

STATES OF JERSEY



COMPOSITION AND ELECTION OF THE STATES ASSEMBLY (P.133/2016): AMENDMENT

Lodged au Greffe on 13th January 2017
by Senator P.F.C. Ozouf

STATES GREFFE

COMPOSITION AND ELECTION OF THE STATES ASSEMBLY (P.133/2016):
AMENDMENT

1 PAGE 2, PARAGRAPH (a) –

For paragraph (a) substitute the following paragraph –

“(a) to agree that it should establish an Assembly of 38 Members comprising 6 Senators elected Island-wide, 12 Parish Connétables elected from within the current Parish boundaries and 20 Deputies elected from 6 Parish-based districts, each choosing 3 Deputies, with the exception of St. Helier Districts 1 and 2, which would each choose 4 Deputies in addition to their Parish Connétable;”.

2 PAGE 2, PARAGRAPH (b) –

In the table, for the word “Senators” substitute the word “Deputies” and in the second column, for the numbers “6” and “5” substitute the numbers “4” and “3” respectively.

3 PAGE 2, PARAGRAPH (c) –

In paragraph (c) for the numbers “44” and “19” substitute the numbers “38” and “18” respectively.

SENATOR P.F.C. OZOUF

REPORT

Preamble

Since before 1999 there have been attempts to reform the Composition of the States.

Like many members I have lost count of the attempts of Propositions which have tried to resolve the serious voter inequity, voter inequality and democratic legitimacy of the Jersey States Assembly.

For my part, I have always accepted the conclusions of properly constituted expert bodies that have recommended changes.

In 1999, the Clothier Report was an attempt for a single member Assembly which resolved voter inequity, voter inequality and solved the democratic deficit. **I accepted the Clothier proposals. A majority of members failed to approve changes.**

Between the failed Clothier proposals and 2013, numerous attempts were made to resolve matters. Even though some were deficient. **Despite attempts, a majority of members failed to approve changes.**

Fast forward to 2013, a properly constituted electoral commission put 3 proposals to a Referendum and an Assembly of Deputies and Constables was approved by the people. I accepted the outcome. **A majority of members failed to approve changes.**

We are past the point of being in the last chance saloon, we urgently, before the May 2018 election, need to put in place a reformed Assembly which deals with the ongoing and now even more serious democratic deficit and completely unacceptable voter inequity and inequality.

Moving the debate on

It appears that the only possible solution that might be acceptable to a majority of members is an Assembly that consists of Senators, Constables and Deputies.

This amendment is put with the benefit of having been the son of a Connétable and discharged the office of Deputy and Senator for 16 years. Moreover having been in the unique position of having been a trained Election Observer and the opportunity to serve on the Privileges and Procedures Committee (PPC) since the start of this Parliamentary term.

I observe the debate has moved on and we must find a solution, and I express the hope that whatever individual members' previous positions have been, that all members will unite around a proposal that meets the minimum standards required to be able to ensure that the election in May 2018 respects, to the greatest extent possible, the elements of the previous debates and referendums which have been accepted and avoid the situation that will inevitably occur that it could be said the States Assembly of Jersey cannot resolve itself and approve a proposal which legitimises the democratic deficit in Jersey.

The proposal of Deputy A.D. Lewis of St. Helier is almost identical to a Proposition that I lodged in the aftermath of the Referendum to the States for the Reform Proposals, in an effort to find a solution to the States not having respected the outcome of the Referendum held on the Composition of the States in 2013. That proposal was defeated.

Whilst there have been many attempts to find a solution, it remains an affront to many peoples' democratic principles that a Referendum was not enacted.

This amendment ensures that the office of Senator is retained in any reform to the composition of the States Assembly and simultaneously achieves a further reduction in the total number of States Members. The outcome of the 2014 referendum on the role of the Connétables as members of the Assembly is also respected. Importantly, the changes put forward in this amendment would allow for an improvement in overall voter equity when compared to the current electoral system.

The office of Senator

The office of Senator remains the most democratic of all the elected offices in Jersey. In a small community such as Jersey, there are numerous issues that are of interest and importance to all electors. Senatorial elections are one of the primary means through which such issues can be discussed and considered by the whole electorate, and a verdict on the various policies of the candidates be given equally by every voter.

Under these proposals for reform, the voice of the parishes is maintained. It is of equivalent importance that the Assembly continues to benefit, as it has since 1948, from the input of Members with an all-Island mandate.

