

# **STATES OF JERSEY**



## **ELECTORAL COMMISSION: COMPOSITION AND TERMS OF REFERENCE**

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**Lodged au Greffe on 13th January 2012  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

## PROPOSITION

### THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 15th March 2011 in which they agreed that an independent Electoral Commission should be established in Jersey to investigate and report on all aspects of the composition of the elected membership of the States Assembly and the election and voting processes for such members; and to vary that decision as necessary and –

- (a) to agree that the Commission should be comprised of 3 members of the States, one of whom shall be its Chairman, together with 3 other persons with appropriate skills and experience who are not members of the States, appointed by the States on the recommendation of the Privileges and Procedures Committee following a recruitment process overseen by the Jersey Appointments Commission;
- (b) to agree that the Chairman and 2 States members should be appointed by the States immediately following the adoption of this proposition, with the nomination and ballot procedures for these positions following the process set out in Standing Orders for the selection of the Chairmen and members of scrutiny panels except that –
- (i) nominations for the 2 members shall be invited from all members without initial nominations being made by the Chairman; and
- (ii) voting for the Chairman and members shall be undertaken by open ballot and not by secret ballot;
- (c) to agree that the terms of reference for the Commission shall be –
- “1. The Electoral Commission shall consider all the following areas –
- Classes of States member;
  - Constituencies and mandates;
  - Number of States members;
  - Terms of office;
- and all other issues arising in the course of the work of the Commission which are relevant to the needs stated above.
2. The views of the public in Jersey should be sought and all such views taken into consideration. Formal meetings and hearings of the Commission should be held publicly in Jersey unless the Commission believes that there are reasonable grounds for holding a meeting or hearing *in camera*. The content of all written submissions to the Commission will be made available to the public, unless the Commission believes that there are reasonable grounds for non-disclosure of a

submission or part of a submission, and should be attributed unless the submitter explicitly requests that a submission shall be non-attributed and the Commission accepts the reasons for such a request.

3. The Electoral Commission shall review existing studies and research and conduct further research as it sees fit.
  4. At the conclusion of its investigation, the Electoral Commission shall present a report with recommendations to the Privileges and Procedures Committee to enable the Committee to present the Commission's proposals to the States for approval prior to the submission of the proposals to the electorate in a referendum under the Referendum (Jersey) Law 2002.”;
- (d) to request the Privileges and Procedures Committee, in consultation with the States members appointed as Chairman and members, to take the necessary steps to recruit the remaining members of the Commission and to request the Commission to forward its recommendations to the Committee no later than December 2012.

## PRIVILEGES AND PROCEDURES COMMITTEE

## **REPORT**

### **Introduction**

On 15th March 2011 the States adopted a proposition of the then Deputy of St. Mary (as amended by certain amendments lodged by the Deputy himself and by Senator B.E. Shenton) and agreed that an Electoral Commission should be established to investigate the composition and election of the States.

In adopting the proposition as amended the States agreed –

- (a) that an independent Electoral Commission should be established in Jersey to investigate and report on all aspects of the composition of the elected membership of the States Assembly and the election and voting processes for such members, with the guiding principles of the Commission's investigation to be –
  - (i) the need to secure the greatest possible acceptance by the public of any new arrangements proposed, and
  - (ii) the need to ensure that the views of the electorate are reflected as effectively and as fairly as possible in the make-up of the States and of the Executive, namely the Chief Minister, Ministers and Assistant Ministers;
- (b) the following terms of reference of the Electoral Commission –

### **ELECTORAL COMMISSION TERMS OF REFERENCE**

1. The Electoral Commission shall consider all the following areas –

- Classes of States member
- Constituencies and mandates
- Number of States members
- Terms of office
- The functions of the electoral process
- Voting systems
- Voter registration

and all other issues arising in the course of the work of the Commission which are relevant to the needs stated above.

2. The views of the public in Jersey should be sought and all such views taken into consideration. Formal meetings and hearings of the Commission should be held publicly in Jersey unless the Panel believes that there are reasonable grounds for holding a meeting or hearing in camera. The content of all written submissions to the Commission will be made available to the public, unless the Commission believes that there are reasonable grounds for non-disclosure of a submission or part of a submission, and should be attributed unless the submitter explicitly requests that a submission

shall be non-attributed and the Commission accepts the reasons for such a request.

