

# **STATES OF JERSEY**



## **PUBLIC ELECTIONS (JERSEY) LAW 2002: RESCINDMENT OF ARTICLE 39A**

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**Lodged au Greffe on 4th February 2009  
by Deputy G.P. Southern of St. Helier**

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**STATES GREFFE**

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to refer to their Act dated 10th June 2008 in which they approved Amendment No. 3 to the Public Elections (Jersey) Law 2002, and to agree, in principle, to –

- (a) rescind Articles 39A and 62A of the Public Elections (Jersey) Law 2002;
- (b) charge the Privileges and Procedures Committee to prepare the necessary amending Law for debate.

**DEPUTY G.P. SOUTHERN OF ST. HELIER**

## REPORT

Article 39A was inserted into the Law by the previous Privileges and Procedures Committee in Amendment No. 1 to the Public Elections (Jersey) Law 2002 (P.65/2008) and is reproduced here –

### **39A Candidate or representative not to interfere with application for registration**

- (1) A candidate, or a representative of a candidate shall not –
  - (a) complete, on behalf of a person entitled under Article 38, or assist such a person in completing any form required to be completed for the purposes of an application under Article 39(4);
  - (b) deliver, or cause to be delivered, to the Judicial Greffier, on behalf of a such a person, any form or supporting documents required for the purposes of an application under Article 39(4); or
  - (c) provide transport for such a person so as to enable the person to make an application in person under Article 39(4).
- (2) Paragraph (1) shall not prohibit a candidate or representative of a candidate providing a person entitled under Article 38 with the form (if any) required to make an application under Article 39(4)(a).

Article 62A reads as follows –

### **62A Interference with postal and pre-poll voting**

A candidate or representative of a candidate who contravenes Article 39A(1) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

In presenting the case for the introduction of Article 39A, the then Deputy of St. Mary had the following to say during the debate –

*“Would anyone really expect candidates or their canvassers to be allowed to enter the polling booth with a voter? I think not. Then why should we countenance their presence at the time of completing a postal vote?”*

As the present Connétable of St. Mary, she has maintained her position. On the radio recently she stated that assistance rendered by a candidate to a voter in applying for a postal vote is –

*“like going into the polling booth with the voter on election day”.*

This analogy is of course completely untrue and misleading. Any assistance delivered to the potential voter concerns the application form that is required in order to apply to have a ballot paper sent to their home so that the person may vote by post. The candidate is at no stage anywhere near the ballot paper, postal or otherwise. No one has suggested that any candidate should be present either in the polling booth or at the time of completing a postal vote.

The vote remains, as it should be, a secret and personal decision, which takes place in private.

I repeat: Article 39A concerns only the completion of an application form requesting a postal vote. The request and the act of voting are separated by several days at least. The integrity of the vote is not compromised in any way by any assistance rendered in completing the application form.

The changes proposed by PPC in 2008 not only demonstrate a fundamental misunderstanding of the democratic process, they demonstrate a level of petty-mindedness which I believe has no place on our electoral process. More importantly, and far worse, Article 39A actively discriminates against some voters and is open to challenge as being a disproportionate restriction on Article 3 of the First Protocol of the Human Rights (Jersey) Law 2000–

*Article 3*  
*Right to free elections*

*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.*

- ❑ Furthermore for persons with disability, this right is given clarity by the UN Declaration:
  - *According to the Universal Declaration of Human Rights 1948; article 21 paragraphs one and two, the right of each and every individual to political participation is affirmed.*
- ❑ The new UN treaty on disability rights, article 29 on participation in political and public life:
  - States Parties **shall guarantee** to persons with disabilities their political rights and the opportunity to enjoy them **on an equal basis with others** (*my emphasis*)
  - On an equal basis with others in accordance with national laws of general application, directly or through freely chosen representatives.

As this report demonstrates, there are several groups of voters who would find it extremely difficult, or in some cases impossible, to cast their vote without the opportunity to vote by post and amongst these are many who would need assistance in completing the form. In the absence of readily accessible help, Article 39A constitutes a disproportionate restriction.

At a time when we are attempting to increase participation in our elections by making it easier for people to vote, the inclusion of Article 39A makes little or no sense.

The report accompanying P.65/2008 pointed out that prior to this amendment –

*“there is no restriction in the Law on candidates or their representatives assisting with the postal voting process”.*

This proposition will restore that situation, and remove a misguided restriction.

