

# **STATES OF JERSEY**



## **DRAFT STATES OF JERSEY (MISCELLANEOUS PROVISIONS) LAW 201-: REQUEST TO PRIVY COUNCIL (P.99/2011): COMMENTS**

---

**Presented to the States on 27th June 2011  
by the Privileges and Procedures Committee**

---

**STATES GREFFE**

## COMMENTS

### Introduction

The Privileges and Procedures Committee believes it is extremely important for States members to appreciate the very far-reaching consequences of adopting the proposition of the Deputy of Grouville.

The States rejected an identical proposition from the Deputy of Grouville on 3rd March 2011, but if the Assembly were to change its 3rd March decision now and support this proposition the consequences would be as follows –

- (i) there would be no true ‘general election’ in October 2014 with all members of the States being elected on one day (PPC considers it is vital to stress the important distinction between a ‘single election day’, when those members due for election in a particular year are elected on the same day, and a true ‘general election day’ by which PPC means an election day when **all** members of the Assembly are elected at one time);
- (ii) Senators elected this year will remain in office for 6 years and will therefore remain in office throughout the 2014 elections without facing the electorate before the appointment of the new Chief Minister, Ministers, Chairmen, etc. after the 2014 elections;
- (iii) there will be no prospect of having a true ‘general election with all members elected on the same day until October 2017 at the earliest;
- (iv) there would be no transition to spring elections for the foreseeable future;
- (v) there would be no common term of office for all members and no spring elections from May 2018 and every 4 years thereafter;
- (vi) there would be no reduction from 12 to 10 Senators in October 2011.

In recent months those campaigning in support of the Deputy of Grouville have largely concentrated on (vi) above, namely the single issue of the reduction in the number of Senators.

PPC believes it is extremely important to stress that support for this proposition would cancel all of the reforms referred to in (i) to (vi) above and not simply the reduction from 12 to 10 Senators in October this year. The only reform measure agreed by the States in recent times that would be unaffected by this proposition is the introduction of a single election day in each year when elections are being held, which was agreed separately in June 2010.

When the first version of this proposition was debated in March 2011, some members expressed the view that it might be possible to cancel the reduction in the number of Senators and to then bring forward as a matter of urgency fresh legislation before the October 2011 elections to reinstate other aspects of the agreed reform measures such as the common term of office and the 2014 general election. In March, PPC stated that this was, in practice, almost impossible to achieve because of the required timescale to draft and debate new legislation and obtain Privy Council sanction but, even if some may feel that view was too pessimistic in March, there is obviously no doubt at this

stage that there is no scope at all to cancel some parts of the reform and not others. Members are therefore now faced with a simple choice to either –

- (i) support the Deputy of Grouville and cancel the whole package of reforms; or
- (ii) reject this proposition and allow the reform measures to be implemented.

The main reasons for PPC's strong opposition to this proposition can be summarised under the following headings.

### **Impact on the work of the future Electoral Commission**

Some of those campaigning in support of the Deputy of Grouville have claimed that the States should cancel the agreed reform package and leave all reform decisions to the Electoral Commission that will soon be established. It is PPC's view that the adoption of the Deputy of Grouville's proposition could, in fact, frustrate rather than assist the implementation of the Commission's eventual recommendations.

The consequence of the adoption of this proposition would be that 6 Senators would be elected this October for a full 6 year term until October 2017. This will immediately tie the Electoral Commission's hands in relation to these 6 Senators until at least 2017, making it likely that the Commission's recommendations could not be implemented until 2017. (PPC has had advice in the past that it would not be possible for legal reasons to legislate to terminate a member's term of office halfway through.) Under the current reform proposals, the term of office of **all** elected members will expire at the same time in October 2014, meaning that it would be possible to implement in full the Commission's recommendations, whatever they are, from that date. PPC thinks it would be extremely undesirable to establish an Electoral Commission in late 2011 or early 2012 and to then have to wait until October 2017 to implement the recommendations in full.

