

STATES OF JERSEY



DRAFT PROCUREURS DU BIEN PUBLIC (TERMS OF OFFICE) (JERSEY) LAW 201-

Lodged au Greffe on 2nd April 2013
by the Comité des Connétables

STATES GREFFE



Jersey

DRAFT PROCUREURS DU BIEN PUBLIC (TERMS OF OFFICE) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chairman of the Comité des Connétables has made the following statement –

In the view of the Chairman of the Comité des Connétables, the provisions of the Draft Procureurs du Bien Public (Terms of Office) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Connétable J. Le S. Gallichan of Trinity**

Chairman, Comité des Connétables

Dated: 26th March 2013

REPORT

1. The aim of this legislation is to re-organise the law relating to electing *Procureurs du Bien Public* and to put an end to problems arising from their elections occurring at random.
2. The *Procureurs du Bien Public* are 2 honorary officials in each Parish who act as public trustees, *i.e.* they maintain an oversight of Parish finances and represent the Parish along with the Connétable (and, when appropriate, with the Rector and Churchwardens) in respect of property transactions of the Parish. The office probably came into existence when rates began to be collected from parishioners.
3. The law relating to the office of *Procureur du Bien Public* is governed mainly by customary law but Article 6 of the *Loi* (1804) *au sujet des assemblées paroissiales* provides that –

“La charge de Procureur du Bien Public, en chaque paroisse, est limitée à 3 ans; après lequel temps il sera procédé à un nouveau choix.”

In translation –

The office of *Procureur du Bien Public*, in each parish, is limited to 3 years; after which time one must proceed with a new choice.
4. The current dates of expiry of the existing 24 terms throughout the Island have become entirely random and in some Parishes both officers are elected on the same day, thus the Parish could be without an officer of some experience if neither is re-elected or if both choose to retire. A similar situation previously existed with the election of Centeniers, before the enactment of the Centeniers (Terms of Office) (Jersey) Law 2007, and essentially the same remedy as in that Law is being proposed to bring about –
 - regularity in the timing of elections for *Procureurs*; as well as
 - clarity as to the duration of the remainder of a term to be served when a casual vacancy is filled.
5. The aim is to have public elections for one *Procureur du Bien Public* in every Parish at intervals of 18 months, the *Procureur* thus elected to hold office for a term of 3 years (as at present). There are only 2 *Procureurs du Bien Public* in each parish, so the elections would be held every 18 months rather than every 9 months for Centeniers (as there are at least 4 Centeniers in each parish).
6. Further, it is proposed that the election dates for the *Procureurs du Bien Public* should fall on the same day (2nd Wednesday of the month) as those of Centeniers in **March** and **September**. This has the advantage that, should a ballot be required, the election date for both offices would be on the same day. This has administrative savings for the Parishes and would also ease the workload of the Jurats (who are appointed returning officers for the elections). The Parishes could also have the nomination meetings on the same evening for both Centenier and *Procureur du Bien Public*.
7. The month of March (and therefore September) also fits in with the parishes’ financial year (ending 30th April) as the newly elected *Procureur du Bien Public* would be able to play a full rôle in preparing the forthcoming budget

which is presented to the Parish Assembly in June/July each year for approval. If the election date was in June (and also December – the other month for Centeniers' elections), the *Procureur du Bien Public* elected in June would not have been party to the budget and account preparations.

