of the rules applicable in other jurisdictions was not reflected in my instructions.'*

It appears that the approach to pursue the 3 aims of government above along the lines adopted by the Jersey authority is unlikely to be found elsewhere.

## **Prevention of undue influence**

The contribution made by Senator Vibert, then a member of PPC and therefore one who helped to bring this amendment to the States, demonstrates the confusion that surrounded the debate about what Article 39A entailed. He states clearly that Article 39A is justified to prevent undue influence –

*‘Deputy Southern made a spirited defence of collecting postal votes. From what I could understand, the main thing was encourage voting, which I totally agree with but not at any cost. If he wants to encourage voting I am sure handing out £1 notes or £10 notes to voters might help but that would be bribery. That would be undue influence. What this amendment is seeking to do is to ensure there is not any undue influence.’*

The then Minister of Education completely misunderstands the concept of undue influence.

The Appendix to the Electoral Commission’s Code of conduct on postal voting (**Item J**) defines it thus –

### **Undue Influence**

A person is guilty of undue influence if they directly or indirectly, make use of or threaten to make use of force, violence or restraint, or inflict or threaten to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. A person may also be guilty of undue influence if they impede or prevent the voter from freely exercising their right to vote.<sup>4</sup>

The Senator obviously did not understand the phrase. There can be no question of undue influence over an application form.

The Attorney General laid the issue of undue influence to rest as a justification for 39A when responding to questions on 28th April 2009 –

### **Deputy G.P. Southern:**

*‘The Attorney General talked about the Representation of the People Act and talked about where votes have been obtained by bribery, treating or undue influence. Will he clarify for Members that undue influence under the United Kingdom law means threatening people to vote for you and that has not happened and is not the same as 39A, which is all to do with helping people obtain a postal vote?’*

### **The Attorney General:**

*‘I think it is quite clear Article 39A is not to do with undue influence’.*

## **Defending the integrity of the ballot: secrecy**

Senator Vibert was obviously under the impression, as were many members, that Article 39A is concerned with the ballot paper when he said in the debate –

*‘What we need to do is protect the integrity of the poll. It really is a case of it should be done in secret and without interference. Not that it might happen*

*but we should not allow a candidate the ability to stand over a voter with a postal vote.'*

This sentiment was repeated by many members, not least the current Chairman of PPC, when she referred to the UK Code of practice (Item 7) –

*'The Chief Executive of the Electoral Commission explained that the aim of the code was to ensure that the standards of behaviour expected at polling stations also apply in the community so that postal voters can have confidence in the system. In other words, **all electors, whether voting in person or by post should be assured the same degree of confidentiality and the same freedom from interference at the point of casting their vote.***

***Would anyone really expect candidates or their canvassers to be allowed to enter the polling booth with a voter? I think not. Then why should we countenance their presence at the time of completing a postal vote? This new Article would make it illegal for a candidate to assist an elector in completing the application form for a postal or pre-poll vote.'***

**This statement can, at best, only be described as misleading. It conflates the polling booth and the casting of votes with assistance with the postal application request.**

Once again, to pretend that the two are comparable and that Article 39A protects the integrity and privacy of the ballot is completely false.

### **Prevention of fraud**

The current Chairman of PPC in presenting Article 39A made several comparisons with the situation in the U.K. where postal voting fraud has been proven, and the resulting Code of Conduct (**Item K**) She implied that 39A was brought forward to prevent fraud –

*'Following the scandal of postal ballot fraud in the UK local elections of 2004 the Electoral Commission produced a code of conduct for political parties, candidates and canvassers, which provides guidance on the handling of postal vote applications and postal ballot papers and advises candidates and canvassers, among other things,*

- *not to handle or help voters complete their postal ballot papers,*
- *to encourage voters to post or deliver ballot papers themselves, and*
- *not to solicit completed postal ballot papers from electors.*

*The code, although voluntary, has been widely accepted in 2005 and in 2006 the 3 main political parties reconfirmed their adoption of the code prior to the May elections.'*

**(SoJ Hansard, 10th June 2008)**

All three of the points raised by the Chairman of PPC are completely irrelevant to the impact of Article 39A. It has no bearing on ballot papers whatsoever, and no impact on the potential for postal ballot fraud at all. The prevention of fraud cannot be linked in any way to the purpose of 39A. Article 39A does not refer to ballot papers but to the register of postal voters.

Where the postal application form is referred to in Section 4 of the U.K. Code of conduct, 4 of the 5 items refer to ‘bespoke’ forms containing an address other than that of the Electoral Registration Officer for the return of application forms. This simply does not happen in Jersey, where the Judicial Greffe produces the only legitimate postal voting application forms, containing their own address.

The fifth item advises candidates or agents who are given a completed ballot paper to forward it promptly. Once again this has nothing to do with Article 39A.

