

STATES OF JERSEY



RE-INSTATEMENT OF SENATORS (P.79/2022): SECOND AMENDMENT

Lodged au Greffe on 1st November 2022
by Deputy M.R. Scott of St. Brelade
Earliest date for debate: 22nd November 2022

STATES GREFFE

RE-INSTATEMENT OF SENATORS (P.79/2022) – SECOND
AMENDMENT

1 PAGE 2, PARAGRAPH (a) –

After the words ‘in 2026’, insert the words “, along with an adjustment in the number of Deputies so that the total number of States Members should either remain the same or decrease after reinstatement of the office of Senator”.

2 PAGE 2, PARAGRAPH (b) –

After the words “in 2026” insert the words -

“, with consideration being given by the Privileges and Procedures Committee to the following supporting proposals for changes to the electoral system and the way public elections are funded –

- (i) changes to the distribution of Deputies across the new constituencies along with the possibility of introducing proportionate voting in the States Assembly for Connétables to reflect the number of voters in the Parish each Connétable represents; and
- (ii) a change in the public funding and prescribed conduct of electoral campaigns for the public office of Connétable, Deputy or Senator to enable candidates to compete on a relatively level playing field regardless of political affiliations, personal finances or disability including:
 - a. a review of current publicly sponsored delivery of campaign literature with a view to increasing the word count of individual manifestos and encouraging the use of shared word count by candidates who are members of publicly declared political alliances; and
 - b. the establishment of a candidate deposit system or other system of fixed contributions that allows deposits or contributions to be waived where candidates can provide public evidence of significant voter support.

3 PAGE 2, PARAGRAPH (c) –

Substitute 2024 for any reference to 2023.

DEPUTY M.R. SCOTT OF ST. BRELADE

Note: After this amendment, the proposition would read as follows –

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

- (a) that the office of Senator, elected on an Island-wide basis, should be re-instated in time for the General Election in 2026, along with an adjustment in the number of Deputies so that the total number of States Members should either remain the same or decrease after reinstatement of the office of Senator;
- (b) to request that the Privileges and Procedures Committee engages with States Members, the public, and other individuals or bodies as it sees necessary, to develop proposals that will amend the electoral system so that Senators, elected on an Island-wide basis, are re-instated at the General Election in 2026, with consideration being given by the Privileges and Procedures Committee to the following supporting proposals for changes to the electoral system and the way public elections are funded –
 - (i) changes to the distribution of Deputies across the constituencies along with the possibility of introducing proportionate voting in the States Assembly for Connétables to reflect the number of voters in the Parish each Connétable represents; and
 - (ii) a change in the public funding and prescribed conduct of electoral campaigns for the public office of Connétable, Deputy or Senator to enable candidates to compete on a relatively level playing field regardless of political affiliations, personal finances or disability including:
 - a. a review of current publicly sponsored delivery of campaign literature with a view to increasing the word count of individual manifestos and encouraging the use of shared word count by candidates who are members of publicly declared political alliances; and
 - b. the establishment of a candidate deposit system or other system of fixed contributions that allows deposits or contributions to be waived where candidates can provide public evidence of significant voter support; and
- (c) that the proposals requested in (b) should be lodged in time for debate by the States Assembly no later than the end of July 2024, with consequential amending legislation being lodged in time for debate no later than December 2024.

REPORT

The Amendment accompanied by this Report seeks that the PPC action requested by Proposition 79/2022 be amended to:

- (a) state an intention that the re-instatement of the office of Senator should not increase the overall number of members of the States Assembly;
- (b) produce related proposals that address the risks of the reinstatement of Senators prejudicing the diversity of States Assembly membership; and
- (c) extend the proposed period for the lodging of proposals by the Privileges and Procedures Committee (the 'PPC') by a year to enable a more thorough review of the proposal.

The Amendment seeks a more progressive solution to the concerns raised by the Proposition than the Proposition (whether or not amended by P.79/2022 Amd) may otherwise achieve.

