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# STATES OF JERSEY



## REFERENDUM COMMISSION REPORT: REFERENDUM ON THE BAILIFF AS PRESIDENT OF THE STATES

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Presented to the States on 10th April 2018  
by the Privileges and Procedures Committee

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STATES GREFFE

## INTRODUCTORY REPORT

On 16th November 2017, the Assembly adopted ‘Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment’ ([P.84/2017](#)). Paragraph (3) of the proposition stated that a referendum should be held in accordance with the [Referendum \(Jersey\) Law 2017](#) on the Bailiff’s role as President of the States.

Under Article 3(1) of the Referendum Law, it is a principal function of the Referendum Commission to consider and give an opinion on the wording of a proposed referendum question. Under Article 6(3) of the same Law, a Referendum Act cannot be lodged unless the Commission has published its opinion on the suitability of the wording proposed for the referendum question.

The Referendum Commission was formally constituted in December 2017. It was agreed that, in relation to the referendum on the Bailiff’s role as President of the States, the Commission would develop the wording of a prospective question and make a recommendation to the Privileges and Procedures Committee. The Commission has undertaken this work and has provided the Committee with its recommendation and accompanying report.

It has been agreed with the Commission that the Committee would present the Commission’s report to the States in order that the requirements of Article 6(3) regarding publication may be met. Following the presentation of this report, the Committee will therefore move to lodge a draft Act to allow for the referendum in question to be held. The draft Act will include the question it is proposed should be used in the referendum.

The Committee would like to take this opportunity to thank the Commission for its endeavours in undertaking this work.

PRIVILEGES AND PROCEDURES COMMITTEE

**REFERENDUM COMMISSION REPORT**  
**Referendum on the Bailiff as President of the States**

**Recommendation**

1. The States Assembly has voted in favour of a referendum on the Bailiff's role as President of the States. For this referendum to take place, the Assembly will be asked to approve a Referendum Act. The Act will include the wording of the question to be used in the referendum. However, before the Act can be lodged for debate, the Referendum Commission must publish its opinion on the wording of the question.
2. In accordance with this process, the Commission recommends that the referendum question should be worded as follows –

**“Should the Bailiff as President of the States Assembly be replaced by a Speaker elected by States members?”**

Respondents should be given the option to reply either “Yes” or “No”.

3. Alongside this recommendation, the Commission highlights the vital importance of ensuring that sufficient material is provided to the Public ahead of the referendum in order that an informed decision may be taken.

**Context**

4. On 16th November 2017, the States Assembly adopted a proposition of the Chief Minister entitled ‘Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment’ ([P.84/2017](#)).
5. Through paragraphs (1) and (2) of the proposition, the Assembly agreed to establish the offices of Speaker and Deputy Speaker. The Speaker would take on the function of the Presiding Officer, as set out in the [States of Jersey Law 2005](#) and the [Standing Orders of the States of Jersey](#). As a result, the Bailiff would cease to be President of the States.
6. Following the adoption of an amendment lodged by Senator Sir P.M. Bailhache ([P.84/2017 Amd.\(3\)](#)), paragraph (3) of the Chief Minister’s proposition *as amended* stated that –

“Paragraphs (1) and (2) should be void and of no effect unless the majority of the people voting in a referendum on the question of whether the Bailiff should remain the President of the States, held in accordance with the Referendum (Jersey) Law 2017, had voted against the Bailiff remaining the President of the States.”

**The Referendum Commission**

7. The Referendum Commission was constituted on 13th December 2017 with the following membership –
  - Mr. M. Entwistle, *Chairman*
  - Advocate M. Boothman
  - Dr. S. Mountford
  - Mr. T.A. Le Sueur, O.B.E.
  - Ms. C. Littleboy.

### **Rationale for the Commission’s recommendation**

8. The Commission must publish its opinion on the proposed question for a referendum before the corresponding Referendum Act can be lodged. In respect of the referendum on the Bailiff’s Presidency of the States, it was established with the Privileges and Procedures Committee (“PPC”) that the Commission would develop a question and make a recommendation to PPC.
9. As a starting point for its consideration, the Commission took the contents of paragraph (3) of the Chief Minister’s proposition. With his amendment to the proposition, Senator Bailhache had effectively proposed that the following question be used –

“Should the Bailiff remain the President of the States?”

10. The Commission researched the principles underpinning the holding of referenda. In particular, it looked at the ‘Code of Good Practice on Referendums’, as prepared by the European Commission for Democracy through Law, (commonly known as the Venice Commission). The Commission also sought guidance on how the United Kingdom’s Electoral Commission had approached the holding of referenda.
11. Furthermore, the Commission agreed it was important to test public understanding of the issues involved in the forthcoming referendum. The Commission therefore made arrangements for focus-groups to be held. The primary purpose of these focus-groups was to test the Public’s reaction to prospective wording of the referendum question. However, the groups also provided an opportunity to explore people’s understanding of the subject-matter, and to hear their views on what material the Public should be given to make an informed decision.
12. The Commission’s own research and discussions, as well as the results of the focus-groups, informed its recommendation. The aim was to identify a suitable question to which a yes/no answer could be provided (in accordance with best principles for the holding of referenda). A primary consideration for the Commission was to ensure that the question (and what was at stake within the question) could be clearly understood by voters. The following matters in particular informed the Commission’s recommendation.

