

STATES OF JERSEY



DRAFT STATES OF JERSEY (MISCELLANEOUS PROVISIONS) LAW 201-: REQUEST TO PRIVY COUNCIL (P.26/2011) – COMMENTS

**Presented to the States on 23rd February 2011
by the Privileges and Procedures Committee**

STATES GREFFE

COMMENTS

Introduction

The Privileges and Procedures Committee is totally united and unanimous in its strong opposition to this proposition.

If the proposition of the Deputy of Grouville is adopted, it will cancel the introduction of the whole package of reform agreed in principle in October 2010 and then agreed again in January 2011, when the States adopted in Third Reading by 45 votes to 5, the Draft States of Jersey (Miscellaneous Provisions) Law 201- which is now awaiting sanction by the Privy Council.

The agreed reform measures that would be cancelled by the proposition are as follows –

- (i) the introduction, for the first time ever, of a true ‘general election’ from October 2014 with all members of the States being elected on a single day;
- (ii) the transition to spring elections by electing all members of the States in the general election in October 2014 for a period of some 3½ years to May 2018;
- (iii) a common 4 year term of office for all members and spring elections from May 2018 and every 4 years thereafter;
- (iv) a reduction from 12 to 10 Senators in October 2011 and a further reduction in October 2014 to 8.

PPC is aware that recent media reports have concentrated on the single issue of the reduction in the number of Senators, but it is extremely important that members are aware that support for this proposition would cancel all of the above reforms and not simply the reduction from 12 to 10 Senators in October this year.

There is, at this stage in the legislative process, no scope to cancel some parts of the reform and not others. Some members may consider that it would be feasible to support the Deputy of Grouville and then somehow reinstate some aspects of reform before this autumn’s elections, but PPC would remind members that States procedures, for good reason, do not allow the Assembly to revisit any States decision until at least 3 months have passed (other than in the case of a rescindment as is happening in this case). It would not be permissible under Standing Order 20(3) for the Bailiff to approve any proposition seeking to re-instate aspects of reform that would have been cancelled by this proposition until those 3 months have passed and by early June it would clearly be far too late to make any changes for this year. Members therefore have a simple choice to either: (i) support the Deputy of Grouville and cancel the whole package of reforms for 2011, or (ii) reject this proposition and allow the reform measures to be implemented.

The main reasons for PPC’s strong opposition to this proposition can be summarised under the following headings.

Credibility of the States Assembly

One of the frequent criticisms of the States Assembly made by the public and the media is that members spend an inordinate amount of time discussing their own internal procedures and revisiting decisions already made.

The reforms listed above, that are now included in the adopted States of Jersey (Miscellaneous Provisions) Law 201-, were first agreed by the Assembly on 13th October 2010 when P.118/2010 ('Composition of the States: Spring election and move to 4 year term of office') was adopted. On that occasion the introduction of a common 4 year term of office and a move to spring elections was approved by 41 votes to 7 and the reduction over time in the number of Senators was approved by 31 to 17.

PPC was charged in October 2010 by the States decision to bring forward the necessary legislation to implement the decision and was therefore disappointed when further amendments seeking to overturn the October decisions and introduce new matters were lodged for debate in January 2011. The main elements of the October 2010 decisions were nevertheless ratified again by States on 20th January 2011 when the Draft States of Jersey (Miscellaneous Provisions) Law 201- (P.176/2010) was adopted, although the Assembly agreed one minor change to amend the transitional cycle and bring forward the date of the first general election to October 2014.

PPC finds it extraordinary that there is now a move to re-open 2 democratically taken decisions and cancel the whole package of reform that has already been approved by significant majorities on 2 occasions. PPC, of course, respects the individual political views of the Deputy of Grouville who has been consistent during her time in the States in her opposition to 4 year terms of office and a reduction in the number of Senators, but PPC nevertheless feels strongly that all members of the Assembly need to recognise that decisions made democratically by a majority of members must be allowed to stand even if they run contrary to the individual views of those who voted against the item in question. PPC considers that it simply brings the Assembly into disrepute to seek to re-open issues and overturn decisions shortly after propositions have been agreed by the Assembly just because some members did not like the decision.

Consequences of the cancellation of the whole reform package

If the proposition of the Deputy of Grouville is adopted, all of the reforms agreed in January will be cancelled as mentioned above. The only reform measure agreed by the States in recent times that would be unaffected is the introduction of a single election day in each year when elections are being held, which was agreed separately in June 2010.

The consequence of the adoption of this proposition would be that 6 Senators will be elected for a full 6 year term until October 2017 in the October elections this year and the 12 Connétables and 29 Deputies will be elected for a 3 year term to 2014. There will be no move towards a general election, spring elections or a common 4 year term of office unless further reform options are agreed in due course.