Article 39A cannot be justified on the grounds that the limitation on the right to vote it contains is required to prevent postal ballot fraud.

The matter of “interference” with the poll and potentially disputed elections is more than adequately dealt with in Parts 10 and 11 of the Public Elections (Jersey) Law, Articles 57 to 68. Undue influence is dealt with by Article 62(1)(c) and interference with the ballot by Article 64. It is noteworthy that the far more serious matters such as inducements and threats, interference with the poll and voting without the right are subject to fines on level 3 on the standard scale as is the case for the much less serious breaches of Article 39A. The fact is that there are already measures contained in the Public Elections (Jersey) Law 2002 to control interference with the ballot without resort to Article 39A.

### **Potential restriction on canvassing**

The approach taken by Senator Vibert calls into question the ability of candidates and parties to canvass the vote effectively and has the potential to restrict this activity unfairly. The Senator stated in debate of 39A –

*‘We should not allow people who, as the Constable said, may be vulnerable. I am sure we have all had the experience of people asking: “Who should I vote for?” We should not be putting candidates in that position and we should not be taking advantage of people who ask those questions.’*

This followed on the back of the inability to distinguish between assistance with an application for a postal vote and interference with the ballot paper demonstrated earlier. When asked ‘who should I vote for?’ by a constituent, a candidate must surely be allowed to say ‘I would prefer you to vote for me’ or words to that effect, provided that the ballot paper is not present.

This potential for restricting the ability of candidates to canvas is further compounded by interpretations of the impact of Article 39A given to the States by the Attorney General in response to questions, as follows –

*Will the Attorney General assist members in defining the scope of Article 39A of the Public Elections (Jersey) Law 2002 by giving his opinion as to whether the following acts of assistance by a candidate or his/her representative are proscribed by the Article –*

- *Informing the constituent of their electoral number so that it can be filled in on a request for a postal vote?*
- *Offering a lift on polling day to a constituent so that they might vote:*
  - *as an ordinary voter*
  - *as a person with a postal vote who now wishes to vote in person?*

*'The first of the illustrations put to me – informing the constituent of their electoral number so that it can be filled in on a request for a postal vote – seems to me to lie within the terms of the offence. The prescribed form does contain space for the electoral number to be completed. It is then followed by the words in parenthesis "(if known)". One can see that informing the voter of the electoral number could fall within the ambit of assisting in the completion of the form, albeit the information provided was not essential to that application.'*

This surely illustrates the unfair and disproportionate nature of Article 39A. It appears to make the passing on of a voter's electoral registration number to the voter illegal. This is a piece of information known to all candidates who have a copy of the register, which in many jurisdictions is sent to voters as proof of their registration on a card confirming that they have the right to vote, along with where their polling station is. Furthermore, there are many candidates who send out the registration number on their election literature or separate polling card as a matter of routine.

- 'Offering a lift on polling day to a constituent so that they might vote:*
- *as an ordinary voter*
  - *as a person with a postal vote who now wishes to vote in person,*

*is not an offence under Article 39A. I express no view as to whether any other offence might have been committed.'*

It is interesting to note that the A.G. here draws no distinction between the 2 cases. In the latter case the voter has to take his postal ballot with him in order to prove that he is not voting twice. Article 39A makes illegal the giving of a lift to a voter to the Judicial Greffe to obtain a postal or pre-poll vote. The giving of a lift to deliver this vote is, however, not illegal. Once again Article 39A appears to be badly directed. It gives greater importance to giving assistance to a voter obtaining a postal vote than it does to actually registering that vote, and more surprisingly to any interference with the ballot.



### Who can rely on Article 3 of Protocol No.1?

**17.005 Individual rights secured.** Article 3 of Prot. No.1 secures individual rights. Any suggestion that its terms are such as to operate solely between states was unequivocally rejected by the Court in *Mathieu-Mohin and Clerfayt v Belgium*.<sup>9</sup>

Such a restrictive interpretation does not stand up to scrutiny. According to its Preamble, Protocol No.1 ensures ‘the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention’; further, Article 5 of the Protocol provides: ‘as between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 ... shall be regarded as additional Articles to the Convention’, all of whose provisions—including Article 25—‘shall apply accordingly’. Moreover, the Preamble to Protocol No.4 refers, *inter alia*, to the ‘rights and freedoms’ protected in ‘Articles 1 to 3’ of Protocol No.1. Nor do the *travaux préparatoires* of Protocol No.1 disclose any intention of excluding the operation of the right of individual petition as regards Article 3, whereas for a long time the idea was canvassed—only to be finally abandoned—of withholding the subject from the Court’s jurisdiction. The *travaux préparatoires* also frequently refer to ‘political freedom’, ‘political rights’, ‘the political rights and liberties of the individual’, ‘the right to free elections’ and ‘the right of election’.

