

STATES OF JERSEY

r

DRAFT PUBLIC ELECTIONS (AMENDMENT No. 3) (JERSEY) LAW 200 (P.65/2008): AMENDMENTS

**Lodged au Greffe on 27th May 2008
by Deputy G.P. Southern of St. Helier**

STATES GREFFE

1 PAGE 17, NEW ARTICLE –

After Article 1 insert the following Article –

“2 Article 5 amended

In Article 5(1)(c) of the principal Law –

- (a) in clause (i), for the words ‘2 years’ there shall be substituted the words ‘18 months’;
- (b) in clause (ii), for the words ‘5 years’ there shall be substituted the words ‘3 years.’”

2 PAGE 20, ARTICLE 4 –

For paragraph (a) substitute the following paragraph –

- “(a) in paragraph (1), for the words the beginning ‘as in force’ to the end of the paragraph there shall be substituted the words ‘as in force at midday on the seventh day before the day when the election is held.’;”

3 PAGE 21, NEW ARTICLE –

After Article 5 insert the following Article –

“* Article 17A inserted

At the beginning of Part 5 of the principal Law there shall be inserted the following Article–

‘17A Interpretation of Part 5 and register in force for nomination meeting

- (1) In this Part any reference to persons entitled under Article 2(1), (2) or (3) to vote at a public election shall be construed as if, notwithstanding Article 12, the reference in each of those paragraphs to the register in force for an election were a reference to the register in force for the nomination meeting.
- (2) Subject to paragraph (3), for the purposes of this Part, the register in force for a nomination meeting is the register in force at midday on the day before the day when the nomination meeting for an election is held.
- (3) Where –
 - (a) 2 public elections are to be held on the same day;
 - (b) nomination meetings are to be held on 2 consecutive days, for the purposes of those elections; and
 - (c) but for the operation of this paragraph, there would be 2 electoral registers, as in force on 2 consecutive days, for an electoral district, for the 2 nomination meetings,the register in force for both of the nomination meetings is the register in force at midday on the day before the day when the first nomination meeting is held.
- (4) The Connétable of a parish shall cause a copy of the register in force for a nomination meeting to be published in printed form and copies of it made available, free of charge,

to candidates nominated at the meeting.’”

And renumber the provisions of the Law accordingly.

DEPUTY G.P. SOUTHERN OF ST. HELIER

NOTE:

On 13th May 2008 the States agreed, under Standing Order 26(7), to reduce the lodging period for the Draft Public Elections (Amendment No. 3) (Jersey) Law 2008 (P.65/2008) to 4 weeks and agreed that the projet should be debated on 3rd June 2008. These amendments will not have been lodged for the required 2 week period by 3rd June 2008 and will therefore only be able to be debated on that day if the States agree to reduce the minimum lodging period for them.

REPORT

The purpose of this amendment is to make the Public Elections Law 2002 more effective in enabling Island residents to take a full part in the democratic process; that is, to vote. Critical to this process is the maintenance and accuracy of the electoral register. The entitlement to vote is limited in this Law not only by the two basic conditions of age and residence, but also by the presence or absence of a person's name on the relevant electoral register.

Members will be aware of my often expressed reservations about the accuracy of the registers maintained in the urban parishes, especially that in St. Helier. The fact is that for the election for Constable in January 2008, the total of names on the register is a mere 13,600, out of a potential 27,000. A simple survey of a block of flats in my district reveals that only 64 of the 114 names appeared accurately on the register at the time of the election for Constable earlier this year. 45 flats were unregistered and 5 (at least) of the names no longer live at the address given.

In the report attached to P.65/2008, PPC state the following –

“In the Parish of St. Helier the number of registered electors fell from 15,907 in the Deputies elections of 2005 to 13,688 in the election for Connétable in January 2008.”

But those figures only present a part of the picture. The fact is that a further 2,000 of those names have now been stripped out of the register, because those names were last registered in 2005, and they have not responded to registration forms delivered in 2006 and 2007.

I completely agree with the Committee when it says –

“PPC does not believe it is acceptable for a system to be in place that allows such drastic variations and which inevitably means that many people entitled to be on the register are not included.”

Therefore I wholeheartedly support the sentiment expressed by the Committee to create a true rolling register as follows –

“This new Article 6 therefore creates, for the first time, a true rolling Electoral Register. Once these amendments to the Law are in force the Register will never again be wiped clean and will simply be updated over time.”