As a result of the 6 year term, 6 Senators will remain in office throughout the October 2014 election process; and the public concern about 'mid-term' Senators being able to gain positions of responsibility in the new States without having had to face an election will not be addressed. In addition, members who support the establishment of

an Electoral Commission to bring forward comprehensive reform options should be aware that if this proposition is adopted, it is unlikely that any package of reform could be fully implemented until 2017 because of the need to introduce transitional arrangements to deal with the position of the 6 Senators who will be in office until October that year. Similarly it is unlikely that any spring election could be introduced until 2020 or 2021 at the earliest, as 6 members would be elected until October 2017, and the Assembly made it clear in the January 2011 debate that it did not favour a “one-off” transitional election in the autumn with spring elections shortly thereafter.

Credibility of Jersey in the eyes of the UK authorities

Once a draft Law is adopted in Third Reading by the States Assembly, Standing Orders require the Greffier of the States to forward the Law to the United Kingdom authorities so that the process of Privy Council sanction can be initiated. The Greffier’s letter is accompanied by the report of the Law Officers on the legislation in question. As stated in this proposition, the Greffier of the States transmitted the Law through the official channels on 26th January 2011, 6 days after it was adopted by the States.

In recent months there have been concerns about the time that is being taken for Jersey legislation to receive sanction by the Privy Council, and it is understood that planned UK government cutbacks are likely to impact on the staffing resources available at the Ministry of Justice to process legislation from the Crown Dependencies. The “Laws Adopted” section of the Jersey Legal Information Board website (<http://www.jerseylaw.je/Law/LawsAdopted>) indicates that a number of adopted Laws have been awaiting Privy Council sanction for some considerable time. At the time of the drafting of these comments, the website shows that 18 adopted Laws are awaiting sanction, and the table below gives the month in which they were adopted by the States (in practice adopted Laws are forwarded to the United Kingdom authorities some 7 to 10 days after their approval by the States).

Month in which Law adopted	No. of Laws awaiting sanction from this month
July 2009	1
November 2009	1
May 2010	3
July 2010	1
September 2010	1
November 2010	1
December 2010	7
January 2011	2
February 2011	1
TOTAL	18

Members who attended the Jersey Finance presentation on 28th January 2011 heard concerns about the consequences for Jersey of potential delays in gaining Privy Council sanction for Jersey legislation.

Although it may be of more immediate concern to Ministers than PPC, the Committee nevertheless believes it is important for members to consider the impact on the credibility of the Island in the eyes of UK officials if a request is sent as a result of this proposition to withdraw the States of Jersey (Miscellaneous Provisions) Law 201-

from the Privy Council sanction process. PPC is aware that a special request was made when the adopted Law was transmitted from Jersey for it to be given particular priority because of the need to have it in place in good time before the elections this year. PPC therefore considers that it will send a very curious message to the UK authorities to request that an adopted Law, that was previously said to be ‘urgent’, should be withdrawn from the Privy Council sanction process. This could possibly have an impact on the weight given by the UK authorities to future requests for ‘urgent’ treatment and PPC urges the Council of Ministers to give consideration to this point and to present comments to the States.

Financial considerations

PPC has made it very clear in its own earlier propositions relating to any reduction in the membership of the States Assembly that simple financial considerations should never be a deciding factor when taking decisions about the appropriate number of members of the Assembly. Nevertheless, once the October 2010 decision to reduce the membership of the Assembly by 2 members from October 2011 was taken, the Committee incorporated the consequential savings in States members’ remuneration as part of its CSR savings proposals, and this was included in the list of CSR savings circulated at the time of the Budget 2011 process. The initial draft cash limit that the Committee is working on for the States Assembly budget for 2012 and beyond incorporates this CSR saving; and if the decision to reduce the membership of the Assembly is reversed there will be a need to find an alternative CSR saving in another area of States expenditure to compensate. PPC would also point out that the cost of all the time spent on this matter to date by the Law Draftsman’s Office, the Law Officers’ Department and the States Greffe would be wasted if the proposition is adopted, as well as the time spent by members themselves dealing with it on 2 separate occasions.

Conclusion

PPC strongly urges members to reject the proposition of the Deputy of Grouville. It has always been clear that any reforms to the composition of the Assembly require some degree of compromise, and PPC believes it would be extremely disappointing if the long awaited true ‘general election’ and the move to a common term of office were not implemented as already agreed on 2 occasions by the Assembly. PPC would also remind members that in the MORI poll undertaken as part of the previous Committee’s consultation on electoral reform, 71% of respondents believed that there should be a general election for all States members on the same day. Although there has been concern expressed by some about the reduction in the number of Senators being elected this autumn, PPC would remind members that the reforms agreed enable the election of 8 Senators in the first true ‘general election’ in October 2014 and PPC considers that the election of 8 Senators rather than 6 at one time will, if anything, enhance the senatorial position rather than diminish its importance, even though a ‘one-off’ transitional election for only 4 Senators will be needed this year and the actual overall number of Senators will be reduced over time.

As mentioned above, any further moves for reform by the new States elected this autumn could be frustrated if this proposition is adopted, as the current reforms, which will lead to all members’ terms of office terminating at the same time in 2014, opens the door, if the new States wish, to implement further reforms of the membership of the Assembly from that date.