

# STATES OF JERSEY



## **DRAFT CONSTITUTION OF THE STATES AND PUBLIC ELECTIONS LAW 202- (P.17/2021): AMENDMENT (P.17/2021 ) – COMMENTS**

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**Presented to the States on 16th April 2021  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

## COMMENTS

PPC opposes the amendments made by Senator Gorst and Senator Farnham.

As a Committee we are dedicated to extending the voter turnout and looking at ways to increase voter participation. The main driver for these changes has always been to simplify the existing system and make it more accessible and understandable. The Assembly embraced change in December 2020 which now Senator Gorst and Senator Farnham seek to reverse.

The Senatorial elections maybe equitable on paper - the same number of people voting for the same number of candidates – but Senator Gorst chooses to ignore the obvious democratic deficiencies:

- An inequality of arms with regards to campaign expenditure – the allowable maximum is well beyond the reach of many of the candidates, but not all.
- Unwieldy and unsatisfactory hustings meetings yielding limited opportunity to gain sufficient understanding of which policy positions separate candidates.
- The unfair expectation that the electorate will have the time available to study between 17 – 20 or more individual manifestos from which to make an informed choice of the kind meaningful elections rely upon.
- The advantage those with a profile or name recognition i.e., sitting candidates have over newcomers when the field is so large, leading to random selection of familiar faces.
- Numerous surveys have shown us that one of the main reasons people do not vote is because they do not understand the system, retaining three categories of States Member maintains the “overly complicated and cumbersome” deficiency as highlighted by the [CPA EOM](#).

The Committee first comments upon Senator Gorst’s proposal to maintain the status quo of the date of the election. We then comment on the proposal to retain eight Senators, which includes our views on the proposal by Senator Farnham to increase the number of Deputies.

### **The date of the election**

This Assembly has made much of its commitment to ‘put children first’ and to listen to the ‘voice of the child’. However, many first-time voters were disenfranchised at the last election because in April and May they were occupied with major lifechanging examinations at GCSE and A level or were still in the UK studying. The 16 to 24 age range are the least represented of our voters and we feel very strongly as a Committee that a move into the middle of June will enable more of this demographic to engage with the process and have their voices heard.

Another major reason for proposing the move to June is that prospective candidates were disadvantaged by the proximity of ongoing States meetings and Liberation Day to the nomination process. In 2018, the very last meeting of the Assembly on 10th April ended at 18.17 and candidates were assembled at the Town Hall by 19.00 for the

Senatorial nominations meeting. Elected members were therefore able to maximise on their public prominence right up to the wire and ensure their visibility in the media and familiarity with the public consciousness was maintained, whilst those candidates new to the process had to start from the ground up. PPC is very keen to see more candidates come forward to provide Islanders with greater choice and diversity. It is important that anyone who takes up the challenge of running for public office is provided a level playing field and does not feel their 'newness' is an impediment. This also aligns with the EOM recommendation 12 which was that there should be an official start to the election campaign to "give equal opportunity to politically eligible States employees who have to step down".

Senator Gorst considers it to be a dangerous precedent, and not good for democracy, for a Parliament to decide, one year before an election, to extend its own term of office for one month for what appears to be 'minor administrative reasons'. The States adopted the proposition of Deputy Maçon (P.88/2018 as amended) on 26th June 2018 and agreed that the Assembly should not ordinarily meet in the week before the week in which election candidates were nominated. Although the meeting dates for 2022 have yet to be fixed and are subject to the outcome of the review of the three weekly cycle trial, PPC envisages that the last full meeting of the States Assembly will be held before Liberation Day during the week commencing 25th April 2022 and the nominations process will commence from 10th May. The Assembly will therefore adjourn during the week commencing 25th April and not meet again until after the elections in late June.

We do not believe that this extends the period of office beyond that which the public believed it was voting for in 2018. The term of office was for 4 years until the next election and the current States of Jersey Law Article 6(3) provides for the Assembly to alter by Regulations the periods within which ordinary elections must be held, both as to their duration and the day they begin. It is therefore a matter for this Assembly whether the short extension proposed is acceptable.

Senator Gorst asserts that under PPC's proposals, Liberation Day would 'risk becoming the campaign launch day for all Members seeking re-election in June'. PPC sees this as quite the reverse. Liberation would signal the end of the tenure for members and allow a respectable gap between such a public event and the nominations announcements – rather than being central to the election campaign period as at present.

Senator Gorst argues that Jersey would be left without governance if PPC's proposals that all members cease to hold office on election day are adopted. PPC does not consider it to be appropriate for outgoing members to maintain their positions until the swearing in of elected or re-elected Members. In the second tranche of legislative amendments due to come forward for debate before the summer recess, PPC will be bringing forward changes so that newly elected members take their oaths as soon as practicable after their election, to ensure that members leaving the Assembly do not retain powers once the electorate have chosen others to take their place. There is currently scope for the outgoing Chief Minister to remain in an oversight role during the intervening period between election and the appointment of the new Council of Ministers and PPC considers that this adequately addresses any concerns raised regarding the resolution of issues which may arise during this short period. The second tranche also contains changes to the States of Jersey Law reducing the time period between the election of the Chief Minister and the appointment of the Council of Ministers after the election which will also address the concerns raised by Senator Gorst about political oversight and the burden on the interim Chief Minister.

