

STATES OF JERSEY

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COMPOSITION AND ELECTION OF THE STATES ASSEMBLY: PROPOSED REFORM (P.145/2006) – SECOND AMENDMENT

**Lodged au Greffe on 17th April 2007
by the Privileges and Procedures Committee**

STATES GREFFE

COMPOSITION AND ELECTION OF THE STATES ASSEMBLY: PROPOSED REFORM (P.145/2006) –
SECOND AMENDMENT

- (1) *In paragraph (a)(i), for subparagraphs (1) to (4) substitute the following sub-paragraphs –*
- “(1) a general election period should be held in 2008, with elections for 8 Senators, and Connétables on the date currently fixed for the senatorial elections in that year, with an election for 29 Deputies held shortly thereafter, with all successful candidates elected for a period of approximately 3½ years until the spring of 2012 when a further such general election period would be held;
 - (2) no person would be permitted to stand for election as both Senator and Connétable on the single election day for these 2 positions;
 - (3) any of the 6 Senators elected in 2005 who wish to do so should be permitted to resign from office to stand in the 2008 election for 8 Senators with the resignation not taking effect until the swearing-in day of the successful candidates in that election, with any vacancies arising, for any reason, in the positions of those 6 Senators from that swearing-in day not then being filled;
 - (4) any of the 12 Connétables who wish to do so should be permitted to resign from office to stand in the 2008 election for Connétables with the resignation not to take effect until the swearing-in day of the successful candidates in that election, with appropriate arrangements being put in place to provide that, for any Connétable who did not exercise this option, the expiry of the next term of office after 2008 for that position would conclude on the date of the 2012 election for Connétables, when all 12 Connétables would be elected on one day.”
- (2) *In paragraph (a)(ii) for the words “the 2008 general election” substitute the words “the date of expiry of the term of office of the 6 Senators elected in 2005, namely December 2011.”*
- (3) *In paragraph (a)(iii) for the words “2008 general election” substitute the words “2012 general election period.”*
- (4) *In paragraph (a)(iv) after the words “general election” insert the word “period”.*
- (5) *After paragraph (b) insert a new paragraph (c) as follows–*
- “(c) to agree that the above proposed reform package should be submitted to the electorate in a referendum to be held as soon as practicable.”

and renumber paragraph (c) as (d) accordingly

PRIVILEGES AND PROCEDURES COMMITTEE

REPORT

Introduction

As members know the Privileges and Procedures Committee has been working for many months on the issue of the reform of the composition and election of the States Assembly. That work has included 2 opinion surveys, an extensive public consultation exercise and, importantly, the “in Committee” debate on the issue on 13th and 14th March 2007 when members were able to give their views on the best way forward.

PPC has always made it clear that it wishes to take careful account of public opinion on this important issue and the Committee feels that the opinion surveys, in particular, have given a good indication of the public’s views on certain issues. It is nevertheless clear from the surveys and from the letters and e-mails received by the Committee (see summary of responses published in R.19/2007) that there is no consensus on the way forward. Opinions are extremely strongly held for and against certain matters such as, for example, the position of the Connétables in the States. The Committee is therefore conscious that it is necessary for the States Assembly to give a lead in agreeing the way forward. The Committee is also realistic in realising that there is simply no point in putting forward proposals that have no hope of receiving the support of a majority of members of the States.

The Committee has analysed the contributions made by members during the “in Committee” debate and, although there were a wide variety of views expressed, the Committee believes that there were certain clear messages coming from that discussion. There appeared to be support for a term of office of 4 years for all members, there was clearly a large majority in support of the retention of the Connétables in the States, there was some support for a small reduction in membership but little support for a larger reduction to, say, 42 members. In addition there was some support for the concept of a general election or, at least, a system where the entire membership of the States could be renewed before members were appointed to positions of responsibility such as Chief Minister, Minister or Chairman of a scrutiny panel. There did not appear to be any consensus on whether members should be elected on an Island-wide, Parish or constituency basis although a significant number of members expressed the view that they were not convinced that there was any significant public appetite for reform and the Committee does not believe that any radical proposals to change the current composition in a very radical way would receive support in the present Assembly.