**Political parties.** It must be assumed that political parties can claim rights under Art.3 of Prot. No.1. This was not contested in *The Socialist Party v Turkey*,<sup>3</sup> although neither the Court nor Commission found it necessary to determine the complaint under Art.3 of Prot. No.1, finding that the dissolution of the communist party constituted a violation of Art.11. In *The Liberal Party, Mrs R and Mr P v United Kingdom*,<sup>4</sup> the Commission found it unnecessary to determine whether a political party could claim to be a victim, since the matters raised by the latter two applicants were identical to those complained of by the Liberal Party. However, it referred in its decision to *X and Church of Scientology v Sweden*<sup>5</sup> where it had expressed the opinion that the interests of a church were so closely related to those of its members, that a church should be permitted to exercise rights under Article 9. In that case, the Commission held that: “[w]hen a church lodges an application under the Convention, it does so in reality, on behalf of its members. It should therefore be accepted that a church body is capable of possessing and exercising the rights contained in Article 9(1) in its own capacity as a representative of its members”. The same reasoning could apply equally to the role of political parties as representatives of their members.<sup>6</sup>

17.007

**14.034.2 Disability** Although the case law on the subject is not entirely clear, it seems likely that Art.14 prohibits differences in treatment based on disability and that it is a status attracting special protection.

In *McIntyre v United Kingdom*<sup>7</sup> the claimant, a disabled student, argued that it was contrary to Art.14 taken with Art.2 of Prot. No.1 that she could not attend classes on the first floor of her school. The government submitted that physical disability was not a “status” for the purposes of Art.14. The Commission considered it did not need to decide the point, because the difference in treatment was justified in any event: the local education authority had been entitled to conclude that installing a lift would be disproportionately expensive, and it had taken other steps to help the claimant.

But in the light of developments in E.C. and international law since this case was decided, there can be little doubt that disability constitutes a “status”.<sup>1</sup> In *B v Secretary of State for Work and Pensions*,<sup>2</sup> the Court of Appeal said: “Mental capacity, although not listed in Art.14, is arguably at least as sensitive a personal characteristic, in relation to discrimination, as race or sex.”

Art.14 permits, and may even require, that people with special needs are given different treatment. In *A v Essex County Council*<sup>3</sup> the Court of Appeal rejected a complaint that the claimant, a gravely disabled child, should have been allowed to remain in the mainstream education system: “To have treated A like any other child would have been entirely wrong. It was right and necessary to treat him differently from other children and in that sense to discriminate, albeit in his favour and not against him.”

**EXTRACT FROM:  
U.N. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

**Article 29 – Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- a. Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
  - i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
  - ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
  - iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- b. Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
  - i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
  - ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

## JERSEY GAZETTE

## PUBLIC NOTICES



Royal Court of Jersey  
Judicial Greffe  
PUBLIC ELECTIONS  
(JERSEY) LAW 2002

AND  
REFERENDUM (ADOPTION OF CENTRAL  
EUROPEAN TIME) (JERSEY) ACT 2008  
Election for Senators and Connétables -  
15th October 2008  
Referendum on Central European time -  
15th October 2008  
Postal and Pre-poll Voting

- Pursuant to Article 36 of the Public Elections (Jersey) Law 2002 ("the Law"), a person entitled to vote at a public election is entitled to vote by post or cast a pre-poll vote before polling day if that person -
  - is likely to be out of the Island during the hours of polling (between 8.00 a.m. and 8.00 p.m.); or
  - has commitments, or a disability, that would prevent him or her from attending personally at the polling station on polling day.
 Identical provisions apply in relation to voting at the referendum.
- Any elector entitled to vote at the forthcoming elections for Senators and Connétables or the referendum on the 15th October 2008, who for any of the reasons given above wishes to vote by post or cast a pre-poll vote should make application to the Postal & Pre-Poll Voting Officer, Judicial Greffe, Royal Court House, Royal Square, St. Helier, JE1 1JG, to have his or her name inscribed in the register of postal and pre-poll voters.
- An application to be registered as a postal voter may be made by post or by attending, in person, at the Judicial Greffe. An application to register as a pre-poll voter and to cast a pre-poll vote must be made by attending, in person, at the Judicial Greffe.
- Applications to be registered as a postal or a pre-poll voter should be made between 9.00 a.m. - 1.00 p.m. and 2.00 p.m. - 5.00 p.m. on any day other than a Saturday or a Sunday by the relevant closing date and time set out below.
- An application for registration as a postal voter must be made by no later than 12.00 noon on Friday, 10th October, 2008. If the postal voting papers are to be sent to an overseas address the application must be made in sufficient time so that those papers can be sent to the voter and the voter is able to return the completed ballot paper and other documents in the "pre-addressed envelope" to arrive at the offices of the Judicial Greffe by no later than noon on Tuesday, 14th October, 2008.
- An application for registration by a person wishing to cast a pre-poll vote must be made by no later than 5.00 p.m. on Monday 13th October, 2008.
- A separate application is required in respect of each elector wishing to vote by post or cast a pre-poll vote and each application must -
  - be in writing and be signed by the elector personally;
  - give the elector's full name and address as inscribed in the relevant Parish electoral register, and, in the case of an application to vote by post, the address, if different from the address on that register, to which the ballot paper should be sent; and
  - in the case where the application is made on the basis that the elector is likely to be out of the Island during the hours of polling (namely between 8.00 a.m. and 8.00 p.m. on the 15th October, 2008), state the dates and times or probable dates and times of the elector's absence from the Island; or
  - in any other case, either state the nature of the commitments or disability that would prevent the elector from attending personally at the polling station on polling day.