Turnout at Senatorial elections is broadly similar to that at elections for Deputies. This has been the case not only in 2014 and 2011, when elections for both offices were held on the same day, but also in 2008 and 2005, when there were separate election days for Senators and Deputies. This does not indicate a strong desire among the public to abolish the role of Senator.

At present, the majority of members of the States Assembly are elected as independent representatives. In a non-party parliamentary democracy, it is important to further enhance, wherever possible, the ability of the electorate to influence the formation of their Government. It has essentially become a convention that the Chief Minister will be elected, by the States Assembly, from among the Senatorial benches. Senior Ministers have typically also held an Island-wide mandate. Abolishing the office of Senator would therefore deny the opportunity for the electorate, as a whole, to directly elect representatives who are highly likely to hold senior positions within the Island's next Government. In a non-party system, this is not a decision which should be taken without significant consideration. To this end, it is interesting to note that, having abolished the Island-wide mandate in 2000, Guernsey are currently considering the option of reintroducing this office in time for the 2020 General Election. Indeed, since the Island-wide mandate was removed in Guernsey, there has been regular debates regarding its re-introduction. It is likely that Jersey would face a similar scenario were the Assembly to abolish the office of Senator.

The Privileges and Procedures Sub-Committee on the election and Composition of the States Assembly held a number of workshops with States Members in 2015 and 2016 during their attempts to identify a proposal for reform that would be acceptable to a majority of States Members. During these workshops, 48.72% of Members present agreed that it was 'very important' to retain the role of Senator, with a further 15.38% agreeing that it was 'quite important'. This amendment therefore respects the view of

States Members as expressed in these consultation workshops by retaining the role of Senator.

There was, however, no settled view on the appropriate number of Senators. Of the States Members present, 41.03% felt that the total number of Senators was ‘about right’, 25.64% believed there were ‘too many’ and 33.33% thought there were ‘too few’. Whilst it is not an international anomaly to hold one election for approximately 8 (and sometimes more) candidates, such elections (e.g. for a proportion of the seats in the Scottish Parliament and for the election of U.K. Members of the European Parliament) are normally undertaken on a party list basis where each voter would have one vote. Having one election to elect 8 individual Senators is, arguably (in both theory and practice), unwieldy, and a reduction to 6 Senators would not only allow for a more manageable election process but also see a return to the norm in Jersey of electing 6 Senators at a time.

A reduction of 2 Senators also ensures that the concurrent reduction in the number of Deputies, now to be elected in larger, parish based districts, is reflected by a broadly similar proportional reduction in the number of Senators. This allows for an Assembly that is appropriately balanced between Senators with an Island-wide mandate, the Connétables, as representatives of the parishes and Deputies representing Parish based districts.

The total number of States Members

Importantly, the original proposition, and this amendment, both respect the outcome of the 2014 referendum on the role of the Connétables as members of the States Assembly. In addition to preserving the office of Senator (at a reduced number), this amendment aims to further reduce the overall number of States Members to 38. This requires a similar proportional reduction in the overall number of Deputies. The adoption of new districts for Deputies, as formulated by the Electoral Commission, provides an appropriate opportunity to review their number.

Accordingly, it is proposed that 20 Deputies be elected from within the same districts as outlined in the original proposition. This ensures that the Deputies would still constitute over 50% of the members of the Assembly. The additional protection for St. Helier is maintained. Under this amendment, no Islander would be voting for a lower number of Deputies than at present, with many voting for a greater number. In addition, the comparative proportional weight that each vote for a Deputy constitutes would be equalised, to a greater extent than at present, across the Island.

A suitable number of States Members for Jersey

The States of Deliberation in Guernsey is also comprised of 38 representatives for Guernsey, with an additional 2 representatives from Alderney sitting in the States as a reflection of the constitutional settlement within the Bailiwick of Guernsey. The Isle of Man’s House of Keys includes 24 elected members and the Legislative Council includes a further 11 members. By comparison with the other Crown Dependencies, an Assembly of 38 members can be evidenced as a more than adequate number of legislators for a jurisdiction of Jersey’s size.

By way of further comparison, the Parliament of Malta, representing a population of around 450,000 people, is constituted of 71 members and the House of Assembly in

Bermuda, representing 65,000 people, consists of 36 elected members (the Bermuda Parliament also includes a Senate, made up of 11 appointed members).

Importantly, an Assembly of 38 States Members would be compatible with the current system of Ministerial Government and Scrutiny and also allows for suitable flexibility so as to fit with any future amendments to the Machinery of Government.

