

STATES OF JERSEY



DRAFT CONNÉTABLES (AMENDMENT No. 2) (JERSEY) LAW 201-

Lodged au Greffe on 14th November 2017
by the Privileges and Procedures Committee

STATES GREFFE



Jersey

DRAFT CONNÉTABLES (AMENDMENT No. 2) (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 Privileges and Procedures Committee has made the following statement –

In the view of the Chairman of the Privileges and Procedures Committee, the provisions of the Draft Connétables (Amendment No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Connétable L. Norman of St. Clement**

Chairman, Privileges and Procedures Committee

Dated: 31st October 2017

REPORT

1. The Draft Connétables (Amendment No. 2) (Jersey) Law 201- has been lodged following the Assembly's adoption of paragraph (a) of '[States of Jersey Law 2005: proposed amendment – States Members' qualifications for election](#)' (P.138/2016), lodged by Deputy M.R. Higgins of St. Helier. This Draft Law is essentially identical to the version lodged by the Privileges and Procedures Committee on 31st October 2017 as [P.110/2017](#). Subsequent to the lodging of P.110/2017, however, it became apparent that a further change was required. The Committee decided it would be preferable to withdraw the earlier version and to re-lodge the Draft Law with the change incorporated. The only difference between this version of the Draft Law and the version contained in P.110/2017 is the addition of new Article 4D.
2. In adopting paragraph (a) of that proposition, the Assembly requested the Committee to bring forward the following amendments to the [States of Jersey Law 2005](#) ("the 2005 Law") –

“to repeal Articles 4A, 7 and 8 of the Law and to replace them with a new Article or Articles to standardise the requirements relating to the qualification and disqualification for election in the States Assembly, so that all members (Connétables, Senators and Deputies) would be subject to the same requirements”.
3. Article 4A relates to the disqualification for election as Connétable; Article 7 to the qualification for election as Senator or Deputy; and Article 8 to the disqualification for office as Senator or Deputy. Article 4A, as it relates to Connétables, is identical to Article 7(2) as it relates to Senators and Deputies.
4. The Committee is proposing an amendment to the [Connétables \(Jersey\) Law 2008](#) ("the 2008 Law"), rather than the 2005 Law, as the 2005 Law was not initially designed to prescribe election qualifications for Connétables as they are States Members *ex officio*. The 2008 Law is therefore the most appropriate place for the new statutory provisions to be contained.
5. Adoption of the draft Law would see the provisions of Articles 7 and 8 of the 2005 Law replicated in the 2008 Law as new Articles 4B and 4C, the only difference being that references to Senators and Deputies in the 2005 Law would instead be to Connétables in the new Articles of the 2008 Law. The same statutory provisions would then apply to all 3 classes of elected member. Article 4A of the 2005 Law would be repealed, as its provisions would instead be contained in the new Articles of the 2008 Law.
6. The draft Law also includes an Article to remove references to Connétables in Article 24 of the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#) ("the 1990 Law"). This Article of the 1990 Law prevents debtors during the course of a désastre (or a person who has the status of an undischarged bankrupt under the laws of any other jurisdiction) from holding specified positions, including that of Connétable. Such a reference to Connétables in the 1990 Law is no longer required with the insertion of the new Articles 4A and 4B in the 2008 Law.
7. Although these amendments to the 2008 Law would ensure that the same statutory provisions apply to all 3 classes of elected member, they would not affect other existing customary law provisions. In that regard, certain customary law provisions which relate to Connétables alone would remain in place. The draft Law would not affect the customary law position that a

Connétable must reside in the Parish he or she represents. Nor would it change the supervisory jurisdiction of the Royal Court over the election of Connétables, as that jurisdiction is dealt with under customary law. That latter position is confirmed in new Article 4D of the 2008 Law, and it is the inclusion of this Article which was the subject of the change that led the Committee to withdraw P.110/2017 and to re-lodge the draft Law in its current version.

Financial and manpower implications

8. There are no financial or manpower implications for the States arising from the adoption of this draft Law.

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 Notes on the Draft Connétables (Amendment No. 2) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Connétables (Amendment No. 2) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The ECHR right that is potentially engaged by the provisions of the draft Law is Article 3 of the First Protocol of the ECHR (“A3P1”).

A3P1 provides that –

“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.”

The right in A3P1 encompasses the right to vote and to stand for election to the legislature. Limitations on A3P1 rights are permitted, provided that they do not impair the very essence of the rights or deprive them of their effectiveness, provided they are imposed in pursuit of, and proportionate to, some legitimate aim. A state is afforded a considerable margin of appreciation by the European Court of Human Rights in determining what is proportionate.