In its discussions following the “in Committee” debate, PPC was aware that the Assembly had agreed to debate the proposition of Senator B.E. Shenton on these issues (P.145/2006) on 1st May 2007. In light of the opinions expressed during the “in Committee” debate it is possible that members may be minded to support the proposition of Senator Shenton which contains many of the features of some of the preferred reform options summarized above. PPC has therefore analysed the proposition of Senator Shenton carefully and believes that it is appropriate to bring these amendments so that, if adopted, the proposition will be workable and represent a realistic way forward for the future. It is, of course, possible that this initial reform, if approved, will be the first stage of further reform that may be undertaken in the light of experience after a number of years. PPC is concerned, as set out below, that if the proposition of Senator Shenton was to be approved in its original form there would be a number of practical difficulties but, if it is amended in the manner set out in these amendments, the reform package would be workable and represent a level of reform that should be acceptable to members of the States.

Amendment 1: for convenience this amendment is set out as an entire replacement of sub-paragraphs (1) to (4) of paragraph (a)(i).

PPC has 2 particular concerns with paragraph (a)(i)(1) of the proposition of Senator Shenton as originally drafted.

Firstly PPC envisages a practical difficulty with the proposal to hold a general election day for all members on the date proposed for the Senatorial elections, namely Wednesday 15th October 2008. Although it is clearly preferable for candidates to canvas in October rather than later in the year members need to consider the practical consequences of holding one single general election for all members in October.

The present system of Senatorial and Deputies elections means that the new States do not convene until some 7 or 8 weeks after the Senatorial elections. Members who do not stand for reelection, or who lose their seats, therefore stay in office until early December and, in particular, vote on the following year’s Budget which is usually

considered on the last days of the old States. If all the elections were concentrated on one day in mid October it would almost certainly be considered as unacceptable by the public for the start of the new States to be unduly delayed. There might be an expectation that the new members would be sworn in quite quickly after the elections so that the new States could theoretically meet to elect Ministers and others by, say, the end of October. For 2008 this could, however, make it almost impossible for the budget to be finalized and lodged as required by the Public Finances (Jersey) Law 2005. The required 6 week lodging deadline for a debate in early December would fall right in the middle of the transition with, possibly, even a change of Minister for Treasury and Resources. In addition, even if it was possible for the Budget to be finalised and lodged, new members would be required to consider the Budget almost immediately on taking office. For this reason PPC does not believe that paragraph (a)(i)(1) is workable as drafted. If members are minded to support the concept of one single general election day it would probably have been better to suggest that the 2008 election took place on the day fixed for the Deputies elections, namely Wednesday 26th November 2008. This would allow the Budget debate to take place the following week (with the old States) before new members were sworn in. The various appointments for Chief Minister, Ministers, Chairmen, etc. could then take place in early December. PPC accepts that it is obviously not ideal for the old States to vote on the following year's Budget but there would seem to be little realistic practical alternative within the present structure.

PPC's second concern with (a)(i)(1) is that it is not clear whether candidates would be able to stand for more than one position on the proposed general election day. PPC has sought legal advice on the feasibility of restricting candidates to stand in only one position when elections for different categories of members are held on a single day and the Committee hopes that this advice will be received in advance of the debate on this proposition and these amendments.

The Committee believes it would be totally unworkable to allow one candidate to stand for several offices. It is quite possible that, under the system proposed in the proposition of Senator Shenton, a popular candidate could be elected on one day as a Senator and a Deputy and possibly even as a Connétable as well. If the person were elected to 2 or even 3 offices at one time it would clearly not be possible for him or her to serve in those different capacities and there would then probably have to be a series of by-elections to fill the positions that would remain vacant. This would clearly be totally unmanageable and would, for example, mean that the new States after the elections might convene with a number of unfilled vacancies. For this reason PPC's revised sub-paragraph (2) proposes that a restriction should be placed so that, in the 2 election system proposed by PPC, a candidate would only be able to stand as a Senator or a Connétable but not for both offices at the same time.