Examination of the tables produced in Appendix 1 serve to demonstrate a clear trend, in that 2 districts stand out with high numbers of postal votes distributed: St. Helier No. 2 and St. Martin. What does this reveal about the electoral districts? It shows that the candidates are prepared to work hard at getting on doorsteps to meet and listen to electors. In the course of such a thoroughly old-fashioned approach to electioneering, these candidates come across electors who wish to vote but find it difficult to do so, and are prepared to assist those who need a postal vote to do so. What is wrong with that? PPC saw some devilish hand at work in what they term as “*interference*” –

*“PPC is concerned that the current provision could be seen to interfere with the fairness of the election process. Any elector who has received significant assistance from a candidate or his or her representative to obtain a postal vote may feel, in some way, pressurised to vote for that candidate when the ballot paper is received from the Judicial Greffier.”*

Voters, obviously weak-minded in some way, may feel “*pressurised*”, after an interval of several days or a week, into voting for the candidate who assisted with getting them the postal vote. PPC present no evidence for such a statement. But on the flimsy grounds of their “*concern*”, the Committee persuaded the Assembly to render “*significant assistance*” in getting a postal vote illegal.

Furthermore, much was made in the debate of June last year of the low return rates from St. Helier and St. Martin postal applications.

Apart from rendering candidates who assist the postal voting process subject to a £2,000 fine, what impact does this have on voters?

Those who wish to have a postal vote fall in to one or more of several groups –

1. Those who will be absent from the Island on election day
2. Those who have an illness, disability or mobility problem that makes getting to the polling station difficult/impossible
3. Those who are too busy with work and/or family commitments to attend.

These are the officially recognised groups. There are also the following, who also often prefer to vote at home where any difficulties may be kept private and help is available from family when required –

4. Those who have a learning difficulty and cannot read
5. Those for whom English is a second language
6. Those with partial sight
7. Those who are elderly and/or infirm who wish to vote but will not venture forth in foul weather (often the case in November)
8. Those who do not usually vote, either from disillusionment or apathy, but who just *might* use a postal vote because it is easier.

Some of those in group 2 (those with serious tremor or with rheumatism of the hands) along with many of those in groups 4, 5 and 6 are unable to fill in the application form and actually need assistance to participate in the voting process. I certainly am aware of many voters in these groups who would not vote were they not able to vote in the privacy of their own home. I also am aware that foul weather will cause significant loss in voter turnout among those in group 7.

Members should also bear in mind that what we are talking about is an application for a postal vote. It takes all of between 30 seconds and 2 minutes to complete for those who know the form:

Name; Address; Reason; Signature; Date; Done.

The ballot form arrives some days later when the candidate is long gone. There is no undue influence; there is merely common decency in helping those who need it to get the voting method they want to allow them to vote.

Imagine the situation that would arise when a potential voter asks directly for help, as many do. What is the candidate to say? “I am forbidden by law to give you any help whatsoever. Get your home help/ neighbour to help. I cannot.” The situation is not only absurd, it is perverse. Examination of the figures given in the tables in Appendix 1 of this report reveals that requests for postal votes are not all converted into actual votes cast, with a conversion rate of between 50% and 75% in the St. Helier districts. Putting another obstacle in the way of obtaining postal votes will simply make voting figures worse.

The adoption of Article 39A has made the following acts illegal –

- Assistance in completing the postal voting application form
- Delivering or causing the delivery of forms to the Judicial Greffier
- Provision of transport to enable a voter to attend the Judicial Greffe.

I believe that any person in groups 4, 5 and 6 above could properly claim that Article 39A disproportionately interfered with and limited their right under Article 3 of the First Protocol of the Human Rights (Jersey) Law 2000 to fully exercise their right to participate in free elections in that it discriminated against them by setting artificial barriers to their ability to vote.

The simplest illustration of the discriminatory nature of Article 39A is provided by the examination of the impact of point 2 above on those with a severe mobility problem. This means that they cannot get to the polling station to vote in person. They have a request for a postal vote completed. How do they get the form to the Judicial Greffe or Parish Hall? They have mobility problems, so they cannot do so in person. They put it in the post. This costs

35p. This group of people have to pay 39p to exercise their right to vote.

To further examine the arbitrary nature of the effects of Article 39A, it is interesting to compare the rules concerning voter registration with those which apply to voting, and postal voting in particular, following the adoption of 39A. Remember the registration and voting elements are each essential in the electoral process. No registration means no vote.

- **Assistance in completing the postal voting application form** is *illegal* under Article 39A.
  - **Assistance in completing the voter registration form** remains *legal* and positively encouraged.
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- **Delivering or causing the delivery of forms to the Judicial Greffier** is *illegal* under Article 39A.
  - **Delivering or causing the delivery of voter registration forms to the Parish hall** remains legal and is seen as helpful.
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- **Provision of transport to enable a voter to attend the Judicial Greffe** to register their pre-poll or postal vote is *illegal* even on election day before noon.
  - **Provision of transport to enable a voter to attend the Polling Station** on election day remains perfectly *legal*.
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Furthermore, the extreme nature of this amendment in its effect on the actions of candidates and the rights of the electorate is demonstrated by 2 additional considerations –

The first concerns the deadline for applications for a postal vote. In order to receive a postal vote, applications must have been made by no later than 12.00 noon on Friday 21st November, 3 working days before the polling day on Wednesday 26th November. After that time, the only recourse for a voter who cannot vote in person because of illness, disability or infirmity must request what is known as a “sick vote”, whereby a member of the parish honorary brings a ballot paper directly to the voter in their home on polling day.

