

STATES OF JERSEY



STATES OF JERSEY LAW 2005: PROPOSAL TO AMEND BANKRUPTCY PROVISIONS (P.55/2016) – COMMENTS

Presented to the States on 28th June 2016
by the Privileges and Procedures Committee

STATES GREFFE

COMMENTS

Prohibition from holding office as, or standing for election as, a Senator or Deputy due to bankruptcy

At present, a person is prevented from holding office as, or from standing for election as, a Senator or Deputy under the States of Jersey Law 2005 for a number of reasons, including if he or she has ‘become bankrupt or made a composition of arrangement with his or her creditors’.

A bankruptcy disqualification will 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.

Disqualification for having made a composition or arrangement with 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.

A reference to a person becoming bankrupt is defined in the Interpretation (Jersey) Law 1954 to include where a person is subject to a *désastre*, a *remise de biens*, a debt remission order, or is subject to a bankruptcy procedure which triggers a *dégrèvement*.

Prohibition from holding office as, or standing for election as, a Connétable due to bankruptcy

A person is prohibited from holding office as a Connétable during the course of a *désastre* or while an undischarged bankrupt under a foreign proceeding. This disqualification ceases when the debtor is discharged from the *désastre*. There is no post-bankruptcy statutory disqualification period for Connétables.

There are a number of additional disqualifications listed under Article 8 of the States of Jersey Law 2005 which are not replicated elsewhere in legislation in relation to Connétables. Currently, in the case of Connétables, the Royal Court has an inherent jurisdiction to remove a Connétable from office if he or she commits a criminal offence, unless exceptional circumstances apply. The Court may also decline to administer the Oath to a person elected to a parochial office where the Royal Court considers the person unfit for office by reason of a previous conviction, or if the candidate has other functions or interests which are incompatible with the office concerned. For Senators and Deputies, only the circumstances provided for in Article 8 of the States of Jersey Law 2005 may disqualify a person from holding office as, or seeking election to office as, a Senator or Deputy.

Proposal of Deputy M.R. Higgins of St. Helier

The Deputy is asking the States to: (a) bring Article 8 of the States of Jersey Law 2005 'into line' with the provisions of Article 40 of the Bankruptcy (Désastre) (Jersey) Law 1990; and (b) provide that the statutory disqualifications relating to Senators and Deputies in Article 8 should apply also to Connétables.

The following is proposed in relation to standing for election as a Senator or Deputy –

- the post-bankruptcy disqualification period in the States of Jersey Law 2005 should be reduced to 4 years from the date of the discharge or conclusion; or
- no post-bankruptcy disqualification should apply, i.e. once a person has been discharged from a désastre, or at the conclusion of other bankruptcy proceedings, he or she should be able to stand for election as a Senator or Deputy.

The following is proposed in relation to holding office or standing for election as a Connétable –

- the statutory disqualification provisions applying to Senators and Deputies in Article 8 of the States of Jersey Law 2005 should also apply to Connétables, including the provisions on bankruptcy, whether or not amended as described above.

If the proposition is adopted, the Privileges and Procedures Committee will work with the Law Draftsman to bring forward the necessary legislation to give effect to the proposals.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were received by the States Greffe after the deadline set out in Standing Order 37A, due to a requirement to seek clarification regarding the provisions of the relevant legislation.