The need to clarify intent

While Proposition P.79/2022 is responsive to voters' concerns regarding their perceived disenfranchisement from the last set of electoral changes, the number of States Members would need to be increased unless:

- (i) numbers of Deputies in the new voting districts are changed; and/or
- (ii) Constables are removed from the States Assembly (which would appear contrary to the preference of the electorate expressed in the referenda of 2013 and 2014),

The amendment proposed by P.79/2022 Amd. seeks to create the 'ideal blend of representation at the local, district and Island-wide levels', by adding wording that the office of Senator 'should sit alongside the office of Connétable and Deputy.

However, it is unclear if the intention of P.79/2022 Amd is for the States Assembly to seek to:

- (a) retain the existing number of Deputies and their current distribution amongst voting districts, with the re-instatement of the office of Senator to increase the total number of States Members: or
- (b) approve a reversion to the membership composition of the States Assembly that existed before the last set of electoral changes.

Increasing the number of States Members would counteract what might be perceived as one positive change resulting from the recent changes to the electoral system and would increase the total remuneration cost of the States Assembly (which is unlikely to be regarded favourably by the public).

The second option would be regressive. There clearly were flaws in the former electoral system, including the uneven distribution of voting power amongst Parishes added to

the ‘complexity’ of having three types of States Member. The former PPC sought to make voting districts closer to being equally representative through the creation of the new voting districts and the distribution of Constables and Deputies amongst those districts.

Reverting to the former composition of the States Assembly and voting districts would mean that the voting power of Constables, in terms of the number of Parishioners each Constable represents at States Assembly, would remain unevenly distributed with no compensatory adjustments in the composition of the States Assembly.

If the States Assembly is minded to reinstate Senators, it is in the public interest for the States Assembly to give clear instructions to the PPC to undertake progressive action that considers and addresses the structural and systemic risks of the proposed change or reversion.

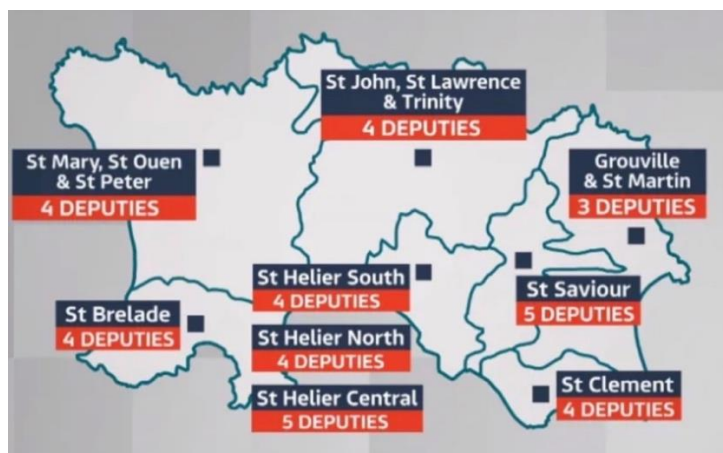
The case for retaining a form of district representation

Different areas of the Island have different needs according to their demographic character (e.g., wealthy areas and relatively deprived areas). This supports an argument for a degree of district or Parish representation.

In Jersey, it traditionally has been part of the role of a Constable to represent the voters of his or her Parish. However, the work and voting power of Constables in representing Parishioners at States Assembly level is, and remains, unevenly distributed.

The recently introduced electoral changes sought to counteract the unequal voting power of Constables with respect to number of voters in their respective Parishes by:

- (a) creating new electoral districts that incorporate the Parishes; and
- (b) re-distributing Deputies (while abolishing the office of Senator) so that up to five Deputies serve one or more Parishes in addition to the Constable for each Parish (other than in the case of St Helier where 13 Deputies serve that Parish in addition to its Constable).



Having more than one elected representative for a single district differs from the UK in which a single member of Parliament is elected to serve constituents of a single district, with constituency office support.

The case for further change

A considerable number of Islanders feel aggrieved and disenfranchised by the recent electoral changes. The changes reduced the number of States Members for whom an Islander can vote from ten or more to no more than five (the exact number varying between voting district and the extent to which seats are contested or not).

The changes also deprived voters of the ability to use their votes to give a clear indication of the popularity of candidates Islandwide. This is because each voter's choice of candidate was restricted to the candidates who chose to stand within that voter's district or parish.

Political party representation and candidate background were unevenly distributed across voting districts as were numbers of candidates, creating further inequality in choice amongst voting districts.

