

# STATES OF JERSEY



## CONSTITUTION FOR JERSEY (P.52/2011): COMMENTS

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Presented to the States on 28th April 2011  
by the Chief Minister

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STATES GREFFE

## COMMENTS

The Council of Ministers has given consideration to the Proposition lodged by Deputy PVF Le Claire, requesting that I bring forward for debate a draft written Constitution for Jersey, and has agreed that I should present the following comments.

1. The Proposition does not indicate why a written Constitution for Jersey is considered necessary at this particular point in time. In most instances where countries have decided to introduce a written constitution, the need has been driven by fundamental change, such as gaining independence from colonial rule or following a revolution. A written constitution has been required in these instances to set out a new or revised system of government or to articulate a new constitutional arrangement between citizens and the state.
2. In the case of Gibraltar, for example, an earlier 1969 Constitution had been introduced by Order in Council to underpin the links with Britain, following a sovereignty referendum in which 99.19% of Gibraltarians had voted against coming under Spanish sovereignty in favour of British rule.

The 2006 Gibraltar Constitution was developed following an invitation by the U.K. Government to British Dependent Territories to submit proposals for constitutional reform, in particular, to move to a modern and mature relationship with the United Kingdom not based on colonialism. Key provisions of the Order in Council included –

- the Gibraltar House of Assembly was renamed as the Gibraltar Parliament to reflect the increased domestic autonomy of Gibraltar;
  - the new Constitution also gave people the right of self determination. However, defence and external relations were still retained by the United Kingdom;
  - a chapter on fundamental rights was included, similar to the European Convention on Human Rights and Fundamental Freedoms.
3. In all the above respects, Jersey is significantly further advanced constitutionally than Gibraltar and other Overseas Territories. Jersey is facing none of the circumstances that affected Gibraltar or other Overseas Territories and so the proposal may be regarded as a solution to fix a problem that we do not have.
  4. Jersey has had a constitutional relationship with England since 1204, which has subsequently developed incrementally by Royal Charters, customary law, case law, Laws and Acts of the States, Ministerial code, constitutional conventions, treaties such as the European Convention on Human Rights and other historical documents. Whilst there may be no single document that draws together all the duties of Government and rights of citizens, they have been documented and exist in written form. The proposal therefore appears to be a wish to codify these various documents. It is not clear that seeking to codify the constitutional position would currently be of any benefit to the Island. If the intention is that a written Constitution would seek to introduce incremental changes to our system of government or the rights of our residents, then there are more effective democratic mechanisms to achieve such aims.

5. Jersey's system of domestic governance, our constitutional relationship with the United Kingdom and our developing international identity are dynamic and evolving concepts. An attempt to codify these into a written Constitution, to cast our Constitution immutably in a formal legal text, could effectively freeze any further progress in the development of these important areas. Such a step may harm Jersey's longer term interests. At present, it would seem wiser to retain the flexibility of an uncodified constitution, which enables the Island to take into account changing times, the needs of our democratic system as it evolves and the flexibility to adapt to changing circumstances.
6. The resource implications of this Proposition are not insignificant. The construction of a document as important as a codified Constitution for Jersey which could be put before the people for consideration is not a minor task. It would certainly involve the advice of at least one highly qualified external constitutional expert, together with the time of Jersey's own constitutional advisers including probably the Bailiff and Attorney General, and other senior officials. Based on the experience of recent similar processes, it is likely the costs of drafting a document alone would be in the order of £150,000 – £200,000. Following this, it would be necessary to consult and promote wide debate on the proposals with the Court, States Assembly, legal profession, interest groups and the public of Jersey, followed by negotiation with the United Kingdom government and the Crown. The costs of these stages of the process are likely to be in the order of a further £200,000. In addition, the need for a public referendum would add an additional cost. Based on the cost of the Central European Time referendum, but recognising that this is a fundamentally more important issue, the cost would be approximately £50,000. In other words, this exercise could cost Jersey a sum in the order of half a million pounds – an amount which is currently not budgeted, and would not provide any measurable benefit to Jersey residents at a time when departments are considering cuts in services to deliver the level of savings required by the Comprehensive Spending Review.
7. The timescale for preparing a written Constitution is unrealistic. A codified constitution does not come 'off the peg' and it would not be possible to simply modify the constitution of an Overseas Territory such as Gibraltar. In 2008, the previous United Kingdom Government considered the possibility of codifying the constitution of Britain. The Secretary of State for Justice, Jack Straw MP, commented that any attempt to encapsulate Britain's constitutional arrangements in a single document should be done on a "bipartisan, consensual" basis over a period as long as 20 years. He also said a national referendum would have to be held to approve the document if it ushered in significant changes. Professor Robert Hazell, the director of the Constitution Unit at University College London, predicted Britain would never get a written constitution.
8. As indicated above, the process of drafting a constitution for Jersey would require careful consideration, followed by extensive consultation and debate, political scrutiny, negotiation and revision to craft a document which might be acceptable to a sufficiently large majority of the Island. A realistic estimate of the timescale for this process would be in the order of at least 5 years. It certainly would not be possible to create a written Constitution for Jersey in time for the next elections. For this reason, I am not able to give a

commitment to the States that I can bring forward for debate a draft written Constitution for Jersey during the remainder of my period in office as Chief Minister, and I am not able to commit my successor to such an obligation.