To this end, Members will be aware that proposals to reform the Machinery of Government are being developed in response to Deputy J.A. Martin of St. Helier's proposition [P.53/2016](#), as amended ([P.53/2016 Amd.](#)). An Assembly of 38 members would be amenable, arguably to a greater extent than at present, with a more inclusive model of government, if Members were minded to support such a move. Such a model could include, for example, a more flexible relationship between Assistant Ministers and Scrutiny Panels.

There is broad public support for further reducing the number of States Members. In reviewing the submissions made to the Electoral Commission during their consultation period, the Commission noted in their final report that "Nearly all the submissions made to the Commission agreed that there were too many members of the States." Whilst the Electoral Commission cautioned that the public would be expected to request fewer politicians, they did note that the number of States Members in Jersey was greater than that in other small jurisdictions.

In the referendum itself, Option B received 40.93% of first preference votes, whilst Option A received 39.59%. Both would have reduced the membership of the Assembly.

Voter Equity

One of the terms of reference under which the PPC Sub-Committee operated was –

“To develop proposals in order to enhance voter equity through:

- Reviewing constituency boundaries;
- Reviewing the categories, numbers and distribution of elected States Members”.

The Council of Europe's Code of Good Practice in Electoral Matters (commonly known as the Venice Commission) is often referenced as an international authority on electoral matters.

When making reference to 'equal suffrage', the Venice Commission stipulates that the principles of equal voting rights and equal voting power should be respected. Under equal voting rights, the Venice Commission states that "equal voting rights mean that all electors should have the same number of votes". This is clearly not the case in Jersey at present, and the Island is evidently out of line with this principle to a considerable extent.

The Commission further states "Equality in voting power, where the elections are not being held in one single constituency, requires constituency boundaries to be drawn in such a way that seats in the lower chambers representing the people are distributed equally among the constituencies, in accordance with a specific apportionment criteria". Again, Jersey's current system is significantly out of line with this principle.

Both the original proposition, and this amendment, make a significant improvement to the Island's adherence to the principle of equal voting rights. All Islanders would have an equal number of votes at a general election, with the exception of parishioners of St. Helier, who would each have one additional vote.

A primary reason for Jersey's non-compliance with the principle of equality in voting power is the status of the Connétables as members of the Assembly. However, it should be noted that the Venice Commission states "Constituency boundaries may also be determined on the basis of geographical criteria and the administrative or indeed historic boundary lines, which often depend on geography". This provision therefore makes allowance for the role of the Connétables serving their Parishes in the Assembly. The 2014 referendum also provides a democratic mandate from the electorate for the Connétables to serve as States Members. It is therefore necessary to accommodate the position of the Connétables when attempting to improve equality in voting power.

This amendment would result in an improvement in Jersey's compliance with the Venice Commission principle of equality in voting power when compared to the Island's current electoral system. This has been confirmed by Professor Iain Mclean, Professor of Politics at Oxford University, who also assisted with analysis for the Electoral Commission's work.

Given that it is not possible to achieve equality in voting rights and equality in voting power whilst retaining the Connétables as Members of the Assembly, this amendment attempts to arrive at a reasonable middle ground and make improvements to Jersey's system in both regards.

This amendment utilises total population as the basis on which to calculate voter equity, a criteria that was supported by 51.61% of States Members during the consultation workshops held by the PPC Sub-Committee.

Summary

The topic of electoral reform has occupied the attention of States Members and, to varying extents, the general public for a significant amount of time. Indeed, this is an issue that should be subject to regular review, seeking improvements to the system where possible. Such is the state of Jersey's current electoral system, however, that the need for reform must be seen as an urgent priority. It is not acceptable for the electorate to continue to be served through such an unequal system.

It can't be avoided, however, that this is a subject which attracts disagreement, both within the membership of the Assembly and externally. This has been demonstrated through the difficulty that PPC has faced in agreeing to present a proposal for reform to the Assembly, despite the in-depth work undertaken. It is likely that no individual proposal for reform will result in anyone's ideal or preferred system. There is a need for compromise in order to secure agreement for a reform which is acceptable to as many members of the Assembly, and our community, as possible whilst ensuring an improved, fairer, electoral system.

Accordingly, this amendment seeks to achieve as balanced a reform as possible. Progress is made towards a fairer, more equitable system, whilst respecting the will of Islanders to retain the link between Connétables and the States Assembly.

All 3 existing elected offices are maintained, with the numbers of Senators and Deputies reduced in a broadly proportional manner. This results in a reduced and appropriate number of States Members for Jersey, and a further reduction in the cost of politics for Islanders.

Financial and manpower implications

A reduction to 38 Members will lead to total savings of around £512,000.