PPC does not share the view expressed by some that all reform should be cancelled and put on hold until the Electoral Commission has completed its work. Incremental reform of the composition and election of the Assembly has occurred in recent years, for example the decision to hold all elections for Connétables on the same day and the move to a single election day each year. The reforms agreed last October are another small step on the road to reform, but the agreed terms of reference for the Electoral Commission make it clear that the Commission will start its work from a completely 'blank sheet of paper' and there would be nothing to stop the Commission recommending whatever it wishes. In its recent report on the establishment of an Electoral Commission (R.54/2011), PPC referred to the 'blank sheet of paper' approach as a concern but, in the current circumstances, it is in fact a significant advantage for the Commission and adopting the proposition of the Deputy of Grouville would simply impose a constraint on the Commission because of the 6 Senators elected until 2017. The simple fact is that the work of the future Electoral Commission will in no way be affected by the current proposals; and PPC considers that members must do what they believe is right now, and not put off decisions simply because an Electoral Commission is about to be established.

## **Perpetuating public dissatisfaction over the lack of a true ‘general election’**

If the Deputy of Grouville is successful, 6 Senators would, as mentioned above, be elected for a full 6 year term in October this year. These 6 would then remain in office throughout the October 2014 election process, and nothing would be done to address repeated public concerns about ‘mid-term’ Senators being able to gain positions of responsibility in the new States without having had to face an election. It would be quite possible, for example, for the Chief Minister chosen in 2014 to be a member who had only faced the electorate in 2011, something that will simply not be possible if the agreed reform package goes ahead as planned.

Those opposing the current reforms have correctly pointed out that successive public opinion surveys, for example the 2006 MORI poll, have shown support for the Island-wide mandate, but this must be considered alongside the significant majority of respondents in those same surveys who are in favour of a true general election (71% in the 2006 MORI poll) and who believe that there too many members (67% in the 2006 MORI poll). It has been said on many occasions that some compromise will always be needed to achieve desirable and workable reform of the States, and PPC considers that the ‘prize’ of a true general election in 2014 is too valuable to compromise at this stage.

## **Credibility of the States Assembly**

One of the most frequent criticisms of the States Assembly made by the public and the media is that members spend an inordinate amount of time discussing their own internal procedures and revisiting decisions already made. PPC is therefore disappointed that the Deputy of Grouville has brought this matter back to the States when the Assembly has already voted 3 times in the last 9 months to pursue the reform package put forward in the Draft States of Jersey (Miscellaneous Provisions) Law 201-.

The current reforms included in that Law were first agreed by the Assembly on 13th October 2010, when P.118/2010 (‘Composition of the States: Spring election and move to 4 year term of office’) was adopted. On that occasion, the introduction of a common 4 year term of office and a move to spring elections was approved by 41 votes to 7, and the reduction over time in the number of Senators was approved by 31 to 17.

PPC was charged in October 2010 by the States decision to bring forward the necessary legislation to implement the decision, and was therefore disappointed when further amendments seeking to overturn the October decisions and introduce new matters were lodged for debate in January 2011. The main elements of the October 2010 decisions were nevertheless ratified again by States on 20th January 2011 when the Draft States of Jersey (Miscellaneous Provisions) Law 201- (P.176/2010) was adopted, although the Assembly agreed one minor change to amend the transitional cycle and bring forward the date of the first general election to October 2014. The States were then asked by the Deputy of Grouville to rescind the decision to approve that legislation on 3rd March 2011 (P.26/2011), but the Assembly voted not to do that.

In its Comments on P.26/2011 before the 3rd March 2011 debate, PPC stated that the Committee *“finds it extraordinary that there is now a move to re-open 2 democratically taken decisions and cancel the whole package of reform that has already been approved by significant majorities on 2 occasions.”* PPC can only, at

this stage, state that it finds it even more extraordinary that the Deputy of Grouville is seeking to re-open this issue for a **fourth** time in 9 months. In addition, the Deputy's proposition is creating uncertainty only 2 months before the nomination meeting when potential candidates are already making up their mind about which role they will stand for in October. As stated in the P.26/2011 Comments, PPC respects the individual political views of the Deputy of Grouville, who has been consistent during her time in the States in her opposition to 4 year terms of office and a reduction in the number of Senators, but PPC nevertheless feels strongly that all members of the Assembly need to recognise that decisions made democratically by a majority of members must be allowed to stand, even if they run contrary to the individual views of those who voted against the item in question.

PPC considers that it simply brings the Assembly into disrepute to seek to re-open issues and overturn decisions shortly after propositions have been agreed by the Assembly, just because some members did not support the decision. PPC accepts that it is perfectly legitimate for matters to be brought back to the Assembly for reconsideration when new evidence emerges, but PPC considers that nothing has changed since the decisions taken in October 2010, January 2011 and March 2011, and the Committee does not therefore think it is appropriate to bring the matter back yet again.