For example:

- (a) 6 candidates stood in District No.1 (St Mary, St Ouen and St Peter) for 4 seats as Deputy whereas 9 candidates stood for Deputy in Districts No. 2 (St Brelade) and St Helier Central (in the case of District No. 2 for 4 seats, in the case of St Helier Central for 5 seats); and
- (b) 5 Reform candidates stood in St Helier Central district, but no Reform Party candidates stood in District 9 (Grouville & St Martin).

Any perceived systemic unfairness or potential systemic abuse can further damage voter confidence in the States Assembly¹.

A former president of the PPC assured the public that the electoral turnout would improve as a result of the electoral changes through improved choice. However, the recent electoral changes produced an overall decrease in an already low electoral turnout in percentage of registered voters from [43.38%](#) to [41.6%](#).

Problems with the current electoral system include the following

1. Confusion and lack of Co-ordination

While the disparity of electorate representation between the Constables remains under the current system, room for confusion also remains regarding the extent to which Deputies are to be regarded as representative of voters in their district or of all voters Islandwide.

There is no clear 'ownership' of constituents amongst States Members elected within a single district and no clear rules to co-ordinate work between District Deputies and Constables satisfactorily or consistently.

A lack of sharing of information and a lack of co-ordination could be aggravated where Constables and Deputies do not all belong to the same political alliance or party.

¹ Cf Chapter 9 of [the 2019 Jersey Opinions and Lifestyle Survey](#) produced by Statistics Jersey which found Islanders least trust the States Assembly out of all civic institutions

However, in small populations, a comparative lack of resourcing and economies of scale do not lend themselves to supporting the type of political party systems seen in larger jurisdictions. [A report commissioned by the Electoral Commission](#) ten years ago acknowledged politics in Jersey largely is non-partisan (as demonstrated by the current composition of the States Assembly) and stated: ‘Though some in Jersey may advocate the development of a party system, it would be quite inappropriate to seek to force that precipitately through the design of the electoral system.’

A lack of co-ordination is neither orderly nor efficient in terms of resourcing and, if the current multi-representative constituency is to continue, merits further examination by the PPC and the Comité de Connétables (which is outside the scope of the Amendment).

2. Potential for distortion of perceived political popularity

A candidate who earns more votes than other candidates may claim comparative popularity to support his or her Ministerial aspirations. However, if fewer candidates have stood in that candidate’s district than in another districts, the choice of the voters in the first district was comparatively restricted. This increases the likelihood of that candidate scoring a higher number of votes than candidates in more competitive districts.

In the case of political parties, [a report commissioned by the Electoral Commission in 2012](#) specifically identified a risk in multi candidate constituencies of political parties tactically choosing to concentrate their candidacies in a single district, rather than spread their candidates across voting districts Islandwide: this would give them a numerical advantage in the States Assembly at the expense of electoral choice across districts.

The same report commissioned by the Electoral Commission reported that, where multi-member contests are created within districts, a single transferable voting system was commonplace in smaller jurisdictions. It suggested this was preferable as most compatible with Jersey’s tradition of non-partisan politics. However, a single transferable vote system was not adopted as part of the recent electoral changes and is unlikely to address distortions of perceived political popularity where a political party chooses to field most of its candidates in a particular voting district and to concentrate its electoral campaign efforts accordingly.

3. Difficulty in identifying electoral support for candidates for Chief Minister

In its [report dated 18th February 2022](#), the former PPC’s Democratic Accountability and Governance Sub-Committee stated it had not reached a consensus on whether the electorate should have a say in the choice of the Island’s Chief Minister.

If the current system is maintained, any candidate for Chief Minister will focus their electoral campaign on the district in which that candidate chooses to stand and canvas for support for their ambition to be Chief Minister amongst States Members, once elected.

Even if electoral candidates are requested to express their preferred choice of candidate for Chief Minister (if all candidacies for Chief Minister are known before an election), it is possible that the preferred candidate will not be elected. The perceived disconnect between voters in other districts and the Chief Minister therefore may remain even if

candidates for Chief Minister run two types of campaign (Islandwide and district), which would itself add to the financial burden of campaigning.

4. *Boundary costs*

[The Final Report of the Commonwealth Parliamentary Association BIPA Election Observation Mission dated June 2022](#) confirmed ‘The boundaries for the election of Deputies now all respect international good practice as articulated by the Venice Commission.’