As can be seen from the proposed substituted sub-paragraph (1) of this amendment PPC believes that members should be given the opportunity to consider an alternative of 2 elections being held within a short space of time rather than one single general election day. Although there was significant support for the concept of a general election in the MORI survey PPC believes that the concern of the public is largely that the membership of the entire Assembly is not renewed before members convene to appoint a Chief Minister and other members to positions of responsibility. The ability to achieve this objective may be as important as the concept of simply electing all members on one single day.

There are clearly certain practical difficulties in proposing that 8 Senators, 12 Connétables and 29 Deputies should all be elected on one single day. Although it would be wrong to claim that the electorate is incapable of coping with this concept (with different coloured ballot papers etc.) it would nevertheless undoubtedly be confusing for electors. There is also perhaps a greater concern that the campaigns for the various offices could become muddled, with Parish issues for Deputies being given little prominence in comparison to the Island-wide elections for Senators happening at the same time. PPC is therefore proposing in the substituted sub-paragraph (1) that there should be a 'general election period' where elections for 8 Senators would take place on the same day as an election for Connétables. An election for 29 Deputies would then be held shortly after. If the amendment is adopted PPC will give further consideration to the appropriate time that should elapse between the 2 elections although the Committee's initial assessment is that the period should be no more than 2 or 3 weeks.

PPC has given very careful consideration to the manner in which reform can be implemented with appropriate transitional arrangements. The Committee supports the concept of spring/early summer elections and believes that this would improve turnout and make canvassing easier with the long summer evenings. The Committee cannot, however, support the amendment of Deputy Southern which suggests that elections should be moved to the early

summer from next year. Firstly there may possibly not be time to introduce all the necessary new legislation to bring the elections forward and the need to curtail the mandate of a very significant number of members might make the transition much more controversial and possibly open to challenge. In addition it is likely that a move to spring or early summer elections will necessitate changes to the whole cycle of financial planning in the States as it would simply not be possible for a new Council of Ministers to be formed in late May or early June and then be in a position to lodge the Annual Business Plan for the following year within a matter of some 5 or 6 weeks for debate as currently required by the Public Finances (Jersey) Law 2005 in September. PPC therefore believes that although spring or early summer elections are desirable it is, unfortunately, only feasible for them to be introduced from the next general election after 2008. This would give sufficient time for full consideration of the consequences of adopting a different annual financial cycle to be undertaken. There may, for example, need to be different provisions to cover an election year with, possibly, a 2 year Annual Business Plan agreed the previous year. In addition matters such as the timing of the formation of the new Council of Ministers and the production of the Strategic Plan need to be carefully considered and it would be unwise to rush into proposing a change to spring elections within the next 12 to 13 months. If the change to spring/early summer elections is agreed but deferred until 2012 there will be ample time to plan for the consequences before that date. For this reason PPC's amendment, as can be seen, proposes that the election period in 2008 would take place in the autumn but candidates would be elected for a period of some 3½ years to enable spring elections to begin from 2012. From that date (see amendment (3)) all members would serve for a 4 year term.

As can be seen in the table below it is possible to find an election date in mid-May and if the 2 election period system as proposed is agreed the 2nd election day, namely that for Deputies, could take place in early June. This would enable the entire Assembly to be sworn in from 2012 onwards in mid-June and enable appointments to take place before the summer recess.

	<i>Easter Sunday</i> <i>[1]</i>	<i>Possible first</i> <i>election Date</i> <i>(3rd Wednesday of</i> <i>May)</i>	<i>Spring Bank Holiday</i> <i>(Last Monday of</i> <i>May)</i>
2012	8th April	16th May	28th May
2016	27th March	18th May	30th May
2020	12th April	20th May	25th May
2024	31st March	15th May	27th May
2028	16th April	17th May	29th May
2032	28th March	19th May	31st May
2036	13th April	21st May	26th May
2040	1st April	16th May	28th May
2044	17th April	18th May	30th May
2048	5th April	20th May	25th May
2052	21st April	15th May	27th May
2056	2nd April	17th May	29th May
2060	18th April	19th May	31st May

PPC has had to give extremely careful consideration to the appropriate transitional arrangements for the 6 Senators elected in 2006 and for Connétables whose terms of office will not expire until after the proposed election for Connétables in the autumn of 2008.

