

STATES OF JERSEY



SENATORS AND DEPUTIES: REMOVAL OF CITIZENSHIP REQUIREMENT

Lodged au Greffe on 15th January 2018
by Deputy M. Tadier of St. Brelade

STATES GREFFE

PROPOSITION

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

- (a) that the requirement that Senators and Deputies must be British citizens should be removed; and
- (b) to request the Privileges and Procedures Committee to bring forward the necessary legislative changes to the States of Jersey Law 2005.

DEPUTY M. TADIER OF ST. BRELADE

REPORT

“If liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost.”

Aristotle (384 BC – 322 BC), *Politics*

Roughly one year ago to the day, I lodged a proposition on this subject, ([P.1/2017](#)), which received only 8 votes. I am grateful to those who voted in favour; however, I think that there were more who would have supported the principle were it not linked to what was paragraph (b), seeking to impose a 5-year residency rule. The debate, unfortunately, focused on what ordinarily resident meant and whether, in fact, having ‘Entitled to Work’ status would have been a more accurate test.

The key principle of democracy that is at stake here is that the people should decide by whom they are governed and represented.

As such, this proposition should be read in conjunction with [my amendment](#) to the Draft Connétables (Amendment No. 2) (Jersey) Law 201- ([P.112/2017](#)).

At the time of writing, foreign nationals who are not British may stand for the office of Connétable. This is not the case for Senators and Deputies.

The question facing the Assembly now is: do we level up or do we level down?

The Council of Ministers, and others, have spoken about wanting a more diverse Assembly. Excluding people on the basis of nationality (i.e. where they were born) goes against this goal.

We live in a modern, globalised world and, increasingly, in a cosmopolitan and outward-looking Island. We teach our children that merit, ability, hard work and values are more important than what you look like, where you were born and whether you are rich or poor.

For me, community is more important than some dated sense of empire.

There should be as few barriers as possible to public office. There is already one sufficiently high bar: that of gaining the approval of the electorate. They should be the ones to choose who gets elected, irrespective of nationality.

Are we an Assembly above the law? Would we, and should we, readily accept such brazen discrimination in any other walk of life? Does automatically excluding some people from public office on the basis of a Law made by those already in office serve the public interest? Does it fit with the direction society is moving in, and does it fit in with the message of anti-discrimination which we should all be promoting?

Since P.1/2017, I have been approached by 2 non-British nationals who were interested in standing for election. I will not name them, but both are long-term Jersey residents with single (non-British) European Nationality. Both are very involved in the community and culturally. Neither knew of the nationality requirement. Despite their decades of service to the community, neither can stand for election for Deputy or

Senator. Someone from the U.K., with less connection to Jersey, could stand after just 2 years.

In one case, the individual in question has said s/he is reluctant to change nationality: (i) as their 'parent' country does not recognise dual nationality; and (ii) because of the high financial cost of the process.

Arguments will be made about what is done elsewhere, and whilst it is true that many countries have some kind of restriction of qualification – whether it be birth, citizenship, European nationality or Commonwealth Membership – others have none.

But I am not concerned about what others do. I am more concerned about what we do, and that what we do is right.

I ask members to support this proposition and to send a strong message out that we want a truly diverse Assembly – of the people, for the people – and that we are a modern, cosmopolitan and forward-thinking Island; not just in business, but in our political set-up too.

Many of the arguments have been previously made in my proposition, P.1/2017, which I attach here as an **Appendix**.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this proposition.

**Report accompanying ‘Senators and Deputies: candidates’ qualifications’
(P.1/2017)**

“There is no reason to think that a determination of fact can be reached more objectively or intelligently by a person who holds a British passport than it can by a person who does not.” – Legislation Committee, States of Jersey, 2000

Many of the barriers which once existed for foreign nationals taking up certain roles or responsibilities in Jersey have been removed over recent years; the following are 3 such examples –

- (1) **Jury Service.** The above quote relates to the *Projet de Loi (200-) (Amendement No. 8) réglant la procédure criminelle* ([P.89/2000](#)) brought by the Legislation Committee in 2000, giving the ability for non-British nationals to serve on a Jersey jury. Jury service was not so much seen as a ‘right’ that ought to be extended to non-Brits but, if anything, a civic responsibility for which all residents (generally speaking) may be called upon to perform.
- (2) **Voting Rights.** Before 1994, non-British Jersey residents were disenfranchised. Many residents who had lived here for decades, who were qualified to work, buy and rent property, were not previously allowed to have a say in how the Island was run. This was seen to be unfair, and the nationality requirement was removed when the Legislation Committee of the day lodged the *Draft Franchise (Amendment No. 5) (Jersey) Law 199-* (**P.104/1994**) (to extend voting rights to non-British nationals.
- (3) **States of Jersey Police.** Prior to 2004, there was ambiguity in the law as to whether non-British nationals could serve in the States of Jersey Police. In reality, recruitment only took place from amongst British Nationals. On 27th January 2004, the Home Affairs Committee lodged the *Draft Police Force (Amendment No. 10) (Jersey) Law 200-* ([P.9/2004](#)). The attached report read “... the principal purpose of the draft Law is to remove any ambiguity concerning the ability of a person who is not a British national to take the oath of office as a member of the States of Jersey Police Force”; and “... it places it beyond doubt that the oath may be taken by persons who are not British nationals, whilst preserving the association with the Crown.”.