PPC is concerned that some opponents of reform have attempted to suggest that the decisions on reform somehow lack legitimacy because the members who supported reform were elected with less votes than those who opposed it. The Committee believes that this is an incorrect and inaccurate way to interpret a States decision. Every elected member, whether he or she is a Senator, a Connétable or a Deputy, has one equal vote on every matter before the Assembly, and it is simply an obvious consequence of the current structure of the Assembly that some members are elected with less votes than others because constituency sizes are so varied (a matter that the Electoral Commission will no doubt be considering in due course). This in no way makes some members' votes in the Assembly more 'important' or 'valid' than others.

### **Credibility of Jersey in the eyes of the Ministry of Justice and the Privy Council Office**

Once a draft Law is adopted in Third Reading by the States Assembly, Standing Orders require the Greffier of the States to forward the Law to the United Kingdom authorities so that the process of Privy Council sanction can be initiated. This means that, in practice, the draft Law is forwarded through official channels to the Ministry of Justice, which is the UK government department responsible for processing Jersey legislation through the required steps before Privy Council sanction (in practice, adopted Laws are forwarded to the Ministry of Justice some 7 to 10 days after their approval by the States). The Greffier's letter is accompanied by the report of the Law Officers on the legislation in question. As stated in this proposition, the Greffier of the States transmitted this Law through the official channels on 26th January 2011, 6 days after it was adopted by the States.

In recent months there have been concerns about the time that is being taken for Jersey legislation to receive sanction by the Privy Council, and it is understood that planned UK government cutbacks are likely to impact on the staffing resources available at the Ministry of Justice to process legislation from the Crown Dependencies. Although it may be of more immediate concern to Ministers than PPC, the Committee nevertheless believes it is important for members to consider the impact on the

credibility of the Island in the eyes of Ministry of Justice and Privy Council officials if a request is sent as a result of this proposition to withdraw the States of Jersey (Miscellaneous Provisions) Law 201- from the Privy Council sanction process. PPC is aware that a special request was made when the adopted Law was transmitted from Jersey for it to be given particular priority because of the need to have it in place in good time before the elections this year. PPC therefore considers that it will send a very curious message to the Ministry of Justice and the Privy Council to request that an adopted Law, that was previously said to be 'urgent', should be withdrawn from the Privy Council sanction process. This could possibly have an impact on the weight given by the Ministry of Justice and the Privy Council to future requests for 'urgent' treatment, and PPC urges the Council of Ministers to give consideration to this point and to present comments to the States.

### **Financial considerations**

PPC has made it very clear in its own earlier propositions relating to any reduction in the membership of the States Assembly that simple financial considerations should never be a deciding factor when taking decisions about the appropriate number of members of the Assembly. Nevertheless, once the October 2010 decision to reduce the membership of the Assembly by 2 members from October 2011 was taken, the Committee incorporated the consequential saving of some £92,000 per annum in States members' remuneration as part of its CSR savings proposals, and this was included in the list of CSR savings circulated at the time of the Budget 2011 process. The initial draft cash limit that the Committee has worked on for the States Assembly budget for 2012 and beyond incorporates this CSR saving; and if the decision to reduce the membership of the Assembly is reversed, there will be a need to find an alternative CSR saving in another area of States expenditure to compensate. PPC would also point out that the cost of all the time spent on this matter to date by the Law Draftsman's Office, the Law Officers' Department and the States Greffe would be wasted if the proposition is adopted, as well as the time spent by members themselves dealing with it on 3 separate occasions.

### **Conclusion**

PPC strongly urges members to reject the proposition of the Deputy of Grouville.

Although there has been concern expressed by some about the reduction in the number of Senators being elected this autumn, PPC would remind members that the reforms agreed, subject to any further reforms proposed by the Electoral Commission, enable the election of 8 Senators in the first true 'general election' in October 2014 and PPC considers that the election of 8 Senators rather than 6 at one time will, if anything, enhance the senatorial position rather than diminish its importance, even though a 'one-off' transitional election for only 4 Senators will be needed this year.

PPC urges members to see the bigger picture of the overall long-term benefits of the reform package, rather than simply focussing on the consequences of the necessary 'one-off' transitional election for 4 Senators this autumn. In addition, PPC reiterates that members should consider the benefits of giving the Electoral Commission the ability to propose a full reform package affecting all 51 members from October 2014 rather than having to wait until October 2017, as will be the case if this proposition is adopted.