- Application forms which may be used to apply for registration as a postal or pre-poll voter are available free of charge from the Judicial Greffe, all Parish Halls, the Public Library and States Book Shop, and can be downloaded from either of the following website addresses:- [www.parish.gov.je](http://www.parish.gov.je) or [www.judicialgreffe.gov.je](http://www.judicialgreffe.gov.je).
  - An elector who applies in person at the Judicial Greffe for registration as a pre-poll voter must bring with them some form of identification such as a passport, driving licence or bank card.
  - An elector whose name is inscribed on the register of postal and pre-poll voters is disqualified from voting in person at the polling station on election day.
- Advocate P Matthews, Deputy Judicial Greffier,  
Judicial Greffe, Royal Court House,  
Royal Square, St Helier, Jersey JE1 1JG
- Dated this 23rd day of September, 2008.

30th September

- Application forms which may be used to apply for registration as a postal or pre-poll voter are available free of charge from the parish offices, the Jersey Library and the Judicial Greffe and can be downloaded from either of the following website addresses:- [www.parish.gov.je](http://www.parish.gov.je) or [www.judicialgreffe.gov.je](http://www.judicialgreffe.gov.je).
  - An elector who applies in person at the Judicial Greffe for registration as a pre-poll voter must bring with them some form of identification such as a passport, driving licence or bank card.
  - This notice is made pursuant to Article 39(2) of the Law.
- Advocate P Matthews  
Deputy Judicial Greffier

11th November

## PUBLIC NOTICES



Royal Court of Jersey  
Judicial Greffe  
PUBLIC ELECTIONS  
(JERSEY) LAW 2002

POSTAL AND PRE-POLL VOTING  
Election for Deputy in the following Electoral Districts:-  
**St. Brelade**  
Vingtaines de Noirmont et du Coin (No. 1 District)  
Vingtaines des Quennevais et de la Moye (No. 2 District)  
**St. Clement, St. Helier**  
Cantons de Haut et de Bas de la Vingtaine de la Ville (No. 1 District)  
Cantons de Bas et de Haut de la Vingtaine du Mont-au-Prêtre (No. 2 District)  
Vingtaines du Rouge Bouillon, du Mont-à-l'Abbe et du Mont Cochon (No. 3 District)  
**St. John, St. Lawrence, St. Martin, St. Mary, St. Peter, St. Saviour**  
Vingtaine de la Petite Longueville (No. 1 District)  
Vingtaine de Sous l'Eglise (No. 2 District)

- Pursuant to Article 36 of the Public Elections (Jersey) Law 2002 ("the Law"), a person entitled to vote at a public election is entitled to vote by post or cast a pre-poll vote before polling day if that person -
  - is likely to be out of the Island during the hours of polling (between 8.00 a.m. and 8.00 p.m.); or
  - has commitments, or a disability, that would prevent him or her from attending personally at the polling station on polling day.
- Any elector entitled to vote at the forthcoming election for Deputies in one of the above electoral districts on the 26th November, 2008, who for any of the reasons given above wishes to vote by post or cast a pre-poll vote should make application to the Postal & Pre-Poll Voting Officer, Judicial Greffe, Royal Court House, Royal Square, St. Helier, JE1 1JG, to have his or her name inscribed in the register of postal and pre-poll voters.
- An application to be registered as a postal voter may be made by post or by attending, in person, at the Judicial Greffe. An application to register as a pre-poll voter and to cast a pre-poll vote must be made by attending, in person, at the Judicial Greffe.
- Applications to be registered as a postal or as a pre-poll voter should be made between 9.00 a.m. - 1.00 p.m. and 2.00 p.m. - 5.00 p.m. on any day other than a Saturday or a Sunday by the relevant closing date and time set out below.
- An application for registration as a postal voter must be made by no later than 12.00 noon on Friday, 21st November, 2008. If the postal voting papers are to be sent to an overseas address the application must be made in sufficient time so that those papers can be sent to the voter and the voter is able to return the completed ballot paper and other documents in the "pre-addressed envelope" to arrive at the offices of the Judicial Greffe by no later than noon on Wednesday, 26th November, 2008.
- An application for registration by a person wishing to cast a pre-poll vote must be made by no later than noon on Monday, 24th November, 2008.
- A separate application is required in respect of each elector wishing to vote by post or cast a pre-poll vote and each application must -
  - be in writing and be signed by the elector personally;
  - give the elector's full name and address as inscribed in the relevant parish electoral register, and, in the case of an application to vote by post, the address, if different from the address on that register, to which the ballot paper should be sent; and
  - in the case where the application is made on the basis that the elector is likely to be out of the Island during the hours of polling (namely between 8.00 a.m. and 8.00 p.m. on the 26th November, 2008), state the dates and times or probable dates and times of the elector's absence from the Island; or
  - in any other case, either state the nature of the commitments or disability that would prevent the elector from attending personally at the polling station on polling day.