Article 1 of this draft Law would insert, into the Connétables (Jersey) Law 2008, provisions as to qualification for election and holding office as a Connétable, which are identical to the qualifications required in relation to Senators and Deputies under the States of Jersey Law 2005 (subject only to a saving provision in relation to the supervisory jurisdiction of the Royal Court at customary law in relation to the office of Connétable). To the extent that these qualifications amount to a limit on the rights provided by A3P1, they are proportionate to a number of legitimate aims. Therefore they are compatible with A3P1.

Explanatory Note

Article 1 of this draft Law would insert, into the Connétables (Jersey) Law 2008, provisions as to qualification for election and holding office as a Connétable which are identical to the qualifications required in relation to Senators and Deputies under the States of Jersey Law 2005. *Articles 2 and 3* would make consequential amendments to the latter enactment and to the Bankruptcy (Désastre) (Jersey) Law 1990 respectively. *Article 4* gives the title by which this Law may be cited and provides for it to come into force 7 days after it is registered.



Jersey

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Arrangement

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Jersey

DRAFT CONNÉTABLES (AMENDMENT No. 2) (JERSEY) LAW 201-

A LAW to amend further the Connétables (Jersey) Law 2008, the Bankruptcy (Désastre) (Jersey) Law 1990 and the States of Jersey Law 2005

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 Connétables (Jersey) Law 2008: provisions inserted

After Article 4A of the Connétables (Jersey) Law 2008¹ there shall be inserted the following Articles –

“4B Qualification for election as Connétable

- (1) A person shall, unless disqualified by paragraph (2), Article 4C or any other enactment, be qualified for election as a Connétable if he or she –
 - (a) is of full age; and
 - (b) is a British citizen who has been ordinarily resident in Jersey –
 - (i) for a period of at least 2 years up to and including the day of the election, or
 - (ii) for a period of at least 6 months up to and including the day of the election, as well as having been so resident at any time for an additional period of (or additional periods totalling) at least 5 years.
- (2) A person shall be disqualified for election if he or she is a paid officer in the service of the States or any administration of the States, unless he or she is permitted, by or under the Employment of States of Jersey Employees (Jersey) Law 2005², to stand for election as a Connétable.

- (3) A retiring Connétable who is not disqualified by this Law or any other enactment shall be eligible for re-election.

4C Disqualification for election or office

- (1) A person shall be disqualified for election as a Connétable if that person –
- (a) holds any paid office or other place of profit under the Crown;
 - (b) is a member of the States of Jersey Police Force;
 - (c) is compulsorily detained or subject to guardianship under the Mental Health (Jersey) Law 1969³;
 - (d) has a curator of his or her person or property;
 - (e) has an attorney without whom he or she may not act in matters movable or immovable;
 - (f) subject to paragraphs (3) or (4), has become bankrupt or made a composition or arrangement with his or her creditors;
 - (g) has been convicted of an offence under the Corruption (Jersey) Law 2006⁴ by virtue of being, within the meaning of that Law, a public official or a member, officer or employee of a public body;
 - (h) within the 7 years immediately preceding the date of his or her election, or since that election, has been convicted, whether or not in Jersey or elsewhere, of any offence and liable to be imprisoned for a period of not less than 3 months, without the option of a fine.
- (2) A person shall be disqualified from holding office as a Connétable by reason of –
- (a) ceasing to be a British citizen; or
 - (b) not being resident in Jersey for a period of more than 6 months.
- (3) The disqualification attaching to a person by reason of his or her having become bankrupt shall cease –
- (a) if the person pays his or her debts in full on or before the conclusion of the bankruptcy proceedings, on the day the proceedings are concluded;
 - (b) in any other case, on the expiry of 5 years from the day the proceedings are concluded.
- (4) The disqualification attaching to a person by reason of his or her having made a composition or arrangement with his or her creditors shall cease –
- (a) if the person pays his or her debts in full, on the day on which the payment is completed;
 - (b) in any other case, on the expiry of 5 years from the day on which the terms of the composition or arrangement are fulfilled.

4D Supervisory jurisdiction of the Royal Court

Nothing in Article 4B or 4C shall be taken to derogate in any way from the supervisory jurisdiction of the Royal Court in relation to the office of Connétable.”.

2 States of Jersey Law 2005 amended

Article 4A of the States of Jersey Law 2005⁵ shall be deleted.

3 Bankruptcy (Désastre) (Jersey) Law 1990: Article 24 amended

In Article 24(1) of the Bankruptcy (Désastre) (Jersey) Law 1990⁶, in the definition “public office” the word “Connétable,” shall be deleted.

4 Citation and commencement

This Law may be cited as the Connétables (Amendment No. 2) (Jersey) Law 201- and shall come into force 7 days after the day on which it is registered.

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- 1 *chapter 16.250*
 - 2 *chapter 16.325*
 - 3 *chapter 20.650*
 - 4 *chapter 08.090*
 - 5 *chapter 16.800*
 - 6 *chapter 04.160*