

# STATES OF JERSEY



## COMPOSITION AND ELECTION OF THE STATES: PROPOSED CHANGES (P.139/2020) – COMMENTS

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Presented to the States on 25th November 2020  
by the Comité des Connétables

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STATES GREFFE

## COMMENTS

### 1. Executive summary

- 1.1. These comments are submitted to assist States members as they consider another raft of proposals for electoral reform<sup>1</sup>.
- 1.2. P.7/2020, on which P.139/2020 is based, was withdrawn so that a working group could try to build a broad consensus on electoral reform – there is no reference to this working group in PPC’s Report.
- 1.3. Is the P.139/2020 ‘compromise’ an improvement on the current system? Does it align with the previously expressed wish of the electorate (referenda in April 2013 (16,624 voters) and October 2014 (24,130 voters)) and more recent public meetings in 2019 to consider P.126/2019 and will a further referendum be held to seek approval?
- 1.4. In written answer WQ52/2020 H M Attorney General said about Article 3 of the First Protocol to the ECHR (“A3P1”):

*There is no reason at present to consider that the electoral system for the States Assembly would breach the requirements of A3P1.*

- 1.5. Respecting the Parish boundaries and the retention of Connétables as members of the States is vitally important. There is no single correct electoral system, and it is universally recognised that this is ultimately a matter for the people of each country.
- 1.6. The proposition and amendments do not address many of the other recommendations in the CPA EOM<sup>2</sup> report which could have a more significant impact on civic engagement and the electoral system. These should be addressed rather than hold a further debate on the composition of the States which has already been considered at length during this Assembly’s term.

### 2. Background

- 2.1. There have been many propositions relating to the reform of the States Assembly in recent years. PPC now brings us P.139/2020 as a revised version of P.7/2020 which “was deferred and timed out in July”.
- 2.2. In fact P.7/2020, lodged by Senator Ian Gorst, was withdrawn on 9<sup>th</sup> March 2020, as recorded in the minutes of the States Assembly sitting.
- 2.3. Senator Gorst also wrote to all members advising that he had given a commitment to the Chief Minister to withdraw P.7/2020 to allow a working group of States Members, which the Chief Minister was forming, to try to build

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<sup>1</sup> Comité des Connétables comments relating to previous electoral reform propositions are [P.126-2019](#) and [P.7-2020](#)

<sup>2</sup> [CPA BIMR Election Observer Mission Jersey General Election – May 2018](#)

a broad consensus within the Assembly and among the wider community on electoral reform.

- 2.4. However PPC has decided to bring forward for debate a further proposition relating to membership of the States based on a previous proposition that was withdrawn and without reference to the Chief Minister’s working group.
- 2.5. The subsequent amendments lodged to P.139/2020 indicate there is still a wide divergence of views across the Assembly and members may again spend considerable time without reaching a consensus. The proposition and amendments are:

Proposition	Number of Members in States Assembly proposed	Number of Senators proposed	Number of Connétables proposed	Number of Deputies proposed
P.139/2020 – PPC proposition	49	Nil	12	37 Deputies elected from 9 Districts (electing 3, 4 or 5 according to District)
First amendment – Deputy Maçon	52	Nil	Nil	52 Deputies elected from 9 Districts (electing 5, 6 or 7 according to District)
Second amendment – Connétable of St Clement	49	Nil	Nil	49 Deputies elected from 14 Parish Districts (electing 2, 3, 4, 5 or 6 according to Parish District)
Fifth amendment – Senator Farnham	48	8	12	28 Deputies elected from 6 Districts (electing 4 or 6 in each District)
Sixth amendment – Deputy Higgins	49	Nil	12	37 Deputies elected from 9 Districts (electing 2, 3, 4, 5 or 6 according to District)
Seventh amendment – Senator Le Fondré	53	8	12	33 Deputies elected from current Districts – adds 1 extra

				Deputy in 4 Districts
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2.6. PPC are, understandably, keen to see progress on the recommendations in the CPA EOM May 2018 Final Report. We would suggest the focus should instead be on some of the other issues identified in the 18 recommendations which may more easily be resolved, but will need legislative changes, prior to the 2022 elections. The Chairman of PPC has, on several occasions, responded to questions in the States<sup>3</sup> setting out a number of areas where legislative changes are required and, in some cases, where discussion is still required before Law Drafting instructions are finalised.