Parish of St. Helier  
Town Hall  
PO Box 50  
St. Helier  
Jersey  
JE4 8PA

To whom it may concern

I have been asked to state the capacity to which the Parish is “unable to communicate to all its Parishioners” the advice that those who are unable to attend the polling station on election day are able to get a postal vote, and, “the capacity to which the Parish electoral officer would be able to cope with attending to those who could not fill in an application for a postal vote and/or deliver it.”

My response is as follows:

The Public Elections Law requires the Greffe to place a notice in the Gazette on 2 different days stating that anyone who cannot attend the Polling Station in person on the day due to a) is out of the island, b) has commitments on Polling day, c) a disability, can either have a pre-poll or postal vote. In addition, Parish officials also place a notice in the Gazette notifying electors of the election and of the opportunity to register for a postal or pre-poll vote.

Clearly not every elector will buy a JEP, read it, or even know where in the paper this type of notice will appear.

The Parish of St. Helier has the additional resource of an Electoral Officer who will use all possible means to explain electoral procedures, including the Parish website and an occasional newsletter. It is hoped that in future this officer will arrange for the production of polling cards which would indicate, as well as such information as the elector’s name, address, voting number, polling station, etc., the fact that they can register a pre-poll or postal vote if qualifying as above.

The Parish has more than 15,000 potential voters; however, **the Electoral Officer has informed me that with one further temporary member of staff for the period following a Nomination Meeting we would be able to visit all those requiring assistance, i.e. to “attend” (in person) “to those who could not fill in an application for a postal vote and/or deliver it.”**

Simon Crowcroft  
*Connétable de St. Helier*

## ITEM G

**Deputy A.K.F. Green of St. Helier**

**Draft speech for debate on P.18/2009: Public Elections (Jersey) Law 2002: rescindment of Article 39A**

**Please note that this draft speech is released in advance and may only be used or published in its entirety and not in parts.**

Yet again I find myself with a dilemma: there is no way that I can ever endorse the breaking of any Law. As a community we need rules and Laws to ensure that we can live together in harmony, thus I could never condone law-breaking as a way of changing a bad Law.

That said, the Public Elections (Jersey) Law 2002, Article 39A is wrong, very wrong. Whilst I accept it may have been introduced with the best of intentions, but what has actually been achieved is the disenfranchising of many of the already disadvantaged members of our community.

I believe the spirit of Article 39A was to prevent undue influence in the voting process; what utter nonsense, how does helping a person fill in an application for postal vote weeks in advance of the poll influence voters? What has far more influence is driving someone to the polling station on the day of the election. This is allowed! Where is the common sense in this?

At a time when we, as a government, wish to encourage political participation and voting, we are actually making it harder for many in society to vote. Can you imagine how difficult it is for those who are already struggling in life to admit to not being able to complete this form, and having done so, being told by the candidate or his agent: I can't help you? That person then has to admit their problem to yet another person and ask for help again, having been refused once! How demeaning and embarrassing can we make it? It's no wonder less and less people get involved and vote.

At the beginning of April this year, I hosted here in Jersey the annual general assembly of BIF (that is the Confederation of Brain injured Families in Europe) and it may interest members to know that we have a representative who sits on the European Disability Forum Board; he is the Danish representative of BIF, part of his role is to feed information to and from the European Disability Board.

On this occasion, that Board asked him to explore with members what was it that prevented disabled people, particularly those with complex needs, from voting. Believe it or not, the overwhelming consensus was that it was completion of forms, not access or transport, but the completion of forms, or more appropriately the lack of the skill to complete the forms that prevent these people from voting!

It is for this reason that Article 39A is wrong! Wrong! Wrong. I will be supporting the amendment.