8. The new Law therefore makes transitional provisions under which the existing disparate election dates become synchronized. The new Law provides that the term of office, instead of expiring on the date on which it was due to expire, will expire on 12th March 2014 or on 9th September 2015. The order in which the terms of the 2 *Procureurs du Bien Public* expire is determined as follows –
 - (a) the term of office of the *Procureur* first to have been elected to his or her present term of office would expire on 12 March 2014; and
 - (b) the term of office of the *Procureur* second elected would expire on 9th September 2015.
9. If the 2 *Procureurs du Bien Public* have been elected to office at the same time, the order in which they were elected shall be reckoned –
 - (a)
 - (i) according to their respective seniority in office as a *Procureur* in that parish; or (if their respective seniority in office as a *Procureur* cannot be distinguished)
 - (ii) according to their respective length of honorary service in that parish; or
 - (b) if the Connétable consents, by agreement between them.
10. As with the Centeniers Law, the terms of office of the *Procureurs* in each 'group' would have to terminate on the same day if their respective election dates were not to get out of kilter all over again. Therefore, the date of expiry of the term of office will be set by reference to the 3rd anniversary of the date of the *Procureur's* election to office.
11. The *Procureur* will, however, remain in office until the return date before the Royal Court for the election of a *Procureur*. This is to cover the 'gap' between the 3rd anniversary of the election and the later date by which the *Procureur*, or his or her successor, is sworn in by the Royal Court.
12. The new Law also provides that if a vacancy occurs during a term of office, e.g. a *Procureur du Bien Public* dies or otherwise ceases to hold office before his or her term has expired, the person elected to replace that *Procureur du Bien Public* serves only the remainder of the term of office of that *Procureur*.
13. In the event of a postponed election (for whatever reason), the *Procureur du Bien Public* eventually elected will serve a term which expires at the same time as it would have expired had the vacancy been filled on the due date.
14. The Report of the Working Party on Parish Assemblies [R.C.38/2001] recommended that elections for the Office of *Procureur du Bien Public* be governed by the Public Elections Law rather than be held at a Parish Assembly. The Public Elections (Jersey) Law 2002 was accordingly amended in 2003 to ensure that the mandate of the *Procureur* should be seen to be the widest possible of the electorate within the Parish, thus enhancing the status of the office as befitted the nature and responsibilities of that office.
15. The *Comité* is confident that the proposed Law will further enhance the status of the office as befits the additional rôle under the Connétables (Miscellaneous Provisions) (Jersey) Law 2012, whereby the senior officer (or junior if so

determined in accordance with that Law) will in due course include deputising for the Connétable in the latter's absence or incapacity. It will also stagger the election dates, thus ensuring a Parish should never be without at least one *Procureur du Bien Public* with some experience.

16. The *Comité* has consulted with the *Procureurs du Bien Public*, who are fully supportive of the proposed change.

Financial and manpower implications

The draft Law may reduce the financial and manpower implications for the States and for the parishes as elections will be held on the same day.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Note on the Procureurs du Bien Public (Terms of Office) (Jersey) Law 201-

1. This Note has been prepared in respect of the draft Procureurs du Bien Public (Terms of Office) (Jersey) Law 201- by the Law Officers' Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR").
2. It is considered that the issue of timing of elections for the office of *Procureur du Bien Public* does not engage any right guaranteed under the ECHR.
3. However, for the sake of completeness, an analysis of why Article 3, Protocol 1 to the ECHR, is not in fact engaged is provided, because this Article is the most likely Article which could be engaged. An analysis of why the Article is any event complied with is also provided below.
4. Article 3, Protocol 1 to the ECHR provides:
"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."
5. The right is expressed to be concerned purely with the choice of 'the legislature.' The ECtHR has found in the past that 'legislature' does not necessarily mean the national parliament and that this word must be "interpreted in the light of the constitutional structure of the State in question."
6. The question of whether or not the office of *Procureur du Bien Public*, or indeed any other parochial office (other than the Connétable)¹ would be deemed by the ECtHR as a 'legislature' has not been subject to judicial consideration. However, the office is a purely parochial office with no legislative powers and is therefore distinguished from bodies such as the Flemish Council and the European Parliament both of which have been found by the ECtHR to be a 'legislature' for the purposes of Article 3, Protocol 1. It is as a result a reasonable conclusion to state that a parochial office does not constitute a legislature and therefore does not engage Article 3, Protocol 1 ECHR.
7. In any event, even if Article 3, Protocol 1 ECHR was engaged, the rights guaranteed by this Article would not be at risk of being undermined by the draft Law.
8. The draft Law seeks to achieve a practical solution to the current inconsistencies and uncertainties in relation to the timing of elections for *Procureurs*.
9. *Procureurs* shall continue to be elected by public election, under the procedures of the Public Elections (Jersey) Law 2002.²

¹ Connétables are ex-officio Members of the States Assembly and therefore, Article 3, Protocol 1 ECHR self-evidently applies to them.

² "public election" is defined in Article 1(1) of the Public Elections (Jersey) Law 2002 to include elections for *Procureurs*.