3. The Electoral Commission shall review existing studies and research and conduct further research as it sees fit.
  4. At the conclusion of its investigation, the Electoral Commission shall put forward a complete package of how the elections to the States should operate in Jersey, with this package being capable of commanding the support of the public, and only to desist from this duty if in all conscience it finds itself unable to do so.;
- (c) that the Privileges and Procedures Committee, after consultation, should bring forward proposals for debate ahead of the debate on the Annual Business Plan 2012 detailing the proposed composition of the Electoral Commission, its anticipated costs, and how it is to be funded;
- (d) that the Privileges and Procedures Committee should take the necessary steps to identify, through a process overseen by the Appointments Commission, the proposed membership of the Commission for subsequent approval by the Assembly on a proposition lodged by the Privileges and Procedures Committee;
- (e) that, on receiving the recommendations of the Electoral Commission, if the Commission has recommended a package of election reform (excluding such matters as could be classed as administrative improvements, for example matters pertaining to voter registration), the States should take into consideration the wishes of this Assembly which is that they should put the option to the electorate in a referendum having followed the procedures laid down in the Referendum (Jersey) Law 2002;
- (f) that the Electoral Commission, subject to additional funding being provided in the Annual Business Plan 2012, shall be requested to endeavour to complete its work no later than 31st December 2012.

The former PPC published a consultation document about the establishment of a Commission on 13th May 2011 (R.54/2011) and then published its final recommendations on the possible structure of the Commission on 7th September 2011 (R.110/2011). The Committee expressed the view in this second report that the Commission's recommendations would have a greater chance of success if a majority of its members were local residents, although it also considered that there should be some outside expertise. The Committee therefore proposed a structure of a Commission of 5 members, with a local Chairman, 2 members from Jersey and 2 expert members from outside the Island.

The States voted a budget of £200,000 for the Commission's work as part of the Annual Business Plan 2012 proposals.

## **Proposed revised structure of an Electoral Commission**

Since taking office, the current Privileges and Procedures Committee has considered the best way to progress the establishment of an Electoral Commission. The Committee is determined to do all it can to achieve long overdue reform of the composition of the States in time for implementation in October 2014 and, although the Committee has only recently been appointed, it is conscious that there is a very tight timescale as set out below if a reformed structure is to be in place for the next elections.

Having reviewed the original proposals for the Commission as agreed by the last Assembly and the former PPC's recommendations, the new Committee has agreed by a majority that the States should be given the opportunity through this proposition to debate whether the new Assembly wishes to revise the March 2011 decision.

The most significant change that PPC is inviting members to debate is whether the Commission should be chaired by a States member and include 2 other members of the States, alongside 3 independent members. PPC has noted that the reform of the States was an important issue during the 2011 elections, with the poll-topping senatorial candidate standing on a very clear platform of achieving reform by 2014. Although it is never possible to ascertain the precise reasons for any candidate's success, PPC believes it is clear that Senator Bailhache's pledge to seek to be involved in the work of the Electoral Commission struck a chord with the electorate who voted for him in record numbers. With a clear message about the need for reform from many other candidates in the elections as well, PPC has concluded that it is appropriate to ask the new States to consider whether the March 2011 decision should now be varied so that the Commission can include elected members.

Although some may consider that the involvement of States members will lead to yet another failure to achieve reform, the present PPC does not share this view. The Committee believes that members must have a stake in the work of the Commission and disagrees with the comments made by the former Deputy of St. Mary in his proposition (P.15/2011) about the inability of the States to drive forward reform. In the report accompanying his proposition (P.15/2011) he wrote –

“Most of us, I believe, are agreed that we cannot reform ourselves in a comprehensive and resolute way” (...) “I should add that in my view, this is not an occasion for breast-beating. It is just a fact that this particular issue is not amenable to being settled by ourselves.” (...) “The call for a Commission is quite understandable in that: (a) what we have is demonstrably unfair; and (b) the States cannot do major reform of its own composition.”.