#### Clarity of the implication of voting yes/no

13. It was apparent from the focus-groups that people wished to understand the implications of their vote – particularly if it were a vote to remove the Bailiff as President of the States. The wording of paragraph (3) of the Chief Minister’s proposition implied a referendum question based solely on the Bailiff’s role as President. However, whilst some details of the Chief Minister’s proposition need to be confirmed, it is clear that there would be other implications. For instance, it is clear that if the Bailiff ceased to be President of the Assembly as a result of the referendum, the Bailiff’s functions would be assumed by a Speaker elected by the Assembly. It is not implied that the Speaker would actually become President of the Assembly, but would take up a similar role. It is the Commission’s recommendation that the question should make that explicit. This would assist the Public’s understanding of what is at stake when they cast their vote.

Clarity and consistency of terminology

14. The Commission was keen to ensure that any terminology used in the question could be readily understood. The Bailiff is officially President of the States, in accordance with the States of Jersey Law 2005. As such, the Bailiff fulfils the function of Presiding Officer, as set out in the same Law and in the Standing Orders of the States of Jersey. Culturally, the Bailiff's role within the Assembly can be equated to that of a Speaker in parliament, and that term could potentially be used to describe the Bailiff's role.
15. The term 'Presiding Officer' was universally rejected by participants in the focus-groups. It is a technical term which was not easily understood. Whilst paragraphs (1) and (2) of the Chief Minister's proposition use the term, it is the Commission's conclusion that it best be avoided in the referendum question. Its use would more likely confuse, rather than help, matters.
16. Using the term 'Speaker' in respect of the Bailiff's role would be more readily understood by the Public. There might therefore be advantages in using that term. However, the Commission ultimately concluded that it would be preferable to use the term 'President', as opposed to 'Speaker', as the use of 'President' would be consistent with the Bailiff's role as it is actually prescribed currently; and it would be consistent with some aspects of the Chief Minister's proposition.
17. However, the term 'President' was not universally understood by participants in the focus-groups. The term carries connotations of the political regimes in other jurisdictions (e.g. President of the United States) and of the power attributed to executive presidents. Nevertheless, feedback from the focus-groups also suggested that the term would be more readily understood if appropriate information were available to the Public. On that basis, and given that 'President' is the term currently used, the Commission concluded that should be the term used in the question to describe the Bailiff's role within the States.
18. The participants in the focus-groups were given the opportunity to consider whether any other terms could be used (and would be better understood). Many participants in fact preferred the term 'Head' to describe the Bailiff's role (and that which the Speaker would take) in the Assembly. Once informed of what the Bailiff does, this was the term which participants felt most accurately described what the Bailiff does in the States and which would be best understood by the voting Public. Whilst the Commission concluded that it would be best to remain consistent with existing terminology (i.e. President), if there were a viable alternative, the term 'Head' would likely be the most appropriate.

Reflecting the existing situation without creating a leading question

19. Paragraph (3) of the Chief Minister's proposition suggested a referendum question on whether the Bailiff should remain President of the States. Consideration was given to whether the word 'remain' could (or should) be replaced by the word 'be'. More generally, consideration was given to the wording in order to avoid circumstances in which the wording might inadvertently favour either the *status quo* or change.

20. Consideration was also given to the fact the Chief Minister's proposition did not propose any change to the Bailiff's other roles: that of President of the Royal Court and the Island's Civic Head. The Commission therefore considered all prospective wording to determine whether or not it would give the impression that all of the Bailiff's roles were implicated; or whether it would be clear that it was simply his role as President of the States which was involved.

#### A simple sentence structure

21. The subject of the forthcoming referendum is many-faceted. It was the Commission's conclusion that the question should reflect current terminology; and present an accurate picture not only of the current situation, but also of what would result from the referendum if the Bailiff ceased to be President of the States. Nevertheless, it was also the Commission's conclusion that the question should be kept as simple as possible. This meant avoiding subordinate clauses within the question or creating a question that was effectively 2 questions in one.

#### **Conclusion**

22. The Commission has endeavoured to identify a question which can be clearly understood, which is presented simply and provides the Public with enough information in itself about what they are voting on – and without leading them towards answering yes or no.
23. Identifying a question in light of these demands is a matter of balance between them; which the Commission has endeavoured to strike. More information could feasibly be put into the question about what would happen if the Public decided that the Bailiff should not be President of the States. But to do so would likely make the question more complex and less easy to understand.
24. To conclude, the Commission would highlight that identification of the question is only one aspect of ensuring a successful referendum. For example, the arguments either in favour of, or against, change will need to be heard; something which participants in the focus-groups made clear. It is also clear there needs to be appropriate information made available to the Public in order that people may understand what they are being asked; and what the consequences of their decision would be. This should include factual information on the Bailiff's present roles. In this regard, feedback from the focus-groups indicated that without proper information being provided to the Public before the referendum, many would choose not to vote.

**Referendum Commission**  
**22nd March 2018**