

# STATES OF JERSEY



## **ELECTED SPEAKER AND DEPUTY SPEAKER OF THE STATES ASSEMBLY: SELECTION AND APPOINTMENT (P.84/2017) – THIRD AMENDMENT (P.84/2017 Amd.(3)) – AMENDMENT (P.84/2017 Amd.(3)Amd.) – COMMENTS**

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Presented to the States on 13th November 2017  
by the Privileges and Procedures Committee

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STATES GREFFE

## COMMENTS

The proposed third amendment ([P.84/2017 Amd.\(3\)](#)) to [P.84/2017](#) ('Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment') would prohibit the proposition coming into 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, have voted against the Bailiff remaining the President of the States". Senator P.F.C. Ozouf has lodged an amendment ([P.84/2017 Amd.\(3\)Amd.](#)) which retains the referendum, but provides that the proposition "shall not be implemented if the result of the referendum shows that a majority of registered voters have voted for the Bailiff to remain President of the States". In other words, the proposition comes into effect unless a majority of the electorate (in total, not simply of those voting) supports the *status quo*.

This amendment raises 3 concerns. The first is that it contravenes the guidance issued by the Council of Europe's Venice Commission, which sets out best practice in the use of referenda:

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2007\)008-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2007)008-e).

Section 7 of that guidance states –

It is advisable not to provide for:

- a. a turn-out quorum (threshold, minimum percentage), because it assimilates voters who abstain to those who vote no;
- b. an approval quorum (approval by a minimum percentage of registered voters), since it risks involving a difficult political situation if the draft is adopted by a simple majority lower than the necessary threshold.

Senator Ozouf's amendment could indeed cause a "difficult political situation", where the *status quo* was supported by a sizeable majority of those voting in a referendum, but the change to an elected Speaker went ahead regardless because of the level of abstention. This would be likely to lessen public confidence in the States and undermine still further the use of referenda to decide constitutional questions in the Island.

Our second concern is that this proposal has been lodged at a late stage, without any prior consideration of whether a threshold of this sort is desirable, or what its implications might be. The Venice Commission cautions against instability in the legislative framework applying to referenda and elections, of which this is an example.

Finally, the Assembly recently agreed to establish a Referendum Commission to advise on the wording of referendum questions and to designate lead campaign groups. The [Referendum \(Jersey\) Law 2017](#) also envisages the Commission being given additional roles related to referenda, which could include advising on matters such as thresholds for 'yes' votes. In our view, the integrity of referenda in Jersey will be improved by utilising the independence and expertise of the Commission to advise the Assembly on such matters. The members of the Commission are in the process of being recruited, with a view to the Commission being established in the next few weeks. If the Assembly is minded to set conditions around what is required for a referendum on an elected Speaker to be successful, this could be considered by the Commission in advance of the Referendum Act being put to the Assembly for decision. This would be more appropriate than reaching a decision on that matter at this point.