## **Retention of the Senators**

If the Assembly decides to retain Senators, then it will be reversing the decision made in December 2020. This will take us back to where we have been for the last 20 years; making small progress then getting cold feet and failing to implement it. The public are frustrated by our lack of progress and must look enviously at our Guernsey counterparts, where the result of their electoral reform referendum was enacted resulting in a radical new system which saw an 80% of registered voters election turnout last year.

Senator Gorst's amendment also ignores the referendum of 2013, when the public agreed that there should be just two types of States member. The referendum showed that overwhelmingly the majority supported the move to larger equally sized constituencies; that is the one thing option A and option B had in common. Voters were happy to lose the Senator/Deputy distinction. Option C, which kept the three types of member was decisively rejected.

In trying to encourage quality candidates – from all walks of life - to come forward, PPC is aware that the current system is not fair. Senatorial candidates face a greater financial outlay than their Deputy counterparts to ensure their message reaches the entire Island, which may be a deterrent for those with limited budgets. The nine districts will be more compact, even for those where several Parishes come together for electoral purposes.

Senator Gorst claims that the loss of the Senators would mean that we reduce the number of votes the electorate can cast at elections, whilst the total number of States Members remains the same and he says this unnecessarily reduces democracy in Jersey. We argue that the opposite is true. It is not just the 'number' of people you can elect, but the power of those members' votes in the Assembly which are important and PPC has demonstrated that there is a clear and unfair discrepancy between the voting power of someone living in a more populated electoral district than someone living in a more rural location. Surely democracy should not be a postcode lottery?

Senator Gorst mistakenly argues that the retention of the 8 Senators and consequential reduction of the number of Deputies in across the districts would have no impact at all on achieving greater equity in terms of voting. To the contrary, his amendment would result in the current inequities being maintained and, in some districts, made worse. It is this random approach to voter equity and equality which has resulted in the current unbalanced and undemocratic system. Senator Farnham's amendment to the Amendment continues this arbitrary approach to the distribution of seats.

Senator Farnham seeks to increase the membership of this Assembly by 3, through the addition of extra Deputies in three of the proposed districts, as well as the retention of Senators. The public are not supportive of an increase in our number.

In December 2020 Deputy Macon brought an amendment to P.139 which advocated 52 Deputies across 9 districts which was rejected 29 votes to 17, despite the fact that it achieved the closest to perfect equity and equality of any reform proposal to date. If the Assembly really wanted to increase its membership and create a far fairer system, then it should have adopted that amendment rather than considering this version which leaves some districts with disparities in their representation. It will also see a reduction in representation for those living in areas which are currently over-represented rather than

adding additional members to those areas which have historically been under-represented.

Senator Gorst's amendment maintains the existing three-member structure of the Assembly. PPC has extensively researched its reforms and it is evident that the current system confuses would-be voters. They do not understand the difference between the three members and with good cause. Once elected, there really is no difference between the 3 in terms of their work within the Assembly, even less so since the move to Ministerial Government from the Committee system. Pre 2005, Senators did indeed occupy the majority of the Presidencies of the major Committees, but the Ministerial system is much more equitable and in each of the Council of Ministers there have been since 2005, Deputies and Connétables have held key Ministerial roles. Senator Gorst says in his report that 'At present, we can all have a say at every general election as to who is to be the leader of our next Government'. To suggest the public votes for someone as a Senator because they believe he or she will become Chief Minister is misleading. In fact, the Assembly has repeatedly rejected the public's opinion and since 2005 has only once placed the poll topper (Senator Gorst in 2014) as Chief Minister.

The Clothier Report came to the following conclusion –

“The very title of Senator is inappropriate, suggesting as it does some kind of revising or upper house, such as is found in many other jurisdictions. We received no convincing evidence that there was a significant difference between the nature and content of the Senators' role and that of the Deputies. In an island about 9 miles long and about 5 miles wide, with excellent communications, we found the distinction between Senators and Deputies less than plausible and in practice there is little difference in the contributions to debate of either category of representative. Nor can the Senators do anything which the Deputies cannot also do. They have no special privileges. Moreover, with one General Election and the same tenure of office for all Members of the States, the distinction will become even less sustainable. In an assembly intended to govern the whole island, every topic of debate should be of island-wide interest, not merely parochial, and should be the concern of every Member. But it is sensible that each representative should have a constituency of voters whose opinions may more easily be sampled and judged over a small area than a large one. And, of course, a constituency gives easy access to a representative for every citizen with something to say.”

PPC considers that a simplification of the system, which acknowledges the special nature of the Connétables' roles within their Parishes as well as within the Assembly, will give the electorate greater clarity. At present the real difference between the membership is simply the way in which they are elected, and they are currently elected by a very small proportion of the Island's population. If we want to improve democracy in Jersey, then we must increase turnout.