PPC recognises that it would be an extremely desirable objective for all members to be elected at one time from 2008 onwards. The Committee nevertheless accepts that the 6 Senators elected in 2005 have a legitimate expectation of a full 6 year term of office and one or more of the candidates may wish to challenge any decision that his term of office should be curtailed by 3 years. The Committee has recently requested legal advice on the ability of the States to legislate for such a curtailment and is hopeful that the advice will be received in advance of this debate. Advice received in the past nevertheless indicated that a challenge from any one of the 6 Senators could be made and it is clear that any such challenge would represent an unnecessary distraction during the reform process and could even have the potential to delay the entire reform package. Sub-paragraph (3) of PPC's

amendments therefore proposes a 'voluntary' system that would avoid the need to legislate to curtail the 6 year mandate of any of the 6 Senators elected in 2005.

Under the proposal put forward in the amendment any of the 6 Senators who wished to do so would be able to indicate that he was resigning from office to stand for one of the 8 Senatorial positions in the 2008 election. The legislation would provide that the resignation would not, nevertheless, take effect until the swearing-in day of the successful 8 candidates so there would be no need for a candidate who did this to be out of office for any period.

Any of the 6 Senators who did not wish to exercise the voluntary resignation option would simply remain in office until the normal expiry of their term of office in December 2011. At that stage there would, of course, be no further elections until the spring of 2012 and there would therefore be no position available for any of the 6 Senators who chose not to stand in the 2008 elections. If all 6 Senators elected in 2005 chose to do this there would, of course, be an Assembly of 55 members after the 2008 elections. PPC does not believe that, in practice this would happen. For example Senator Shenton himself has already indicated in the report accompanying his proposition that he would be quite willing to stand down and seek a fresh mandate in 2008. It is likely that some of the other 5 Senators would choose to do likewise if they wished to remain in the Assembly after 2011. Even if only 2 Senators decided to resign and stand again the number of members would not increase beyond the current 53. It can be seen that any vacancies arising in these 6 positions after the swearing in of the 8 new Senators would not be filled and the very latest at which a full reduction to 49 members would occur is therefore December 2011. PPC believes this is a more realistic and fairer way to proceed rather than legislating within the next 12 months to cut in half the mandate of candidates elected in 2005 with an expectation of serving for 6 years.

In relation to the Connétables similar considerations apply. The terms of office of 5 Connétables expire during 2007 and it is unlikely that there will be time to introduce transitional legislation to amend their term of office from a full 3 years.

St. Peter	Thomas John du Feu	02.07.07
Grouville	Daniel Joseph Murphy	23.07.07
St. Saviour	Philip Francis Ozouf	13.08.07
St. Clement	Derek Frederick Gray	17.12.07
St. Helier	Alan Simon Crowcroft	17.12.07

PPC has received informal indications that all 12 current Connétables would be willing to vacate office voluntarily to stand in a single election for Connétables in the autumn of 2008 although there could, of course, be new Connétables elected later in 2007 who may not be willing to do this particularly, for example, if they have just fought a contested election.

In order to avoid unnecessary and possibly lengthy disputes about the desirability of curtailing terms of office by legislation sub-paragraph (4) of these amendments therefore proposes a voluntary system similar to that suggested for the Senators. Any of the 12 Connétables who wished to do so would be permitted to resign from office and stand in the 2008 election for Connétables but the resignation would not take effect until the swearing in of the new candidates to ensure no break in office. It is possible therefore that the 2008 election might involve all 12 Connétables or, at least, a significant proportion of them. If any Connétable decided not to exercise the option to resign voluntarily and stand again the next term of office for the position would be curtailed by legislation (in advance of the next election) to coincide with the 2012 election for Connétables when all 12 Connétables would definitely be elected on a single day.

