STATES OF JERSEY

DRAFT AMENDMENT (No. 50) OF THE STANDING ORDERS OF THE STATES OF JERSEY

Lodged au Greffe on 22nd October 2020
by Senator L.J. Farnham

STATES GREFFE

REPORT

Introduction

As a result of the rather sudden lodging of P.139/2020 – Composition and Election of the States: Proposed Changes – I believe it important and necessary to provide the Assembly with a further opportunity to amend Standing Orders so that that 32 votes are required under standing order 89A for a proposition to be adopted that –

(a) alters in any way the membership of the States;

(b) lengthens or shortens the term of office of any class of elected member; or

(c) alters, adds or extinguishes the constituencies of any class of elected member,

so that any such proposition shall not be adopted unless at least 32 members of the States vote in favour of it.

Jersey is renowned for its secure and stable political system. Our past success was, and our future is, dependent on that fact.

As a modern and, in my experience, a more forward-thinking Assembly it was almost inevitable that we would be called upon to deliberate over Propositions brought by States committees and members on important issues that will impact upon the make-up and constitution of the States Assembly and our electoral system. It was not however anticipated that we would be called to do so with such short notice in relation to P.139/2020.

Having endured a number of debates on such matters in the recent past, one thing that needs to be made very clear is that these are matters of substance and great importance for current and future generations. The decisions we make now will direct how Islanders are represented and governed long after current members have moved on.

Given the importance, and the potential consequences, of such decisions I believe that a far more considered and consensual approach, than that of which has been adopted in recent years, is essential to ensure that we introduce change that is in the very best long-term interests of our Island.

This proposition, if approved, will force members to work harder in a more considered and collaborative manner if we are to adopt the changes necessary to ensure that we maintain a modern, well respected, secure and stable democracy.

For the avoidance of doubt this proposition is being tabled to encourage change, to force members to work together, collectively and thoughtfully to blend their views together with the interests of Islanders into properly considered, sustainable reform of our political system.

Simply put, it is time to put the interests of all Islanders before our own personal interests and political agendas.

Definition

A ‘supermajority’, or a ‘qualified majority’, is a requirement for a proposal to gain a specified level of support which is greater than the threshold of more than one-half used for a majority.

A ‘supermajority vote’ is a vote that must exceed the number of votes comprising a ‘simple majority’. For example, a ‘simple majority’ in the 49-member States Assembly is 25 votes; while a two-thirds ‘supermajority’ vote requires 32 votes.

A supermajority in this instance is based on the entire membership of the States Assembly rather than on those present and voting.

Most parliamentary procedure requires that any action of a deliberative assembly that may alter the rights of a minority has a supermajority requirement, such as a two-thirds vote.

Changes to constitutions commonly require supermajority support in a legislature.

Examples[1]

The following examples show an assortment of different procedures required to amend a variety of constitutional issues in a small selection of countries in different parts of the world.

They all demonstrate that a significantly higher bar than a simple majority is set for such amendments.

United Kingdom

The United Kingdom is quite unique in that it has an uncodified constitution that is not entrenched. The U.K. 'constitution' can be changed by an act of Parliament, which makes the government in power stronger and have greater legitimacy, and allows it to pursue its programme of government.

Due to its uncodified nature, the U.K. constitution demonstrates a fairly high degree of flexibility. It is relatively easy to change aspects of the U.K. constitution via normal legislative procedures, with no special or complex arrangements being required for constitutional amendments.

The U.K.'s flexible constitution is one that may be amended by a simple act of the legislature, in the same way as it passes ordinary laws. The statutes that make up the U.K. constitution can be amended by a simple act of Parliament. U.K. constitutional conventions are held to evolve organically over time.

It could be argued that there are a number of weaknesses inherent in the current practice of legislating for constitutional change: lack of constraints on the government; failure to have regard to the wider constitutional settlement; lack of coherence within government; lack of consistency in the application of different processes; and changes being rushed and lack of consultation. These weaknesses arise out of the fact that the United Kingdom has no agreed process for significant constitutional change.