The present PPC does not share the former Deputy's views on this issue. States members are elected by the people of Jersey to take decisions on every important issue facing the Island and PPC considers that it would be an abdication of responsibility for members to pass responsibility on one of the most significant decisions, the composition of the States Assembly, to an outside body. The last Assembly showed it was capable of taking incremental decisions on reform with the move to a single election day in 2011, the transition to a full general election for all members in October 2014 and a small reduction in membership. PPC is confident that a majority of members of the Assembly elected in 2011 will be willing to drive through more significant reform if workable recommendations emerge from the work of the

Electoral Commission. PPC considers that these reform proposals are likely to have a much greater chance of success when they are debated if they have been developed with the involvement of elected members. Past experience in relation to reports by bodies including no States members, such as the 2000 Review on the Machinery in Government in Jersey (the 'Clothier' report), or the 2010 Review of the Roles of the Crown Officers (the 'Carswell' report), shows that many of the recommendations have never been implemented in full when States members have been asked to consider them or have simply never been brought forward for debate. For example, none of the 6 Clothier recommendations on the composition of the Assembly have been implemented and no steps have been taken to debate the principal recommendation of the Carswell review that the Bailiff should cease to be President of the States.

PPC is determined that the work of the Electoral Commission should not come to a similar unsatisfactory conclusion. The Committee considers that the involvement of 3 States members will enable the Commission to maintain close liaison with other members during the review, and this will increase the likelihood of acceptable recommendations emerging from the work of the Commission. PPC is nevertheless recommending that the Commission should also contain 3 other members who are not members of the States. The Committee considers that the involvement of these 3 non-States members will bring a useful outside perspective, and in making this recommendation the Committee has taken account of the way in which the mixture of States members and non-States members has worked very effectively for a number of years on the Public Accounts Committee. A mixture of States members and non-States members will, in PPC's view, provide an ideal mixture of internal States expertise and an external perspective.

In reviewing the existing proposals for the Commission, PPC also considered whether the members who are not States members should be locally-based or brought in from outside the Island. Although PPC has decided not to be prescriptive about this in the proposition, the Committee's own preference is for members who are locally-based or who have very strong Jersey connections if living outside the Island. If the Commission is to have any chance of success, the members must understand the Jersey context and culture; and the failure to implement the recommendations of earlier reviews may stem in part from the fact that Panel members from outside the Island did not have this understanding. Even if persons from outside the Island brought particular expertise of electoral reform or electoral systems, the lack of a detailed knowledge of Jersey's history and culture would put them at a significant disadvantage when considering what recommendations would have any chance of being acceptable to the electorate and to the Assembly. The creation of a Commission of totally Jersey-based members would also enable the work of the Commission to be undertaken in a much more timely way without the need for members to have to travel to the Island for meetings.

It will, of course, be necessary to ensure that any locally-based members approach the work in a totally objective way, but the Committee shares the view expressed by its predecessor in R.110/2011 when it stated –

“... it will be essential to ensure that those who apply do not come with preconceived ideas or existing strong views on the matters to be addressed by the Commission. PPC accepts that it may be difficult to find local residents who meet this requirement, but who still have appropriate skills and sufficient interest in the subject-matter to be willing to give their time, but the Committee is hopeful that this will not prove to be impossible. Recent

experience with the review of the role of the Crown Officers, chaired by Lord Carswell, shows that local Panel members can be selected who approach a task such as this in a totally objective way.”.

If this proposition is adopted, PPC intends to advertise for expressions of interest within the Island before undertaking a short-listing and interview process. This will be done with the involvement of the Jersey Appointments Commission to ensure that a robust and fair recruitment process is followed. The names of those selected will then be brought to the States for approval. PPC does not think that the possibility of appointing one or more members who are resident outside the Island should be ruled out, but the Committee does not intend to take active steps to advertise or seek expressions of interest outside Jersey. It is, of course, quite possible that candidates with suitable experience and local connections may become aware of the advertisement and apply for membership. PPC nevertheless intends to make it clear that membership would be on a purely honorary basis, although reasonable travel and accommodation costs would need to be met if a member from outside Jersey was appointed.