PPC accepts that some members may be disappointed that the certainty of a single election period with a renewal of the entire membership of the Assembly cannot be guaranteed under these amendments until 2012. The Committee would nevertheless point out that the alternative of possible challenges to legislation (for example through a petition to the Privy Council) could, in fact, derail the entire reform process and mean that the elections in 2008 had to take place in accordance with the current legislation which would simply delay reform for an even longer period. The Committee believes that the measures set out in these amendments represent a significant step forward and, within one further electoral cycle, the concept of a general election period with the entire membership of the Assembly renewed before any elections for Chief Minister etc take place will be achieved.

Amendment (2) this amendment is merely consequential on the transitional arrangements for the 6 Senators elected in 2005 and makes it clear that the reduction to 49 members will be achieved on a permanent and definite basis from the date of expiry of the term of office of these 6 Senators.

Amendment (3) as mentioned above it is proposed that candidates elected in the autumn of 2008 should be elected for 3½ years to enable a transition to spring/early summer elections. The full 4 year term would not therefore begin until after 2012.

Amendment (4) this amendment is merely consequential on the proposal above to hold 2 elections within a general election period and adds the word “period” after general election to avoid any implication that the “general election” would be held on one single day.

Amendment (5) PPC has consistently promised that a referendum on changes to the composition of the States should be held before reform is implemented. This amendment meets that commitment to achieve the objective of a referendum. Although the changes proposed in the proposition of Senator Shenton as amended by these amendments do not represent a total transformation of the composition of the States PPC nevertheless believes that members should be given the option to decide whether or not a referendum should be held.

The consultation period has shown that there are very strong public views on these issues and PPC believes it is therefore appropriate to give an opportunity to the public to express a view on the proposals. PPC’s intention is that a single question should be asked, setting out the proposed reform package and asking electors whether or not they support the proposals. It has already been made clear that the Referendum Law does not enable the outcome of a referendum to be binding on the States but it is, of course, almost unthinkable that the States would decide to approve the relevant legislation to give effect to these proposals if they were heavily defeated in a referendum. If this part of the amendments is adopted by the States PPC would make every effort to ensure that the referendum is held before the summer so that the relevant legislation to give effect to the changes can be brought before the States, in the event of a favourable outcome from the referendum, in the autumn.

Financial and manpower implications

The only potential financial implications of the amendments brought by PPC arise from the possibility that the reduction in membership to 49 members (that would lead to a financial saving of some £170,000 per year) might not occur in full until 2011. There are no other resource implications.

Comments of the Privileges and Procedures Committee on other paragraphs of P.145/2006

Paragraphs (a)(iv) and (v): PPC supports the proposal that the Chief Minister should only be appointed from members holding an Island-wide mandate from 2008. Experience has shown that the senior politician in Jersey has always been elected from the Senatorial benches in recent decades but the Committee believes it would be sensible to formalize this position so that Connétables or Deputies would not be eligible for the position of Chief Minister.

PPC will shortly be lodging a proposition setting out full details of its proposals on the regulation of election expenses and PPC therefore supports sub-paragraph (v) although it believes it may be more appropriate for the Assembly to await the full detailed proposition on this matter, which will be lodged by the Committee as soon as appropriate legal advice which has been sought has been received.

Paragraph (b) PPC does not support this proposal which would appear to run counter to the principle, recently reiterated by a vote in the Assembly, that all members should receive equal remuneration. Although it is the case that Connétables undertake work for their Parish in addition to their work in the States this is, of course, no different from any other members who have outside employment and there is currently no evidence at all that the Connétables are, as a group, undertaking less work for the Assembly than Senators or Deputies.

Paragraph (c) PPC is, of course, content to bring forward the necessary legislation to give effect to the changes. PPC has already secured law drafting time in 2007 to deal with changes to the composition and election of the

Assembly and is confident that the changes can be in place in time for the 2008 elections provided that these are not held before the autumn.

^[1] *Never earlier than 22nd March and never later than 25th April.*