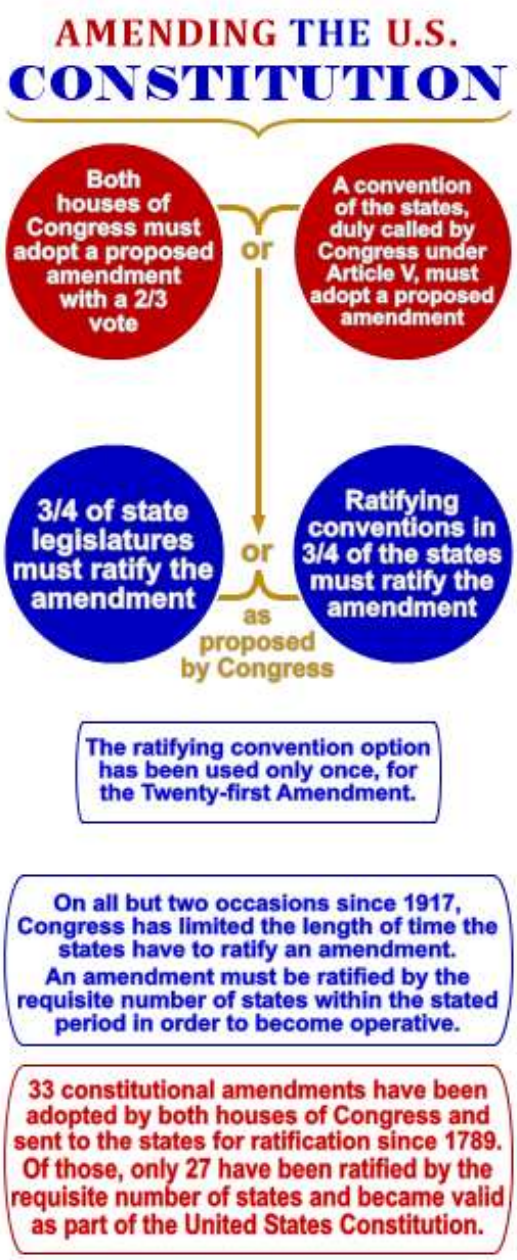
USA

In a bicameral parliament it may be required that a special majority be achieved in both chambers of the legislature.

For example, Article V of the United States Constitution describes the process whereby the Constitution, the nation's frame of government, may be altered. Under Article V, the process to alter the Constitution consists of proposing an amendment (or amendments) and subsequent ratification.

Amendments may be proposed either by Congress with a two-thirds vote in both the House of Representatives and the Senate; or by a convention of states called for by two-thirds of the state legislatures. To become part of the Constitution, an amendment must be ratified by either – as determined by Congress – the legislatures of three-quarters of the states or state-ratifying conventions in three-quarters of the states.

[1] *All of the examples used have been obtained from recent desktop research from reliable and appropriate websites, including Wikipedia.*



There are 2 pathways to a constitutional amendment under Article V of the Constitution: through Congress, if a two-thirds majority of both chambers wants one, or through the states, if two-thirds of the state legislatures (currently 34) call for a national convention. To date, 33 of the approximately 11,699 amendments proposed in Congress since 1789 were sent to the states for ratification. Only 27 have been ratified. All of these came through Congress.

Most constitutions require that amendments cannot be enacted unless they have passed a special procedure that is more stringent than that required of ordinary legislation. Examples of such special procedures include supermajorities in the legislature, or direct approval by the electorate in a referendum, or even a combination of 2 or more different special procedures. A referendum to amend the constitution may also be triggered in some jurisdictions by popular initiative.

Australia and Ireland provide examples of constitutions requiring that all amendments are first passed by the legislature before being submitted to the people; in the case of Ireland, a simple majority of those voting at the electorate is all that is required, whereas a more complex set of criteria must be met in Australia (a majority of voters in a majority of states is also necessary). Switzerland has procedures similar to that of Australia.

Belgium

The Constitution of Belgium can be amended by the federal legislative power, which consists of the King (in practice, the Federal Government) and the Federal Parliament. In order to amend the Constitution, the federal legislative power must declare the reasons to revise the Constitution in accordance with Article 195. This is done by means of 2 so-called Declarations of Revision of the Constitution, one adopted by the Chamber of Representatives and the Senate, and one signed by the King and the Federal Government.

Following this declaration, the Federal Parliament is automatically dissolved and a new federal election must take place. This makes it impossible to amend the Constitution unless an election has intervened. Following the election, the new Federal Parliament can amend those articles that have been declared revisable. Neither Chamber can consider amendments to the Constitution unless at least two-thirds of its members are present and the Constitution can only be amended if at least two-thirds of the votes cast are in favour of the amendment.