### **Proposed timescale**

As mentioned above, PPC is concerned that the work of the Commission must be undertaken in a timely way if reform is to be in place, after a referendum, by October 2014. The proposition therefore proposes that the Commission finishes its work no later than December this year. Although October 2014 may seem a distant date at present, the following timetable, which works back from October 2014 and which has been updated from the one given in R.110/2011, shows how important it is that the Commission finishes its work by this date –

October 2014	Elections
June 2014	Legislation registered in Royal Court
May 2014	Legislation sanctioned by Privy Council
November 2013	Legislation debated by the States
September 2013	Legislation lodged for debate
July/August 2013	Legislation drafted
June 2013	Referendum held
March 2013	Commission’s proposals and referendum Act debated by the States
January 2013	Commission’s proposals and referendum Act lodged by PPC
December 2012	Commission presents its recommendations to PPC
1st May 2012	Non-States members appointed by the States enabling the Commission to begin its work



3rd April 2012	Proposition to appoint non-States members lodged by PPC
22nd to 30th March 2012	Closing date for applications, short-listing and interviews
9th/10th March 2012	Advertisement published for recruitment of non-States members
6th March 2012	This proposition debated by the States. Chairman and 2 States members appointed by the States.

### **Establishing the Commission**

As indicated in paragraph (b) of this proposition, the Chairman and 2 States members would be appointed by the States immediately after the debate on this proposition if it is adopted.

The appointment procedure would mirror the procedure used for the appointment of Chairmen and members of Committees/Panels except that: (i) nominations for the 2 members would simply be made by members without any initial nominations from the Chairman; and (ii) voting would be by open ballot and not by secret ballot.

The use of this appointment procedure for the Chairman means that all candidates will be able to speak for up to 10 minutes about the manner in which they would discharge their duties as Chairman of the Commission, and would then be questioned by other members for up to 20 minutes. This may take some time if there are several candidates, but PPC considers that the position of Chairman will be an extremely important one, and it is important that all members are given the opportunity to understand how candidates would approach the position before voting. The ballot procedure used, namely a series of ballots with the lowest placed candidate dropping out until one candidate obtains a majority of votes cast, will ensure that the member appointed has the support of a majority in the Assembly.

Following the appointment of the Chairman, nominations would be invited by the Presiding Officer to fill the 2 States member positions and, if there were more than 2 candidates, a ballot would be held to select the 2 members.

Once the States have agreed the proposed composition of the Commission as set out in this proposition, and the Chairman and 2 States members have been appointed, immediate steps will be initiated to recruit the 3 non-States members. As shown in the timetable above, the need to allow time for applications and to then lodge the proposition in relation to the appointments for the required 4 week period means that the non-States members cannot be appointed until the States meeting of 1st May 2012, but the Commission will be able to begin work immediately after that date once the appointments have been made. The Jersey Appointments Commission will be involved in the recruitment process and PPC will then recommend the persons selected for approval by the Assembly. To enable the Commission to start work as soon as possible after 1st May, practical arrangements for matters such as the secondment of an officer to support the Commission will begin once this proposition has been adopted.

The timetable above allows the Commission some 8 to 9 months to complete its work by December 2012. PPC accepts that this is an ambitious timescale, but considers that there will still be adequate time to seek views from the public, hold public meetings, consult with States members and undertake and/or commission whatever research the Commission wishes. If all members of the Commission are locally-based or able to travel to the Island whenever required, there should be no difficulty for the Commission to complete its work by the proposed deadline.

### **Financial and manpower implications**

As mentioned above, the States voted a budget of £200,000 for the Commission as part of the Annual Business Plan 2012. The proposals now being put forward by PPC in this proposition will lead to a considerable saving on the costs initially envisaged last year, as those costs included a significant sum for the fees and travel/accommodation costs of a Chairman and external members. The costs of the Commission will now be restricted to the cost of secondment of an Executive Officer for some 9 to 12 months and matters such as advertising, transcription costs, room hire (if necessary), equipment set-up for hearings and public meetings. PPC does not anticipate that the total costs will exceed £80,000 to £90,000 as set out below.

Executive Officer (Grade 10 officer for one year <sup>1</sup> , total cost including pension, social security, etc.)	£57,000
Accommodation, IT/recording equipment set-up, room hire for public meetings, etc.	£10,000
Transcription of public hearings (estimated to allow some 18 to 20 days for some 6 hours per day at £90 per hour of audio)	£10,000
Advertising, printing, stationery, incidental costs	£10,000
<b>APPROXIMATE TOTAL COST</b>	<b>£87,000</b>

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<sup>1</sup> The cost of an officer has been estimated for 12 months as, although the Commission itself may complete its work in 8 to 9 months, the officer will almost certainly be needed to assist with the preparation of the necessary proposition to the States and the preparation of the referendum.