### 3. P.139/2020 - a compromise proposition?

3.1. Turning to P.139/2020 and its comparison with P.7/2020, there is a difference as P.139/2020 –

- Omits reference to the basis for any reform of the composition and election of the States
- Omits reference to respecting and implementing the outcome of the 2014 referendum
- Varies the distribution of Deputies - one less in District 9 (Grouville and St Martin) and one more in District 2 (St Helier central).

3.2. The report of PPC urges acceptance of the proposals as it says it offers the compromise of –

- Retaining the automatic right of the Connétables to a seat in the Assembly
- Introduces constituency boundaries drawn in line with international standards
- Complies with the Venice Commission recommendation
- Does not eliminate the uncontested election for Connétables
- Will address the dire state of civic engagement in the island
- Will address the unfair electoral system with some electors being afforded a vote of greater weight and power over others
- Provides a more inviting electoral system for candidate and elector alike.

3.3. The Comité des Connétables submitted comments on P.7/2020 and also on P.126/2019 (P.7/2020 was originally lodged as an amendment to P.126/2019). Some of that content is relevant to P.139/2020 and, for ease of reference, relevant excerpts are included in these comments.

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<sup>3</sup> [OQ.306/2019](#); [WQ.264/2020](#); [OQ.266/2020](#)

#### 4. Composition and election of the States

- 4.1. Any reform of the composition and election of the States must deliver a legislature fit for Jersey's requirements having regard to best practice and to the principles of fairness and transparency in voting and to the will of the people.
- 4.2. But the key question is what should be the make-up of Jersey's legislature – the body vested with power to make and repeal laws?
- 4.3. Should it include elected representatives of the Parishes (as local government) or should there be a separation of island and local government? P.139/2020 proposes the retention of the Connétables though they are removed by both Deputy Maçon's and the Connétable of St Clement's amendments.
- 4.4. There are two kinds of legislatures prevalent in the world.
  - 4.4.1. The **unicameral** legislature is the system of government where a single central unit has the wholesale right to make laws and decide upon government policies.
  - 4.4.2. A **bicameral** legislature is one where there are two chambers of Parliament, i.e. the Upper house that represents States, and the other is the Lower house that represents people of the country. In this type of legislature, the powers are shared by the two houses.
- 4.5. In commenting on the EOM report the Comité wrote to PPC –

*.. we do not consider the practicalities and costs (in time and money) of a two chamber administration – common elsewhere – are appropriate given the island's size and population.*
- 4.6. In our view joined-up government is best achieved by a unicameral legislature where the twelve Parishes, as sole corporations, continue to be represented by the Connétable as the elected head of the Parish.
- 4.7. A Connétable who is separately elected as a States member may bring their knowledge and experience as Connétable to the States Assembly but must surely represent his or her constituents rather than the Parish in his/her work in the Assembly (see 5.1 and 5.2 below).

#### 5. Constituency boundaries

- 5.1. Parish boundaries are important and the Connétable of St Clement outlines this in his amendment which respects these boundaries but enables a person to stand as both Connétable and States member if he/she wishes.
- 5.2. The difficulty this may present is that depending on the constituencies, a person may be elected as a States member for a constituency that differs from the Parish in which they serve as Connétable. In such a case, surely they must represent their constituents rather than the Parish?

- 5.3. Both PPC and Deputy Maçon propose electoral districts which are a variety of –
- A single parish – in the case of St Saviour, St Clement and St Brelade
  - Groups of two or three parishes – in the case of eight parishes
  - Parts of a single parish – in the case of St Helier
- 5.4. Whilst the number of States members for each district seems to be convenient for ‘voter equity’ (though not all electors will have the same number of votes) what has not been addressed or explained is the basis for these electoral districts.
- 5.5. The Venice Convention is quoted as justification for ‘voter equity’ but, as explained in section 6, exemptions are permissible.
- 5.6. It is disappointing - given the evidence from the recent Guernsey all island election which has been remarked upon on several occasions by the Chairman of PPC<sup>4</sup> – that alternatives including this do not appear to have been considered. This is surely something that a working group seeking consensus would be researching.
- 5.7. Another option – or rather a principle – for determining electoral districts might be that no district should consist of only one Parish or part of one Parish. If some parishes are to be joined to form an electoral district then that should apply in every case i.e. parts of St Brelade, St Clement, St Helier and St Saviour could form an electoral district with parts of other parish(es).