France

Amendments to the Constitution of France must first be passed by both houses with identical terms, and then need approval either by a simple majority in a referendum or by a three-fifths majority of the 2 houses of the French parliament jointly convened.

Germany

The Federal Republic of Germany uses a basic law as its constitution. The Basic Law for the Federal Republic of Germany states its terms for amending under Article 79 of the document.

This Basic Law may be amended only by a law expressly amending or supplementing its text. In the case of an international treaty regarding a peace settlement, the preparation of a peace settlement, or the phasing out of an occupation regime, or designed to promote the defence of the Federal Republic, it shall be sufficient, for the purpose of making clear that the provisions of this Basic Law do not preclude the conclusion and entry into force of the treaty, to add language to the Basic Law that merely makes this clarification.

Any such law shall be carried by two-thirds of the Members of the Bundestag and two-thirds of the votes of the Bundesrat.

Ireland

The Constitution of Ireland can only be modified by referendum, following proposal approved by the lower and upper houses of the Oireachtas, amongst citizens entitled to vote for the President. The amendment succeeds by simple majority, and no quorum is required.

Poland

The Constitution of Poland says the following under Article 235 of "Chapter XII: Amending the Constitution" within it –

1. A bill to amend the Constitution may be submitted by the following: at least one-fifth of the statutory number of Deputies; the Senate; or the President of the Republic.

2. Amendments to the Constitution shall be made by means of a statute adopted by the Sejm and, thereafter, adopted in the same wording by the Senate within a period of 60 days.
3. The first reading of a bill to amend the Constitution may take place no sooner than 30 days after the submission of the bill to the Sejm.
4. A bill to amend the Constitution shall be adopted by the Sejm by a majority of at least two-thirds of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators.

Albania

The Constitution of Albania states its terms for being amending under Article 177 within "Part 17: Amending the Constitution." –

1. An initiative for amending the Constitution may be taken by not less than one-fifth of the members of the Assembly.
2. No amendment to the Constitution may take place when extraordinary measures are in effect.
3. A proposed amendment is approved by not less than two-thirds of all members of the Assembly.
4. The Assembly may decide, by two-thirds of all its members, that the proposed constitutional amendments be voted on in a referendum. The proposed constitutional amendment becomes effective after ratification by referendum, which takes place not later than 60 days after its approval by the Assembly.
5. An approved constitutional amendment is submitted to referendum when one-fifth of the members of the Assembly request it.
6. The President of the Republic cannot return for re-consideration a constitutional amendment approved by the Assembly.
7. An amendment approved by referendum is promulgated by the President of the Republic and becomes effective on the date provided for in it.
8. An amendment of the Constitution cannot be made unless a year has passed since the rejection by the Assembly of a proposed amendment on the same issue or 3 years have passed from its rejection by referendum.

Bulgaria

Under the current Constitution of Bulgaria (1991), there are 2 procedures for amendment, depending on the part of the constitution to be amended –

- Normal amendment procedure (Articles 153–156): the Parliament can amend the Constitution for minor issues with a two-thirds majority. This shall be done in 3 successive readings.
- Special amendment procedure (Articles 157–163): this procedure is the only way to revise the international borders of Bulgaria; change the form of government in the country; change the form in which the Constitution and international treaties are applied in Bulgaria (Article 5) or suspend citizens' rights. When such amendment is needed, the Constitution envisages an election for Great National Assembly, which consists of 400 deputies, with 200 elected by proportional vote and 200 elected by the first-past-the-post method. Then the amendments to the Constitution are passed by two-thirds majority in 3 successive readings.

Estonia

The Constitution of Estonia can only be modified by three-fifths majority in 2 successive complements of Parliament, and a referendum for certain chapters.

Australia

The procedure for amending the Constitution of Australia is detailed in Section 128 of the Constitution.

It firstly requires that the proposal pass by absolute majority in the House of Representatives. This means that out of the 150 members of the House, at least 76 of them must agree to the proposal.

If this succeeds, then the proposal is moved to the Senate, where it must again achieve an absolute majority, this means that of the 76 members of the Senate, at least 39 of them must agree to the proposal.

