

**AN ELECTED PRESIDENT OF THE STATES (P.3/99): REPORT**

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**Presented to the States on 2nd February 1999  
by the Policy and Resources Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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## Report

Senator Syvret's report and proposition asks States Members to agree in principle that the Bailiff and Deputy Bailiff should cease to be President and Vice-President respectively, of the States, and that the offices of President and Vice-President be filled by elected persons. However, the Committee does not believe that States Members could debate this matter without much more information to enable them to make an informed judgement on a most important issue representing a historic and fundamental change to what is a centuries old constitutional arrangement.

The Committee agrees with Senator Syvret that at some stage the House should have the opportunity to debate this important constitutional matter. However, it cannot be good government for such a debate to be undertaken on the basis of such limited information as to the consequences of a decision one way or another.

The position of the Bailiff in relation to the overall machinery of government is to be reviewed by an independent panel, as proposed by the Committee. The States will then have before them a comprehensive report upon which an informed decision can be based. It is right and proper that a matter of such moment as the functions and role of the Bailiff should, as in the past, be considered on the basis of a thorough review. Not least it would seem important that before the States agree in principle to the change proposed by Senator Syvret, they should take soundings of the community at large, something that it is expected the review of the machinery of government will undertake.

When the Policy and Resources Committee presented a report and proposition to the States on the functions and role of the Bailiff in February 1993, the Committee noted that previous reviews of the position of the Bailiff undertaken by the Committee of the Privy Council in 1947 and the Royal Commission on the Constitution (1969-73) had come to the conclusion that the Bailiff's functions should not be disturbed.

To quote from P15/93 -

“The Policy and Resources Committee has considered whether anything has changed since 1973 to suggest that the conclusion to the Royal Commission would not be the same today. These were -

- (i) there is no suggestion that the Bailiff as President of the States exercises undue influence in the course of their deliberations;
- (ii) the Bailiff as President of the States exercises important functions in advising members on constitutional procedure which, from the nature of the constitution, requires an intimate knowledge of the privileges, rights and customs of the Islands;
- (iii) there is no suggestion that the Bailiff as President of the Royal Court allows his “political” position to influence his judicial decisions.”

In the same report, however, the Policy and Resources Committee agreed that there was a need for greater recognition to be accorded in the constitution of the States Assembly to the part played by the elected members. The Committee went on to quote -

“This proposition is consistent not only with the democratic principle that matters of policy should be decided by elected representatives answerable to the electorate but also with the greater political responsibility which has been exercised by politicians in recent years. The political, economic and social climate has changed since the great constitutional reforms which took place in 1948. The Committee believes that there should be a response to this change but not in a way that derogates from the constitutional powers and duties of the Bailiff as President of the States Assembly. The Committee accordingly proposes that provision should be made for the Vice-President of the States to be chosen by the elected members from amongst their number; the Vice-President would discharge the civil functions of the Bailiff in the event of the latter's absence or incapacity.”

The foregoing is quoted to indicate the extent to which the matter of the functions and role of the Bailiff is complex and requires detailed study before any individual commitment is made to a particular course of action. The following also gives some indication of the issues that will need to be addressed in this process -

- if the Bailiff is removed as President of the States, something must replace him. If it is to be an elected President he will need his own officials to carry out the executive authority to take decisions other than in the departmental context. An elected President would need support at a high level for he could not be assumed to be a lawyer or to have any knowledge of the constitutional relationship between the Island and the United Kingdom;

- the creation of an elected President with executive support could involve an interesting tension with the Policy and Resources Committee and its department. The Bailiff is constrained by the constitutional convention that he should not take political decisions which should more properly be taken by elected representatives. Would an elected president feel the same constraint?
- one possible scenario would be for the elected president to be speaker of the States Assembly, but for the administrative responsibilities of the Bailiff, including the official line of communication with the Home Office, to be vested in the Policy and Resources Committee. This however might envisage the creation of a “super committee” with executive powers, headed by what might to all intents and purposes be seen as a Chief Minister.

The ramifications of removing the Bailiff from the Presidency of the States are quite considerable, and it is in this context that the issues involved are considered to be best addressed in the first instance by the review of the machinery of government.

It is suggested in the report accompanying Senator Syvret’s proposition that the view might be advanced that the matter should be left entirely to the machinery of government review body. It is not envisaged that the review body would make decisions. It is simply envisaged that the review body would undertake a comprehensive review of the role of the Bailiff within the context of the machinery of government, and the recommendations of the review body would then be brought before the States, together with the background to those conclusions, for the States to then debate in an informed way an issue of fundamental importance having regard to the Island’s history.

The Committee is of the view that it is not appropriate for the States to make a decision on the matter to which the proposition of Senator Syvret refers in the absence of the information that can be expected to be made available through the review of the machinery of government. In the light of the foregoing, the Committee would hope that Senator Syvret would withdraw his proposition. Failing that, the Committee recommends that the States rejects the proposition.