**Application for inclusion of name on the electoral register**

FORM 2 Article 7(4)(c) of the  
Public Elections (Jersey) Law 2002

**To: The Connétable,  
Parish Hall,  
Parish of .....insert name of Parish**

The Parish is registered with the Jersey Data Protection Authority and all information is collected and used in compliance with the Data Protection (Jersey) Law 2005 for the purposes of electoral register and jury service administration.

**Address:**

  
  
  

**Parish**  
**Post Code**  
**Telephone**

*Note. This form must be filled in with your details (and then sent to the Parish Office) if you are entitled to be registered as an elector (see the notes at the end of this form). More than one person resident at the same address may be included on this form, if there is space. But please remember that every person included on the form must sign it.*  
If there are more than four persons entitled to be registered as an elector at this address please obtain additional form(s) from your Parish Hall.

**I apply for inclusion of my name on the electoral register for the electoral district in which I live.  
I am ordinarily resident at the above address.**

Please complete using **black ink** and CAPITAL LETTERS. Check your address/postcode are correct and amend if necessary. Return this form as soon as possible to your Parish Hall.

	1 <sup>st</sup> Elector	2 <sup>nd</sup> Elector	3 <sup>rd</sup> Elector	4 <sup>th</sup> Elector
My surname is				
I prefer to be addressed as <small>(title (e.g. Mr, Mrs, Miss, Ms, Dr))</small>				
My forenames are, in full				
My maiden name is <small>(insert your maiden name, if any, if it is different from your surname above)</small>				
I was born on <small>(date of birth - enter day/month/year)</small>	DD / MM / YYYY	DD / MM / YYYY	DD / MM / YYYY	DD / MM / YYYY
My residence qualification is <small>(insert "A" or "B", depending on whether option A or option B in note 2 applies)</small>				
My name does/does not appear on another electoral register in Jersey, and that is in respect of the following address <small>(cross out either "does" or "does not" and if your name does appear on another register, state for which address)</small>	'does' <small>(enter address)</small>	'does' <small>(enter address)</small>	'does' <small>(enter address)</small>	'does' <small>(enter address)</small>
	'does not'	'does not'	'does not'	'does not'
I declare that the information given in this application about me is true. <b>Signature</b>				
Date when signed				
The following information is requested for the completion of the jury service list. It is not compulsory and should it not be entered, your name will automatically be included on that list. In any event, your name will not be excluded from the electoral register.				
My Occupation is				

Instructions to the applicant (see over)

For Office use only:-	Ref. R02/08
Date ballot paper sent.....	
Ballot paper number .....	

**ELECTION FOR CONSTABLE OF ST HELIER**

The Public Elections (Jersey) Law 2002 allows people to vote by post or to vote before polling day in certain circumstances.  
Please complete one of the first three sections of this form whichever is appropriate.

**1 – Sickness or Disability**

I cannot attend the polling station on 9<sup>th</sup> January, 2008, because I have a sickness or disability. (Give brief description)

.....

.....

**2 – Absence**

I will be out of the Island between .....and ..... and cannot vote in person on 9<sup>th</sup> January, 2008.

**3 – Commitments**

I cannot attend the polling station on 9<sup>th</sup> January, 2008, due to the following commitments:

.....

.....

Please print your name:

Mr/Mrs/Miss.....  
(Block letters- Full Christian name(s) and Surname)

Please print your full address:

.....

.....

Post Code.....

Contact telephone number (in Jersey) .....

I would like my name to be added to the register of postal voters for this election and the necessary ballot paper sent to me at:

Please print the full postal address to which the documents should be sent, if different from the above:

.....

.....

Contact telephone number (where ballot papers are to be sent) .....

Signed..... Date:.....

Electoral number ..... Vingtaine / District .....

Please return this form to: **Mrs Nicola Southouse, Postal and Pre-Poll Voting Officer, Judicial Greffe, Royal Court House, Royal Square, St Helier, JE1 1JG.**

All postal ballots must be returned by noon on 8<sup>th</sup> January, 2008. This form may also be used if you are unable to vote on polling day and wish to attend the Judicial Greffe to cast a pre-poll vote in person. Please bring with you some form of identification. Please also note Christmas and New Year opening times.

Please read the Important Notice on the reverse of this form



**STATEMENT TO BE MADE BY H.M. ATTORNEY GENERAL  
ON TUESDAY 28th APRIL 2009**

**Statement under Standing Order 17(2) regarding the Election in St. Helier No. 2**

I have been asked by some members and by members of the public whether I will be challenging the results of the Deputies' elections in No. 2 District of the Parish of St. Helier, held last November, on the grounds that election offences have been committed.