Following this, Australians then vote on the proposal in a referendum. For a referendum to succeed both of the following must be achieved –

1. A majority of states (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania) must agree to the proposal.
2. A majority of the combined votes of all of Australia must agree to the proposal.

Japan

The Constitution of Japan states that it can be amended corresponding to Article 96 of "Chapter IX: Amendments" within the document. It says the following: Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Consultation and Background

In a survey conducted by MORI, on behalf of the previous Corporate Services Scrutiny Panel, as part of their work on the 2017 electoral proposals (reported in S.R.6/2017) the following was reported by MORI, in a statistically representative survey of 1,030 Islanders –

"… *87% of the respondents say that there should be greater communication with the public on matters relating to significant changes to political representation or governance and almost three-quarters of the respondents (71%) agree that a referendum should be held on the proposed changes*…".

87% of the respondents said that there should be greater communication with the Public on matters relating to significant changes to political representation or governance. Women are significantly more likely to say there should be greater communication about the electoral changes than men: 91% of women compared with 84% of men. Around 7 in 10 (71%) respondents agree that a referendum should be held on these proposed changes.

Q17. Do you think there should be greater communication with the public, on matters relating to significant changes to political representation or governance or not?	
Yes	87%
No	8%
Don't know/No opinion	5%
All participants:	**1,030**
Q18. Do you think a referendum should be held on these proposed changes to States membership or not?	
Yes	71%
No	21%
Don't know/No opinion	9%
All participants:	**1,030**

This led to the following recommendations by the Panel (amongst others) –

Recommendation: Proposals for reform should actively engage with the public in advance of any debate. 87% of those polled desired further communication.

Recommendation: Any proposed constitutional changes should be put to a referendum in accordance with the public's wishes, with a straightforward yes/no answer.

Conclusion

Any change to the Constitution of the Island is significant, and will be of relevance to Islanders. This is confirmed by the MORI Poll outlined above. It would not be satisfactory for a proposition to be passed, perhaps after just 4 weeks' notice, by perhaps a single vote. In my view that would deepen the low regard in which this Assembly is held, and at this time of significant external threats and uncertainty, we would be accused of navel-gazing, self-interest, and not treating such matters with the importance they should require.

Whilst my personal preference is for Referenda on such matters, it is also clear that there are other ways of ensuring that that matters of such importance as Constitutional change are treated with the importance they deserve. Many significant jurisdictions have supermajorities built into their criteria for approval, and many have a threshold consistent with the two-thirds that I am proposing. To leave such an important change to be approved by potentially just one vote (i.e. 25 to 24) which directly impacts upon the fundamentals of how Islanders are represented, how their interests are protected, or how they can vote, would completely belittle the importance of the subject, and once again impact upon the standing of this Assembly. I hope Members will give this matter proper consideration, and be supportive of this Amendment to Standing Orders.

Financial and manpower implications

There are no financial or manpower implications arising from the adoption of this Amendment to Standing Orders.

EXPLANATORY NOTE

This Amendment to the Standing Orders of the States of Jersey changes the number of votes that are required under standing order 89A for a proposition to be adopted that –

(a) alters in any way the membership of the States;

(b) lengthens or shortens the term of office of any class of elected member; or

(c) alters, adds or extinguishes the constituencies of any class of elected member,

so that any such proposition shall not be adopted unless at least 32 members of the States vote in favour of it.

Jersey

DRAFT AMENDMENT (No. 50) OF THE STANDING ORDERS OF THE STATES OF JERSEY

Made	*[date to be inserted]*
Coming into force	*[date to be inserted]*

THE STATES make the following Amendment to the Standing Orders of the States of Jersey[1] under Article 48 of the States of Jersey Law 2005[2] –

1 Standing order 89A (decisions) amended

In standing order 89A in the Standing Orders of the States of Jersey[3], for paragraph (1) there is substituted –

> "(1) Notwithstanding Article 16 of the Law, any proposition before the States to which this standing order applies shall not be adopted unless at least 32 elected members vote in favour of it.".

2 Citation and commencement

This Amendment may be cited as Amendment (No. 50) of the Standing Orders of the States of Jersey and comes into force on the day after the day it is made.

ENDNOTES

Table of Endnote References

[1] *chapter 16.800.15*
[2] *chapter 16.800*
[3] *chapter 16.800.15*