Although the more equal distribution of elected representatives amongst voting districts can be regarded as a positive, the standard articulated by Venice Commission:

- (i) is not a compulsory requirement for the States Assembly;
- (ii) requires additional government machinery in the form of a Boundaries Commission and its related operating costs to monitor whether voters continue to be roughly distributed evenly over voting districts: and
- (iii) continues to enable unequal voting power amongst the Constables themselves.

In due course Parish identity may be threatened by the revision of voting district boundaries or produce complications should they need to be re-drawn.

The Amendment seeks for the PPC to explore the possibility of proportional voting amongst the Constables so that their twelve votes in the States Assembly are redistributed fractionally amongst the Constables in proportion to the number of voters in each of their respective Parishes.

This could assist in reducing the total number of Deputies to accommodate the reinstatement of Senators. The retention of the office (and potential restatement of the representative role) of Deputy may be considered desirable to dilute the concentration of work and voting power of Constables of significantly more populous Parishes.

Relevance of the Clothier Report and recent Islandwide referenda in shaping electoral change

A recent President of the PPC referenced the Clothier Report and the 2013 referendum in advocating changes to the electoral system. However, their content remains controversial in offering support to proposals for electoral change.

[The Clothier report](#), published over twenty years, has had no electoral mandate to date. Although it proposed Deputies should be substituted for Senators, it was unclear how the 12 additional Deputies should be distributed Island wide.

Along with its proposals that Constables should not be States Members, if implemented, implementation of the Clothier report’s recommendations would have reduced the composition of the States Assembly to 24 States Members. With 49 elected States Members, the States Assembly also continues to have more States Members than the [report commissioned by the Electoral Commission in 2012](#) advised is justifiable in terms of international comparison with smaller jurisdictions.

To date, proposals to remove the Constables from the States Assembly have not been supported by any Islandwide referendum (in fact, arguably the opposite in the 2014 referendum).

At the same time, the referendum submitted to voters in 2013 [limited the voters' choice to retain Senators more than the options put forward to voters that involved the retention of Deputies](#). The option of retaining Senators was coupled with the option of retaining a system presented as unfair in terms of voter distribution. This meant States Members could not be adequately informed on the electorate's preferences regarding a reformed system that included the retention of Senators.

Candidate number management

Generally increased choice is considered a positive. However, one argument that has been raised against Islandwide voting for all candidates is the additional choice for voters could produce an unmanageable number of manifestos for voters to read.

Without forcing a political party system onto the electorate, this objection might be overcome by the encouragement of overt political groupings amongst candidates who share common political ground so that manifestos could be shared. This would also help voters to navigate the political values of different candidates.

Another way of managing numbers is to introduce a more acceptable barrier for entry of which the electoral deposit system currently conducted in the United Kingdom could be an example. However, this still could lead to financial circumstances being an obstacle for some candidates particularly those pressed for time to raise electoral funding owing to other circumstances (such as current employment or parenting commitments). A system whereby a candidate might demonstrate electoral support through the collection of written signatures has been advocated in the United Kingdom.

Preserving other possible advantages of the revised electoral system

[The Final Report of the Commonwealth Parliamentary Association BIPA Election Observation Mission published dated June 2022](#) noted a greater percentage of elected female States candidates in the last election but said that candidates standing in this election continued to lack ethnic and cultural diversity overall'.

The report did not seek to perform any extensive data analysis that could have been informative in identifying the nature of any link between the recent electoral changes and increased diversity (i.e., whether it was co-relative or causative).

Such data analysis might have included consideration of the percentages of candidates who were women in the 2018 election, how many female and ethnic candidates had stood before (generally a previous electoral campaign by a candidate helps increase that candidate's profile among the electorate) and the statistical breakdown in terms of gender and age at which, and circumstances in which, candidates have been found most likely to stand (e.g., reduced parental responsibility or approaching retirement age).

From the perspective of States Members and other candidates for election, the recent changes to the electoral system nevertheless were supportive insofar as they enabled a greater number of candidates to confine their election campaigning activities to a part of the Island rather than the whole of the Island.

This is particularly useful for those who have limited finances or who wish to influence their electorate mainly through door knocking activities (although not all candidates can carry out such an activity and not all voters embrace this style of campaigning. Many voters object to the intrusiveness of roadside poster displays too.)

