

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY SENATOR S.C. FERGUSON
ANSWER TO BE TABLED ON TUESDAY 9th OCTOBER 2018**

Question

Further to his answers to questions on the matter during the debate on ‘Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment’ (P.84/2017) on 15th November 2017, could H.M. Attorney General indicate whether his advice on whether the removal of the Bailiff from the role of President of the Assembly raises a constitutional issue for the Island remains his considered view; and does he have anything further to add to his comments to the Assembly during that debate?

Answer

During the debate on 15 November 2017 (“the debate”) I expressed the view that the removal of the Bailiff from the role of President of the States is clearly a constitutional issue. The Solicitor General and I remain of that view.

As I explained during the debate, Articles 2 and 3 of the States of Jersey Law 2005 provide that the States of Jersey are constituted of, inter alia, the Bailiff (Article 2) who shall be President of the States (Article 3). Articles 2 and 3 were not innovative, but gave statutory underpinning to a fundamental aspect of the constitutional role of the Bailiff.

As I said during the debate, the role of the Bailiff goes to the heart of the Island’s constitutional identity. The term “Bailiwick” (“*Bailliage*”) is inextricably bound up with the word “Bailiff” (“*Bailli*”). Jersey is called a Bailiwick because of the constitutional role of the Bailiff as its civic head. This is not simply a matter of status but (as Lord Carswell put it) a “reflection of his dominant position in public affairs in Jersey over the centuries”.¹ This derived from Jersey’s constitutional identity as a *bailliage* within Normandy, headed by *un bailli*.² To this day Jersey remains a *bailliage*, or bailiwick, under the English Crown in place of the Duke of Normandy, and still headed by a bailiff. Sir Philip Bailhache in his submission to the Carswell Review,³ was therefore correct to state that, in constitutional terms, the head of the Bailiwick of Jersey is the Bailiff.

Sir Michael Birt explained, when Bailiff, in his letter to the Chairman of the Privileges and Procedures Committee⁴ in 2011 “*The Bailiff has an important role to play in safeguarding the constitutional position of the Island*”; and he went on to say “*it is hard to see how this role could continue if the Bailiff were simply Chief Justice. The underpinning [of this role] is that he is President of the States*”.

I explained in the debate that I shared that view and that remains the case.

Whether the role of the Bailiff as President of the States continues is a political issue and, as such, an issue upon which I express no view. However, such a change to the role of the Bailiff would be a constitutional matter, and would inevitably impact upon the Bailiff’s constitutional role as civic head of the Bailiwick of

¹ Carswell Review, Chapter 5.

² Pesnelle: *Ancienne Coutume de Normandie*, first volume (4th edition) “de jurisdiction”, first Article. « *Bailli signifie la même chose que Gardien; comme Baillie signifie Garde & Protection. Le Bailli donc étoit comme le conservateur du Peuple & des Loix.* » [Bailli means the same thing as guardian; as Baillie means Guard and Protection. ... The Bailiff thus was in the position of preserver (*conservateur*) of the People and of the Laws.”]

³ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Bailhache%20Submission%2020100406%20PB%20v1.pdf>

⁴ R28/2011

Jersey, particularly when Lord Carswell recommended that the Bailiff remain both civic head and guardian of the constitution of the Island.