10. Furthermore, the draft Law does not reduce the term of office for *Procureurs*. The 3 year term, currently provided for by Article 6 of the *Loi (1804) au sujet des assemblées paroissiales*, is preserved by Article 2(2) of the draft Law. The draft Law provides that those currently in office or those who are elected in the interim shall see their term expire on either 12th March 2014 or 9th September 2015. Although this may lead to an inconsistency in the terms served by those *Procureurs* in office before those dates, these dates have been identified to ensure that there is a reasonable transition and not a disproportionate truncating of any individual *Procureur's* term of office.
11. **The draft Law is therefore compatible with Article 3, Protocol 1 ECHR.**

Explanatory Note

This Law provides for the terms of office of Procureurs du Bien Public.

Article 1 provides that a reference in this Law to a “Procureur” is to a Procureur du Bien Public.

Article 2, supplemented by the Schedule, contains the rules for determining the term of office of a Procureur. In doing so, it allows for the possibility that a parish may have one or 2 Procureurs.

If a parish has one Procureur immediately before 12th March 2014, his or her term of office will expire on that day.

If a parish has 2 Procureurs immediately before 12th March 2014, the default rule is that the term of office of the Procureur who was elected first to his or her present term of office will expire on that day and the term of office of the other Procureur will expire 18 months later, on 9th September 2015.

Paragraph 3 of the Schedule makes further provision for the application of the default rule, in a case where the 2 Procureurs in a parish were elected to their current period of office at the same time. In such a case, the longer-serving Procureur is taken to have been elected first. If the 2 Procureurs have both served in that office for the same period of time, whichever of them has served, in any honorary office in the parish, for the longer period is taken to have been elected first.

Paragraph 2(2) of the Schedule allows the default rule to be overturned if the 2 Procureurs and the Connétable of the Parish agree that, notwithstanding the rule, the term of office of the Procureur who has served for the shorter period will expire on 12th March 2014 and the term of office of the Procureur who has served for the longer period will expire on 9th September 2015.

The term of office of a Procureur will continue to be 3 years. So, the term of office of a Procureur elected on 12th March 2014, and of his or her successors, will expire on the second Wednesday in March, in every third year. The term of office of a Procureur elected on 9th September 2015, and of his or her successors, will expire on the second Wednesday in September, in every third year. If a Procureur vacates office before the expiry of the 3 years, his or her replacement will only hold office for the remainder of the 3 years.

Article 3 provides for an election to be held on the day a Procureur’s term of office expires.

Article 4 provides that, although this Law specifies a date for the expiry of a Procureur’s term of office, the Procureur in fact remains in office until his or her replacement is sworn in.

Article 5 empowers the States, by Regulations, to amend any expression of time in Article 2 or 3 or the Schedule.

Article 6 repeals Article 6 of the Loi (1804) au sujet des assemblées paroissiales. Article 6 currently provides for a Procureur’s term of office to be limited to 3 years.

Article 7 amends Article 17 of the Public Elections (Jersey) Law 2002 to make it clear that the Royal Court’s duty to order a public election arises when such an election is required under Article 3 of this Law. The opportunity is taken to make the like amendment in respect of elections required under the Centeniers (Terms of Office) (Jersey) Law 2007.

Article 8 provides for the citation of this Law and its commencement 7 days after it is registered.



Jersey

DRAFT PROCUREURS DU BIEN PUBLIC (TERMS OF OFFICE) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT PROCUREURS DU BIEN PUBLIC (TERMS OF OFFICE) (JERSEY) LAW 201-

A LAW to make provision as to the terms of office of Procureurs du Bien Public; and for related matters

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law, “Procureur” means Procureur du Bien Public.

2 Terms of office of Procureurs du Bien Public

- (1) In each parish, the term of office of one Procureur shall expire on 12th March 2014, and the term of office of the other Procureur shall expire on 9th September 2015, whether there are 2, one or no Procureurs in office immediately before 12th March 2014 or 9th September 2015.
- (2) After that, in each parish, in separate cycles of 3 years –
 - (a) the term of office of one Procureur shall expire on the second Wednesday of the month of March that falls 3 years after the month of March in which a previous term of office of a Procureur expired; and
 - (b) the term of office of the other Procureur shall expire on the second Wednesday of the month of September that falls 3 years after the month of September in which a previous term of office of a Procureur expired.
- (3) The Schedule applies to determine which term of office is to expire on 12th March 2014 and which is to expire on 9th September 2015, in the case where there are one or 2 Procureurs in office in a parish immediately before 12th March 2014.