However, I am somewhat sceptical and unsure whether, given the terms of Article 8(4)– Exclusion or removal of name from a register – the Committee have actually produced what they intended, a true rolling register. Given that one of the problems of maintaining a proper register, particularly in the urban areas, is that of communicating with the residents of bedsits and lodging houses, I do not believe that the term “*shall serve notice on that person*” improves markedly on what was contained in the previous law. If the phrase “*serve notice*” merely replaces the phrase “*send a notice*” with no more effort made to establish who lives at an address and whether they wish to register to vote or not, then no improvement will have been made. We shall have a similar situation in the future as pervades today. It is not made clear how this amendment will actually get more people registered to vote.

Registration during election period

The fact is that under the current law the electoral register for any particular election is closed immediately before the election is declared, that is, on the day before nomination night. For those who become interested in voting after that, and many do, the register is closed. My amendment to Article 12 contained in P.2/2008, lodged on 7th January 2008 extended this time limit to the noon of the day before the actual election, enabling canvassers to register potential voters on the doorstep during the campaign. At that time I stated in my report that –

“The production of a list of these late registrations to be available at polling stations does not seem to me to be an insurmountable, or even a difficult, administrative task.”

In response, PPC had the following to say –

“PPC believes that Deputy Southern has misunderstood the current position. Elections are called over one month prior to the relevant nomination day. This period, and the publicity generated by the calling of the election, already provides ample opportunity, and impetus, for persons who may wish to vote to ensure that they are in fact registered”

The Assembly at that time chose to accept the arguments of PPC and rejected my proposition. The fact remains however that the month before any election does not provide sufficient impetus for potential voters to rush to the Parish hall and register. PPC have produced no figures to demonstrate such an effect. In many elections, in many

parishes, those who think about elections at all merely wonder whether there will be anyone willing to stand against the incumbent Constable or Deputy at all. Election fever only starts after nomination night when it becomes clear that the post will actually be contested.

Back in January, my amendment proposed that registration should be open right up to midday on the day before polling. This amendment proposes a compromise at one week before polling. This would provide an additional 3 or 4 weeks of registration during the active campaigning stage of an election which could produce many additional voters. The production of a final list of “late” voters must be possible administratively, surely.

The argument deployed by PPC contained in their comments to P.2/2008 is largely secondary and, I believe, misplaced.

“The existing system has an added benefit in that a single and definitive list for all candidates for election to work to is made available following nomination day.”

The goal of any change must be to make things easier for the electorate and not necessarily for the benefit of the candidates. In this coming election we will not have a true rolling register in place, nor have we yet seen the complementary measures under consideration by PPC and mentioned in their comments on P.2/2008.

“The provision of lists to Candidates (if they are producing their campaign information by mail merge they will want it to be complete, and this will be especially true if the provisions for one bulk mailing in our Electoral Expenses proposals are adopted) and (more crucially) facilitating of postal and pre-poll voting. As we are actively considering measures to create a true “rolling register” which would, by and large mean that once a person was in the Electoral Registration system, they would remain eligible to vote until evidence was received that they had died or moved away, this concern over late registration would largely disappear in future.”

I believe that an extension of the time available to register is the only guaranteed way to ensure some additional voters on the register.

Length of residence

The amendment to Article 5 seeks simply to reduce the length of residence required of persons before they are eligible to register to vote. It is my third attempt to reduce this period. It is a move to improve the inclusive nature of our community by allowing newcomers to the Island to participate in our democracy with minimum delay. I believe that there is a level of support for such a relatively moderate reduction in the timescale. Indeed both the Bailiff and the Dean have recently spoken on the theme of making our society more inclusive. It is written in order to put this spirit of greater inclusion into real terms.

Article 13

Members must recognise that the purpose underlying these amendments is to encourage improved voter participation and turnout. In short, we are trying to get more people to vote. Set in this context, Article 13 makes little or no sense.

The changes proposed by PPC in Article 13 must surely rank as one of the most obnoxious items of bureaucratic nonsense ever to come before the Assembly. Not only do they demonstrate a fundamental misunderstanding of the democratic process, they demonstrate a level of petty-mindedness which I believe has no place on our electoral process. More importantly, and far worse the changes actively discriminate against some voters and are open to challenge as being a disproportionate restriction on Article 3 of the First Protocol of the Human Rights (Jersey) Law 2000.

The report accompanying P.65 points out that –

“At present there is no restriction in the Law on candidates or their representatives assisting with the postal voting process”

That is the way it should remain.