It is reasonable to suggest the fewer obstacles there are to standing in an election, the more candidates of different backgrounds are likely to stand in one.

Candidate electoral campaign funding

Limiting election campaign budgets and candidates' campaign work (bearing in mind many candidates standing for election have full-time jobs or parental responsibilities) is likely to support diversity within the States Assembly and therefore increases electoral choice. As such, it is an area in which the PPC could seek general improvement, bearing a mind that a balance needs to be drawn between demands on the public purse in supporting electoral campaigns and consideration of moral, democratic and security issues where candidates:

1. are significantly advantaged in electoral campaigning by having more in the way of private resources than other candidates;
2. are forced through personal circumstances into political associations that restrict independence of thought, or to court donors who may wish to influence the content of political manifestos; and/or
3. seek campaign funding outside the Island (which could give rise to potential external state interference threatening Island sovereignty.)

Electoral campaigning could be made fairer and more affordable generally by requiring candidates to contribute, or raise, a fixed amount of funding towards their electoral campaign that could be less than the maximum private funding currently allowed under the electoral expenses law or the average amount of such funding.

Such a deposit or fixed contribution system, accompanied by campaigning rules that eliminate or further restrict opportunities for the private funding of electoral campaigns, could produce or contribute equal and consistent funding for the election campaigns of all electoral candidates.

One objection that could be raised to an electoral deposit system is that some candidates may not be able to afford or (by reason of their occupation before standing for election) find time to raise such a deposit or contribution. Such concerns could be circumvented by allowing candidates equal access to public funding of their electoral campaigns if they obtain the signatures of a specified number of sponsors that demonstrate sizeable support for their candidacy.

Both the deposit and signature systems have already been implemented or recommended in the United Kingdom and would help to make the numbers of candidates more manageable while potentially providing more equity in campaign funding.

The number of manifestos to be published in an election could also be made more manageable by encouraging political groupings, such as through the incentive of combined manifesto word counts.

Political groupings

This Report distinguishes between political parties and other types of political alliance that could feature in a public election.

In the case of political parties, campaign funding traditionally is provided through membership fees with the law requiring that political parties assume a particular organisational structure and administration burden (a constitution, leader, treasurer, secretary and the keeping of accounts) to protect their members as private donors (bearing in mind the identities of donors of small private donations do not need to be declared by any electoral candidate).

The Political Parties (Registration) (Jersey) Law 2008 requires political parties to register and use a name and logo.

Names and logos can be helpful in identifying other types of political platform in campaign material. While there appears to be no specific prohibition on the use of names and logos by other forms of political alliance, it could be helpful for the PPC to explore this matter and to consider whether names and logos of other types of political platform should be registered for election purposes too without necessitating the formation of a political party. It may also be necessary for the PPC to consider whether such a matter currently is within its terms of reference.

How might co-ordination and accountability be improved amongst District representatives?

With the opportunity for Parishioners to express their views on political matters in Parish meetings currently restricted by law, there is a perception amongst some voters that Constables can have too much power within a Parish (despite the Constables' oath requiring them to consult with separately elected Procureurs and the Constables being answerable to the Royal Court).

Further work that could be explored by the States Assembly to address this concern could be the introduction of changes to:

- (a) the Code of 1771 (for example, changing the Constables oath to require them to consult with the Deputies of the relevant District and, to improve co-ordination, further requiring Deputies of a District to consult with the relevant Constable in respect of Parish matters; and
- (b) the Loi (1804) au sujet des Assemblées Paroissiales and the Loi (1905) au sujet des Assemblées Paroissiales (to create a system of direct democracy within Parishes).

Such changes could be complex and currently appear to be outside the terms of reference for the PPC (something the PPC itself perhaps could change by recommending a change to the Standing Orders). They are not being sought by P.79/2022, P.79/2022 Amd or this Amendment in seeking to offer political direction to the PPC.

Financial and manpower implications

The additional work involved in formulating the proposals contemplated by the Amendment should be encompassed by the PPC budget made available under the Government Plan. Any proposals put forward by the PPC as a result can be costed by the PPC in terms of public finances and manpower at the time the PPC produces the proposals.