Article 57 of the Public Elections (Jersey) Law 2002 ("the Law") is in these terms:

*"Application to Royal Court*

- (1) *Every case of a disputed Public Election shall be dealt with by the Royal Court.*
- (2) *Any person, whether or not a candidate in an election, may dispute a Public Election by making application to the Royal Court, being an application on Oath setting out the grounds for the dispute and made before the end of the period of six months following the day that has been fixed for delivering the returns to the Royal Court."*

In my opinion, it would be appropriate for the Attorney General to make an application under Article 57 if he were satisfied that he had the evidence to support it and that it was in the public interest to do so. Having the evidence is obviously critical for without it, no such application would be ventured. In addition, however, I do not consider that there would be any, or any sufficient, public interest in an application being made, if it is clear that the outcome of the election would not be affected by the application.

The purpose of an application under Article 57 must ultimately be to seek a remedy under Article 60 or Article 61 with a view to unseating a candidate or candidates who has or have been elected. Although that purpose will always be pursued where what is sought is the declaration of a vacancy under Article 61(2), the same is not true where Article 60 applies, which relates to the discounting of numbers of votes. The relevant part of Article 60 is as follows:

*"If the Royal Court upholds a dispute that turns on any of the following circumstances, it shall order that the relevant return be amended by subtracting from the number of valid votes the number of votes (if any) cast by persons in those circumstances –*

- (e) *that a person recorded his or her vote in a manner contrary to the requirements of this Law."*

The election offences which have been admitted are contraventions of Article 39A of the Law in relation to postal voting. The exact number of contraventions relevant to any such application would have to be established by evidence tendered in the case in question.

Article 60 of the Law is not in some respects dissimilar to the United Kingdom provision in Section 166(1) of the Representation of the People Act, 1983, which provides:

*“Where on a Parliamentary election petition claiming the seat for any person, a candidate is proved to have been guilty by himself, or by any person on his behalf, of bribery, treating or undue influence in respect of any person who voted at the election there shall, on a scrutiny, be struck off from the number of votes appearing to have been given to the candidate one vote for every person who voted at the election and is proved to have been so bribed, treated or unduly influenced.”*

The United Kingdom legislation does not have provisions similar to Article 39A, and I refer to the provision from the Representation of the People Act as analogous to the provisions of Article 60.

In my view the effect of the election offence under Article 39A is that the voter exercising the postal vote has cast that vote in circumstances in which it is recorded in a manner contrary to the requirements of the Law within the meaning of Article 60(e). The result is that the relevant candidate’s tally of votes stands to be reduced, even if it be the case that the voter in question did not in fact cast the vote in the candidate’s favour.

Deputy Southern and Deputy Shona Pitman have pleaded guilty to offences under Article 39A. Accordingly, the tallies of votes cast for them would be reduced by the numbers of offences which they could be shown to have committed. The tally of their fellow Jersey Democratic Alliance candidate, Deputy De Sousa, would only be reduced if she could be shown to be an accessory to the offences contrary to Article 67, or had committed offences herself.

I have seen no evidence against Deputy De Sousa which would justify any such conclusion, and the fact that she is, like Deputies Southern and Shona Pitman, a member of the JDA is, in my view, immaterial.

There is nothing in the Law which suggests that wrongdoing committed by a particular candidate can affect a fellow candidate from the same political party. I think it would need express language to produce such a result and there is no such language in the Law.

It is to be noted that the wider power to declare a vacancy or declare the entire election void is prescribed in Article 61 of the Law, but that power is based on three different types of circumstance, none of which in my view apply in this case.

Deputy Southern and Deputy Shona Pitman would respectively need to have 253 and 186 votes discounted in order to be left with an equal total to that of the fourth placed candidate. However they both appear to have given candid confessions of the extent of their offences and in the absence of any evidence that those offences extend to 253 and 186 occasions respectively I do not consider there is any public interest in my bringing the election result before the Royal Court.

An application under Article 57 must be made within six months of the date fixed for delivering the returns to the Royal Court. In this case, the application would have to be

made by 8th June, 2009. Deputy Southern and Deputy Shona Pitman are awaiting sentence which is currently scheduled to take place on 20th May 2009. I would rather have made no statement on the electoral position until the criminal case had been concluded but given the deadline of 8th June for others to take action, if so advised, I have decided to make my position clear at this stage. I do not however think that it would be appropriate for me to answer questions until after the criminal case is over and I accordingly ask for members' forbearance in that respect.

## Code of conduct for political parties, candidates and canvassers on the handling of postal vote applications and postal ballot papers

### 1 Introduction

Political parties, candidates and canvassers play a vital part in elections, not least through encouraging voting. With the increasing use of postal voting there is a need to ensure that traditional standards of political propriety observed at polling stations are carried through to the postal voting context.

### 2 Key principles

All political parties, candidates and canvassers handling postal vote applications and postal ballot papers will adhere to the following two key principles:

- Candidates and supporters should assist in the efficient and secure administration of elections and uphold the secrecy of the ballot.
- No candidate or supporter should place themselves in a situation where their honesty or integrity – or that of the party or candidate – can be questioned.