## 6. Venice Convention

- 6.1. P.139/2020 suggests that retaining the Connétables will mean the Assembly is not properly compliant with the Venice Convention<sup>5</sup>. We addressed this in the comments on P.126/2019 but they are worthy of restating.
- 6.2. The Venice Commission’s central concern is plainly that malapportionment of constituencies may be used to give the wrong party or parties victory in elections (i.e. those lacking majority or plurality support). Malapportionment can be a device for gerrymandering. This concerns does not exist in Jersey [at present].
- 6.3. Jersey remains [at present] what is known as a consensus-based system, of which there are few in the world. This means that its politics largely lacks political parties, whereas the Venice Commission when addressing the requirements of democracy assumes that party politics are central to elections. In Jersey, the aim is to elect the people who will have to form a consensus.

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<sup>4</sup> See [OO.266/2020](#)

<sup>5</sup> The EOM Report acknowledges in footnote 6 –

*6. Connétables are concurrently elected as father/mother of their parish; in this respect the principle of the equality of the vote is observed since the vote of every elector carries equal weight within the boundaries of the parish.*

This makes the relative size of each member's electoral mandate less sensitive. For example, no one thought to compare in the Chief Ministerial election if members supporting the defeated candidate in fact represented more voters than the successful one. As no one was elected for the purpose of backing one or other candidate, it was irrelevant in the Jersey system as presently operating.

- 6.4. All systems and institutions should be called upon to justify themselves from time to time. The principal factors present in Jersey depend on how Parish identity is viewed – how this should be viewed is not a matter of international law. It is a matter of local identity in the jurisdictions where the issue arises.
- 6.5. It is common for countries to ensure disproportionate representation for smaller component parts. Countries which systematically practice degressive proportionality in one form or another are likely to be told to consider changing but, properly understood, that is not to say that they are non-compliant with the Venice Commission, but rather they are judging themselves to be exceptional cases. There is no sign of an international condemnation of that response. One such example would be Andorra – it is not a federation, however, each of its seven parishes have two legislators regardless of size with a further fourteen nationally elected members. Other clear examples of this principle in the lower legislative house are India, Spain, Canada, Argentina, France and Australia.
- 6.6. The Venice Commission states that 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. So whilst we might strive to comply with the 'Code of Good Practice in Electoral Matters guidelines' and other international covenants we must be mindful that exceptions are permissible. The permissible departure from the norm, of not more than 10% to 15%, should be only in special circumstances such as the protection of a concentrated minority or sparsely populated administrative entity.

## **7. Uncontested elections**

- 7.1. PPC refers to the uncontested elections of Connétables but doesn't mention uncontested elections for other seats.
- 7.2. In its comments to PPC on the EOM report the Comité wrote –

With regard to any disincentive for other candidates to stand, the CPA representatives said it was highly unusual in developed countries for a high proportion of seats to be filled without opposition (this refers to 11 of the 12 Connétables seats). Yet the absence of any clear prospect of success – or the recognition that the post holder is doing a good job - is more likely the reason a number of Connétables seats are not contested. The Mission says in its report it "*was repeatedly informed by various stakeholders that the informal qualifications for a Connétable's candidacy were dependent on the historical voluntary support and commitment to the parish in which they live, which reduces the pool of those likely to stand and creates disincentive to contest elections at the Connétable level.*"

In the 2018 Connétables elections, it was known well in advance that there would be 4 vacant seats as the incumbents had made early declarations that they would not be seeking re-election. Yet, in 3 of those parishes, only one candidate stood for election so this does not support there being any barriers from the sitting Connétable. It is not only the Connétables seats which are unopposed – there were 3 Deputies either re-elected or elected unopposed in the 2018 elections.