The Law Draftsman’s Explanatory Note within [P.9/2004](#) also assists, in stating that: “This change would enable persons who are not British nationals to be appointed as members of the States of Jersey Police Force.”. The change was adopted by a margin of 28 votes to 12.

The Review of Public Elections: legislation and procedure

The issue of the British Nationality requirement was considered in 2013 as part of a wider review into public elections legislation and procedures. This resulted in the lodging of *Public Elections: amendments to legislation and administration* ([P.110/2013](#)).

On the subject of the nationality test, the Sub-Committee had the following to say –

“In most other jurisdictions there is a nationality requirement for candidates for national parliaments, for example in the United Kingdom and in France. However, as voters of all nationalities are now allowed to vote in Jersey, subject only to a residence requirement, the Sub-Committee decided to test the Assembly’s view in relation to elected members.

Interestingly, there is no citizenship requirement for the Connétables, and a person of any nationality can seek election in this role.

After consultation with the Privileges and Procedures Committee, it was agreed that the provisions relating to standing as a candidate should mirror those in relation to electors, namely that there should be no nationality requirement, and the residence requirement should be the same as in Article 5 of the Public Elections Law.

RECOMMENDATION 33

The Sub-Committee decided to recommend that the States of Jersey Law be amended to provide that there should be no citizenship requirement to stand as a candidate for Senator or Deputy for the States and that the residence requirement should mirror that in Article 5(1)(c) of the Public Elections (Jersey) Law 2002. In the event that this is adopted, the Oath of office would also require review.”

CPA Benchmarking survey

This recommendation was echoed more recently in the CPA Benchmarking Survey that was undertaken by a Sub-Committee of the Privileges and Procedures Committee earlier this year, which consisted of Deputy S.M. Bree of St. Clement, Deputy J.M. Maçon of St. Saviour, former Senator Z.A. Cameron, and myself. The findings and recommendations were circulated to States Members on 25th May 2016.

Our comments relating to this area were as follows:

[Criteria]

1.2 Candidate Eligibility

1.2.1. Restrictions on candidate eligibility shall not be based on religion, gender, ethnicity, race or disability.

[Comment]

We **PARTIALLY COMPLY** with this benchmark.

This was an area which the Sub-Committee felt should be reviewed in greater detail.

Candidates currently have to be British citizens. Members considered that 5 years’ residency should be sufficient and that the requirement for British Citizenship precluded valuable members of the Portuguese and Polish communities, as well as other nationalities, from entering political life. If Jersey

had its own unique nationality, then it would seem sensible to maintain this requirement.

British Nationality vs. Jersey Citizenship

It is my belief that both Sub-Committees were on the right track in making this recommendation. Many people have commented how it is strange that a British citizen who has only been in the Island for 2 years can serve as a Deputy or Senator, but a longstanding French, Portuguese or Italian (etc.) resident cannot.

Proponents of the *status quo* argue that *it is important to demonstrate a [patriotic] commitment to the Island if you want to serve as a parliamentarian*. Even if we accept this as true, the commitment presumably is one to Jersey, as the States is not the parliament of Britain, England, Scotland, Wales or Northern Ireland – it is the legislature of and for Jersey. Any commitment should, logically, be to Jersey.

Whilst we do not have our own nationality as such, we do have our own legally recognised measures of what constitutes and confers rights as a Jersey citizen under the Control of Housing and Work Regulations. The rule of thumb is that after 5 years you are entitled to work and claim benefits.

It is a strange anomaly that a British Citizen who has been in the Island for more than 2 years but less than 5 years, is not entitled to work, but would be entitled to serve (work) as a States Member, and receive commensurate remuneration.

An Assembly that reflects the community

If non-British people are allowed to stand for election, Jersey will not fall apart; indeed, our democracy will be strengthened. We will still be a British Island and we will not be over-run by foreigners telling us what to do.

The Island's Police Force has been strengthened by being able to recruit officers from the cultural diversity of the Island's demography. Not only do foreign nationals bring different experiences and perspectives, but on a very practical level, they are able to speak directly to the various communities that they seek to assist, in their own languages where necessary.

Just as it is important for the Police Force, it is also important that we have a parliament that reflects the cultural and demographic diversity of the community that we represent.

The ultimate test for becoming a States Member should lie with the voting Public. If the Public are willing to come out and vote for a non-British candidate in large enough numbers, because they have the requisite skills for the job, who are we to say otherwise?

Financial and manpower implications

There are no financial or manpower implications for the States arising from this proposition.