### 3 What the law says

- An individual may only vote once in each election and not for more than the number of seats available in that election.
- A voter's signature or mark must always be their own.
- An individual may not vote for, or as, someone else unless they are formally appointed to act as their proxy. If an individual steals someone else's vote they may be prosecuted for making a false statement, forgery, using a false instrument or pretending to be someone else (personation).
- An individual may not exert undue influence to persuade or force someone to vote; not to vote; or to vote a certain way. Someone who prevents or deters the voter from freely exercising their right to vote may be found guilty of undue influence.
- It is an offence to offer money, food, drink, entertainment or other gifts to persuade someone to vote, or not to vote.

**See Appendix (page three) for further information on specific electoral and general offences of which you should be particularly aware.**

## 4 Applications for postal voting

- If you develop a bespoke application form, it should conform fully with the requirements of electoral law, including all the necessary questions and the options open to electors.
- Electors should be encouraged to ask for the postal vote to be delivered to their registered home address, unless there are compelling reasons why this would be impractical e.g. the elector expects to be at a holiday address during a specific election period.
- Because of the risk of suspicions that the application may be altered and the risk of the application form being delayed or lost in transit, the local Electoral Registration Officer's address should be the preferred address given for the return of application forms.
- If an intermediary address is used, forms should be despatched unaltered to the relevant Electoral Registration Officer's address within two working days of receipt.
- If you are given a completed application form, you should forward it directly and without delay to the local Electoral Registration Officer.

## 5 Postal voting ballot papers

- You should not touch or handle anyone else's ballot paper. If you are asked for assistance in actually completing a ballot paper, you should always refer the voter to the Returning Officer's staff at the elections office who can arrange a home visit if necessary. Assistance will also be available for electors at polling stations.
- Wherever practical, the voter should be encouraged to post or deliver the completed ballot paper themselves. If you are asked to take the completed ballot paper, you should ensure that the voter has sealed it first and then post it or take it to a polling station or office of the Returning Officer immediately.
- If you are with a voter when they complete their ballot paper, remember they should complete it in secret. Equally, you should ensure that the voter seals the envelopes personally and immediately. If you are asked to give advice, it is acceptable and often helpful to explain the voting process but do not offer to help anyone to complete their ballot paper.

If you are in any doubt about the probity or propriety of your actions, you should ask yourself the question

### **“What would a reasonable observer think?”**

This code has been prepared based on this test, as advocated by the Third Report of the Committee on Standards in Public Life.<sup>1</sup>

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<sup>1</sup> Committee on Standards in Public Life (1997) *Standards in Public Life Standards of Conduct in Local Government in England, Scotland and Wales Third Report*. Chairman Lord Nolan. The Stationery Office, London.

## Appendix – relevant electoral and general offences

There are a number of specific electoral offences and some general offences which candidates, agents and supporters should be particularly aware of during their campaign. This is not intended to be a comprehensive list and independent legal advice should be sought if necessary.

### **Bribery**

A person is guilty of bribery if they directly or indirectly give any money or procure any office to or for any voter, in order to induce any voter to vote or refrain from voting, or for a particular candidate.<sup>2</sup>

### **Treating**

A person is guilty of treating if either before, during or after an election they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.<sup>3</sup>

### **Undue Influence**

A person is guilty of undue influence if they directly or indirectly, make use of or threaten to make use of force, violence or restraint, or inflict or threaten to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. A person may also be guilty of undue influence if they impede or prevent the voter from freely exercising their right to vote.<sup>4</sup>

### **Secrecy**

Everyone involved in the electoral process should be aware of the secrecy of the ballot. The Returning Officer will give everyone who attends the opening or counting of ballot papers a copy of parts of Section 66 of the Representation of the People Act 1983. Any person found guilty of breaching the secrecy requirements set out in Section 66 may face a fine of up to £5,000 or imprisonment for up to six months.

### **Personation**

It is an offence to aid, abet, counsel or procure the offence of personation.<sup>5</sup>

### **Multiple voting and proxy voting offences**

There are various offences regarding multiple voting and proxy voting including voting by post as an elector or proxy when subject to a legal incapacity to vote; voting more than once in the same or in more than one local election area; applying for a proxy without cancelling a previous proxy appointment and inducing or procuring another to commit one of the above offences.<sup>6</sup>

There are also a number of non-electoral offences which may be relevant; for example, making a false statement under the Perjury Act 1911, forgery and using a false instrument under the Forgery and Counterfeiting Act 1981.

<sup>2</sup> S 113(2) Representation of the People Act (RPA) 1983

<sup>3</sup> S 114(2) RPA 1983

<sup>4</sup> S 115(2) RPA 1983

<sup>5</sup> S 60 RPA 1983

<sup>6</sup> S 61 RPA 1983