

STATES OF JERSEY



DRAFT STATES OF JERSEY (AMENDMENT No. 9) LAW 201-

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

STATES GREFFE



Jersey

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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 States of Jersey (Amendment No. 9) Law 201- are compatible with the Convention Rights.

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

Chairman, Privileges and Procedures Committee

Dated: 14th March 2017

REPORT

1. The States of Jersey (Amendment No. 9) Law 201- seeks to implement the decision made by the States Assembly on 2nd February 2017, when it approved [P.133/2016, as amended](#).
2. It changes Schedule 1 to restate the electoral districts for the position of Deputy across the Island, and also reduces the number of Deputies in the Assembly to 28.
3. With the creation of the 6 large districts, each parish other than St. Helier will be an electoral district in its own right, unlike the current provision where both St. Saviour and St. Brelade are also divided into electoral districts. All of the detail pertaining to the administration of the electoral register, nomination meetings, hustings and elections will be contained within amendments to the Public Elections (Jersey) Law 2002, which PPC will be lodging for debate once consultations with the Parishes and officers of the Judicial Greffe have concluded.
4. Given the very short lead-in for these changes to take effect, PPC believes it is important to preserve the current parish-based electoral system, and will be proposing that the electoral registers be established in each parish. This will mean that there will be no consolidated register prepared for the large electoral districts, and candidates and others will simply access the electoral register for the parishes within the district. It is nevertheless important to point out that, notwithstanding the abolition of electoral districts in St. Saviour and St. Brelade, there is no reason why parishes cannot still have a number of polling stations in different parts of the parish for the convenience of electors, and the Public Elections (Jersey) Law 2002 currently allows for there to be more than one polling station in a single electoral district. It is also envisaged that the counting of votes in the large electoral districts would still take place on a parish basis, as happens at present with a Senatorial election.
5. PPC considers that it will have completed the work necessary to underpin the changes to the electoral system in time for the 2018 elections, subject to debate and approval by the Assembly before the summer recess.
6. PPC accepts that this will be slightly outside of the guidelines adopted by the Venice Commission in July 2002 ('Code of Good Practice in Electoral Matters') which state that "*The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election*". However, PPC considers that its proposed timescale will still ensure that all the crucial legislative changes can be in place before the start of the lead-in to the election. It also means that the Committee will have plenty of time to make certain that the vote.je campaign can provide comprehensive information to the Public so that all voters, even those who have voted for years, fully understand the new system, and most importantly who they can vote for and where they can cast their vote. This will be in addition to the normal voter registration and election campaigns which have been organised in previous years.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law, apart from a saving of £46,400 through the loss of one Deputy's post.

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 States of Jersey (Amendment No. 9) Law 201-

These Notes have been prepared in respect of the Draft States of Jersey (Amendment No. 9) 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 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.”

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.

This draft Law would give effect to the decision of the States Assembly made on 2nd February 2017, to adopt proposition P.133/2016. The effect of Articles 2 and 3 of the draft Law is to amend the States of Jersey Law 2005 to reduce the number of Deputies by one to 28, and to distribute those deputies across 6 proposed districts in accordance with the table to be substituted by Article 4 of the draft Law into Schedule 1 to that Law.

It might be argued that the effect of these changes limits the free expression of the opinion of the people in the choice of the legislature, because it results in an uneven distribution of seats between electors and to inequality in the representation enjoyed by electors in rural parishes and districts, in particular, in comparison with those in St. Helier.

It is important to recognise that, as has been confirmed by the European Court of Human Rights, A3P1 does not create any express requirement to achieve equality in the voting power of individual electors. Further, as already noted, the European Court has found on a number of occasions that A3P1 does not bind states as to the electoral system to be used, and a considerable margin of appreciation is afforded to them in determining the detail of their electoral systems.

The division of Jersey into 6 electoral districts, if sanctioned by the States Assembly, could not be said to be arbitrary or to impair the very essence of the rights afforded by A3P1. Any perceived limitation on the rights in A3P1 brought about by the arrangement of the new constituencies may properly be seen to fall within Jersey’s margin of appreciation in respect of A3P1.

Explanatory Note

This draft Law would give effect to the decision of the States Assembly (on 2nd February 2017, adopting P.133/2016 as amended) that the number of Deputies in the Assembly should be 28 (*Articles 2 and 3* make relevant amendments to the States of Jersey Law 2005) and that these Deputies should be elected from 6 districts, in accordance with the table to be substituted (by *Article 4*) in Schedule 1 to that Law.

Article 1 is an interpretation provision and *Article 5* gives the title by which this Law may be cited and provides for it to come into force on a day to be appointed by Act of the States.



Jersey

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Arrangement

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Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 9) LAW 201-

A LAW to amend further 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 Interpretation

In this Law, a reference to an Article by number and without more is to the Article of that number in the States of Jersey Law 2005¹.

2 Article 2 amended

In Article 2(1) for the number “29” there shall be substituted the number “28”.

3 Article 4 amended

In Article 4(4) for the words “remain 29” there shall be substituted the words “be 28”.

4 Schedule 1 amended

For the table in Schedule 1 to the States of Jersey Law 2005 there shall be substituted the following table –

<i>“Constituencies</i>	<i>Number of Deputies to be returned</i>
District 1: St. Helier North Vingtaine du Mont Cochon Vingtaine du Mont à l’Abbé Vingtaine du Haut du Mont au Prêtre, and Vingtaine du Rouge Bouillon, in the Parish of St. Helier	6
District 2: St. Helier South Cantons de Bas et de Haut de la Vingtaine de la Ville, and Vingtaine de Bas du Mont au Prêtre, in the Parish of St. Helier	6
District 3: South-East District Parish of St. Clement, and Parish of Grouville	4
District 4: East Central District Parish of St. Martin, and Parish of St. Saviour	4
District 5: North Central District Parish of St. John, Parish of St. Lawrence, Parish of St. Mary, and Parish of Trinity	4
District 6: West District Parish of St. Brelade, Parish of St. Ouen, and Parish of St. Peter	4”.

5 Citation and commencement

This Law may be cited as the States of Jersey (Amendment No. 9) Law 201- and shall come into force on such day as the States may by Act appoint.

¹ *chapter 16.800*