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- (4) For the purposes of this Article and the Schedule, if a Procureur is elected to fill a vacancy in the office of Procureur during the relevant term of office, the election of the Procureur shall be taken to have occurred at the start of that term of office.
 - (5) However, paragraph (4) does not apply in reckoning aggregate time for the purpose of clause (a) or (b) of sub-paragraph (1) of paragraph 3 of the Schedule.
 - (6) This Article and the Schedule shall have effect in relation to a term of office of a Procureur, even if the term would have expired on a different day if this Law had not been enacted.

3 Elections of Procureurs du Bien Public

An election of a Procureur shall be held on each day on which the term of office of a Procureur expires on or after 12th March 2014 and otherwise when a vacancy occurs in the office of Procureur.

4 Continuation in office pending election

- (1) Despite the expiry of a Procureur's term of office, the Procureur shall remain in office until the return date for the election of a Procureur held on that expiry.
- (2) The reference in paragraph (1) to the return date for an election of a Procureur is a reference to the date fixed by the Royal Court, pursuant to Article 17(2)(c) of the Public Elections (Jersey) Law 2002¹, for the person elected as Procureur to appear in the Royal Court to take his or her oath.

5 Regulations to amend expressions of time

The States may by Regulations amend any expression of time (including any date) in Article 2 or 3 or the Schedule.

6 Loi (1804) au sujet des assemblées paroissiales amended

Article 6 of the Loi (1804) au sujet des assemblées paroissiales² shall be repealed.

7 Public Elections (Jersey) Law 2002 amended

In Article 17(1) of the Public Elections (Jersey) Law 2002³, for the words beginning "or under" to the end of the paragraph there shall be substituted the words "Article 3 of the Centeniers (Terms of Office) (Jersey) Law 2007⁴, Article 2 or 3 of the Connétables (Jersey) Law 2008⁵ or Article 3 of the Procureurs du Bien Public (Terms of Office) (Jersey) Law 201-⁶".

8 Citation and commencement

This Law may be cited as the Procureurs du Bien Public (Terms of Office) (Jersey) Law 201- and shall come into force seven days after it is registered.

SCHEDULE

(Article 2)

ORDER OF ELECTION**1 Schedule applies to terms of office of existing Procureurs**

This Schedule applies to the most recent terms of office, as Procureurs in any one parish, of the persons who, immediately before 12th March 2014, are Procureurs in that parish.

2 Date of expiry of term of office of existing Procureur

- (1) A term of office shall expire –
 - (a) on 12th March 2014, in the case of the term of office of the Procureur who was first elected to his or her present term of office (or who is the only Procureur in office); or
 - (b) on 9th September 2015, in the case of the term of office of the other Procureur.
- (2) However, if –
 - (a) there are 2 Procureurs in office in a parish immediately before 12th March 2014;
 - (b) the 2 Procureurs agree; and
 - (c) the Connétable of the parish consents,the order set out in sub-paragraph (1) may be reversed.

3 Notional order of elections for the purposes of paragraph 2(1)

- (1) If, immediately before 12th March 2014, 2 Procureurs are in office in a parish and they were elected at the same time, then for the purpose of paragraph 2(1), the order in which they were elected shall be reckoned as follows –
 - (a) the Procureur who has served the longer aggregate time in one or more terms of office as Procureur in that parish shall be taken to have been first elected; or
 - (b) if the 2 Procureurs have served the same aggregate time in one or more terms of office as Procureur in that parish, the Procureur in that parish who has served the longer aggregate time as the holder of one or more honorary offices in that parish shall be taken to have been first elected.
- (2) The reference in sub-paragraph (1)(b) to honorary offices in a parish means any office in the parish to which a person is sworn by the Royal Court, and includes the office of Procureur.
- (3) For the purpose of sub-paragraph (1)(a) or (b), it does not matter whether the terms of office were consecutive or not.

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- 1 *chapter 16.600*
 - 2 *chapter 16.100*
 - 3 *chapter 16.600*
 - 4 *chapter 23.055*
 - 5 *chapter 16.250*
 - 6 *P.45/2013*