Examination of the tables produced in P.65 serve to demonstrate a clear trend, in that two districts stand out with high numbers of postal votes distributed; St. Helier No. 1 and St. Martin. What does this reveal about the electoral districts? It shows that the candidates are prepared to work hard at getting on doorsteps to meet and listen to electors. In the course of such a thoroughly old-fashioned approach to electioneering these candidates come across and are prepared to assist those who wish to have a postal vote to do so. What is wrong with that? PPC see some devilish hand at work in what they term as “interference”:

“PPC is concerned that the current provision could be seen to interfere with the fairness of the election

process. Any elector who has received significant assistance from a candidate or his or her representative to obtain a postal vote may feel, in some way, pressurised to vote for that candidate when the ballot paper is received from the Judicial Greffier."

Voters, obviously weak-minded in some way, may feel "*pressurised*" into voting for the candidate who assisted with getting them the postal vote. PPC present no evidence for such a statement. But on the flimsy grounds of their "*concern*", the Committee wish to render "*significant assistance*" in getting a postal vote illegal.

Apart from rendering candidates who assist the postal voting process subject to a £2,000 fine, what impact does this have on voters? Those who wish to have a postal vote fall in to one or more of several groups –

1. Those who will be absent from the Island on election day
2. Those who have an illness, disability or mobility problem that makes getting to the polling station difficult/impossible
3. Those who are too busy with work and/or family commitments to attend.

These are the officially recognised groups. There are also the following, who also often prefer to vote at home where any difficulties may be kept private and help is available from family when required –

4. Those who have a learning difficulty and cannot read
5. Those for whom English is a second language
6. Those with partial sight
7. Those who are elderly and/or infirm who wish to vote but will not venture forth in foul weather (often the case in November)
8. Those who do not usually vote, either from disillusionment or apathy, but who just *might* use a postal vote because it is easier.

Whilst nothing precludes the 3 groups officially recognised as able to request a pre-poll or postal vote from filling in the form and understanding the voting process without assistance, the same cannot be said of the latter groups. Certainly for groups 4, 5 and 6 some help is often essential. I certainly am aware of many voters in these groups who would not vote were they not able to vote in the privacy of their own home. I also am aware that foul weather will cause significant loss in voter turnout among those in group 7.

Members should also bear in mind that what we are talking about is an application for a postal vote. It takes all of between 30 seconds and 2 minutes to complete for those who know the form: Name; Address; Reason; Signature Done. The ballot form arrives some days later when the candidate is long gone. There is no undue influence; there is merely common decency in helping those who need it to get the voting method they want.

Imagine the situation that would arise when a potential voter asks directly for help, as many do. What is the candidate to say? "I am forbidden by law to give you any help whatsoever. Get your home help/daughter/neighbour to help. I cannot." The situation is not only absurd, it is perverse. Examination of the figures given in the tables on page 8 of the report reveals that requests for postal votes are not all converted into actual votes cast, with a conversion rate of between 50% and 75% in the St. Helier districts. Putting another obstacle in the way of obtaining postal votes will simply make voting figures worse.

The adoption of Article 13 would make the following acts illegal–

- Assistance in completing the postal voting application form
- Delivering or causing the delivery of forms to the Judicial Greffier
- Provision of transport to enable a voter to attend the Judicial Greffe.

I believe that any person in groups 4, 5 and 6 above could properly claim that Article 13 disproportionately interfered with and limited their right under Article 3 of the First Protocol of the Human Rights (Jersey) Law 2000 to fully exercise their right to participate in free elections in that it discriminated against them by setting artificial barriers to their ability to vote.

To examine this potential challenge, it is sufficient to compare the rules concerning voter registration with those which would apply to voting, and postal voting in particular if Article 13 were to be adopted. Remember the registration and voting elements are each essential in the electoral process. No registration means no vote.

- **Assistance in completing the postal voting application form** would become *illegal* under Article 13.

- **Assistance in completing the voter registration form** would remain *legal* and positively encouraged.

- **Delivering or causing the delivery of forms to the Judicial Greffier** would be *illegal* under Article 13.
- **Delivering or causing the delivery of voter registration forms to the Parish hall** would remain legal and be seen as helpful.

- **Provision of transport to enable a voter to attend the Judicial Greffe** to register their pre-poll or postal vote would become *illegal* even on election day before noon.
- **Provision of transport to enable a voter to attend the Polling Station** on election day would remain perfectly *legal*.

These comparisons serve to illustrate the ill-thought out nature of the consequences of Article 13. Adoption of Article 13 would serve only to introduce arbitrary, inconsistent and discriminatory rules into the election process. It is neither practicable nor useful.

There are no significant financial or manpower consequences arising from these amendments.