- 7.3. The Connétable of St Martin has lodged an amendment (the third amendment) asking that the choice of ‘None of the Above’ be automatically included as a ballot option in any States Assembly election where the number of candidates in a District or Parish does not exceed the number of seats available, with an appropriate formal consequence being provided should this ballot option achieve a plurality of the votes cast.
- 7.4. The option of ‘None of the Above’ is to be welcomed as it will ensure that not only does the electorate have the choice of rejecting the candidate but the person elected will know the confidence placed in him or her by the electorate. It will prevent candidates from being elected unopposed and require voters to consent to their election (thereby preventing a candidate from being elected before polling day).
- 7.5. It is disappointing that on page 6 of its report, PPC suggests this option could be counter-productive by putting off contenders from standing.

## **8. Boundaries Commission**

- 8.1. The proposition includes the establishment of an independent Boundaries Commission. It is not therefore clear how long the districts, as proposed, would remain.
- 8.2. It must be repeated, as set out above, that the Venice Commission recognises that constituency boundaries may be determined on the basis of geographical criteria and the administrative or indeed historic boundary lines.
- 8.3. Malapportionment can be a device for gerrymandering but this concern does not exist in Jersey [at present].
- 8.4. In ‘The Jersey States Assembly in Comparative Perspective - A Report for the States of Jersey Electoral Commission 16 August 2012’ Alan Renwick, University of Reading, set out how the current malapportionment could be reduced by more than a fifth whilst still retaining Senators, Connétables and Deputies. It would mean one Deputy seat is taken from each of St Saviour and St Lawrence. These seats are added to St Brelade and St Clement.

## **9. Civic engagement and other matters**

- 9.1. PPC is encouraging members to support its proposition and suggests it –
  - Will address the dire state of civic engagement in the island



- Will address the unfair electoral system with some electors being afforded a vote of greater weight and power over others
- Provides a more inviting electoral system for candidate and elector alike.

9.2. However, the proposition –

- Removes the Senators whilst, in practice, this is the most fair and democratic of the current positions and the preference of many of the electorate (as further evidenced in votes at meetings held in January 2020 in the Parishes of St Peter and St Ouen).
- Appears to focus on voter equity yet our understanding from the election observer training is that this is not a core concern of the CPA. The focus should instead be on increasing voter turnout – one of the concerns above - rather than making changes to the composition of the States.
- Does not address many of the other recommendations in the CPA report which could have a more significant impact on civic engagement and the electoral system, such as –
  - Proroguing – previously agreed in principle by the States<sup>6</sup>
  - Voter registration – previously agreed in principle by the States<sup>7</sup>
  - Outreach to minority communities
  - Disqualification criteria
  - Legal status of political parties
  - Candidate’s code of conduct
  - Media regulations
  - Scrutiny of financial declarations
  - General arrangements for nomination and polling days

9.3. In the written question (WQ.97/2020) the Chairman of the Privileges and Procedures Committee referred to the Jersey Opinions and Lifestyle Survey Report of 2018 which showed that 49% of people who did not vote in May 2018 said that they “Deliberately decided not to vote” (the most commonly cited reasons were ‘my vote won’t change things in Jersey’ and ‘I don’t trust the political system in Jersey’ (both 39%)). About half that number cited “Don’t understand political system” (25%) followed by “Could not get to polling station” (17%). This suggests that simplification of the electoral system will not, in itself, have the greatest impact on increasing voter turnout.

9.4. Reforms to the system might also address issues such as –

- The number of States members –the amendments of Deputy Maçon and of Senator Le Fondré seek an increase on the current number of 49 whereas in the 2013 referendum many supported proposals to reduce the number to 42 States member.

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<sup>6</sup> P.88/2018 was adopted and requests “the Privileges and Procedures Committee to undertake a more general review of the purdah rules applying to the Assembly, scrutiny panels and committees and Ministers, and to present a report, with recommendations, to the Assembly on purdah”.

<sup>7</sup> PPC stated in its report [R.127-2016](#) “PPC has authorised the preparation of Law Drafting instructions to make the necessary changes to the Public Elections (Jersey) Law 2002 to enable automatic electoral registration.”

- Jersey's current system of first-past-the-post in both single- and multi-member constituencies and alternative methods of voting e.g.
  - Single Transferable Vote (STV)
  - Alternative Vote (AV)
- None of the Above – now submitted by the Connétable of St Martin as the third amendment to P.139/2020
- A referendum on the proposals – now submitted by the Connétable of Grouville as the fourth amendment to P.139/2020.