How does that voter obtain this vote? They may call the parish hall to request one, but most voters unless they are chronically sick and know the system, are not aware of this option. In many cases, it is the candidate in calling on his constituents after the postal deadline has passed, who will phone the parish to make these arrangements for election day. This is a widely accepted practice in all parishes, and perfectly legal. This then gives rise to a further anomaly –

- **Assistance in completing the postal voting application before 12.00 noon** is *illegal* under Article 39A.
- **Assistance in obtaining a sick vote, after 12.00 noon, remains legal.**

Further, one has to turn to the all-encompassing nature of the wording of the amendment made by 39A. The rendering of “assistance in completing the application” is very wide remit. For example a candidate may assist in one of several ways, for example the candidate may –

- Write on the form directly, in the case of those who cannot because of physical or mental disability;
- Help the constituent, by discussing which of the 3 options could apply; or
- Assist by phoning up the parish hall and request a visit from a parish official.

All of these options could be classed as rendering assistance and mean that the candidate becomes subject to prosecution and a potential £2,000 fine.

Finally, those who suggest that banning all assistance from the candidate in completing the application form, as the Law now does, is a minor issue and that obtaining a postal vote is a simple issue are incorrect. A majority of members of the public are unaware of postal voting, and are certainly ignorant of the application and the mechanics of the process. This can come as no surprise to members. The publicity promoting this facility is extremely poor, as illustrated by the advertisements placed in the press by the Judicial Greffe, to be found in Appendix 2. These are lifesize. Some members may have problems reading the notice themselves; imagine what those elderly or those with a sight problem would make of it. Those electors who can read it and are keen to vote, but have a mobility problem, would search in vain for a telephone number to contact and request a form. They may not be able to get to the Greffe to pick up a form; after all if they could, they would be voting in person. They may choose to write requesting the form; another 35p in order to vote.

There can be no doubt that 39A fails to meet the UN treaty conditions on disability rights –

“States Parties **shall guarantee** to persons with disabilities their political rights and the opportunity to enjoy them **on an equal basis with others**”

and, as such should be rescinded. It is, in effect, discriminatory.

### **Financial/manpower implications**

There are no significant financial or manpower implications for the States arising from this proposition.

**Deputies 2002 contested seats**

<b>Electoral District</b>	<b>Registered electors</b>	<b>Papers sent out</b>	<b>Papers returned</b>	<b>Papers not returned</b>
St. Helier No. 1	3,483	102	73	29
St. Helier No. 2	3,526	159	100	59
St. Helier No. 3	6,506	69	66	3
St. Saviour No. 1	2,355	36	27	9
St. Saviour No. 3	1,822	23	20	3
St. Brelade No. 1	1,972	40	39	1
St. Brelade No. 2	4,238	44	38	6
St. Clement	4,650	40	38	2
Grouville	2,852	55	47	8
St. Lawrence	2,893	46	43	3
St. Martin	2,248	284	195	89
St. Mary	1,040	41	36	5
St. Ouen	2,254	31	26	5
St. Peter	2,493	28	27	1

**Deputies 2005 contested seats**

<b>Electoral District</b>	<b>Registered electors</b>	<b>Papers sent out</b>	<b>Papers returned</b>	<b>Papers not returned</b>
St. Helier No. 1	4,289	68	49	19
St. Helier No. 2	4,032	186	96	90
St. Helier No. 3	7,586	99	88	11
St. Saviour No. 1	2,692	22	19	3
St. Saviour No. 2	2,473	29	24	5
St. Brelade No. 1	2,185	36	29	7
St. Brelade No. 2	4,703	59	56	3
St. Clement	5,306	51	43	8
St. Lawrence	3,149	66	61	5
St. Mary	1,130	19	17	2
St. John	1,769	69	63	6



**DEPUTIES ELECTION 26TH NOVEMBER 2008**  
**Postal & Pre-Poll Voting**

<b>Parish</b>	<b>Ballots Sent Out</b>	<b>Ballots Returned</b>	<b>Ballots Missing not returned before noon on 26/11/08</b>
St. Brelade No. 1	31	29	2
St. Brelade No. 2	77	66	11
St. Clement	56	52	4
St. Helier No. 1	83	59	24
St. Helier No. 2	111	84	27
St. Helier No. 3	97	92	5
St. John	42	40	2
St. Lawrence	29	27	2
St. Martin	76	65	11
St. Mary	14	13	1
St. Peter	47	38	9
St. Saviour No. 1	32	28	4
St. Saviour No. 2	24	22	2
<b>TOTAL</b>	<b>719</b>	<b>615</b>	<b>104</b>

**JERSEY GAZETTE**

**PUBLIC NOTICES**



Royal Court of Jersey  
**Judicial Greffe**

**PUBLIC ELECTIONS  
(JERSEY) LAW 2002  
AND**

**REFERENDUM (ADOPTION OF CENTRAL  
EUROPEAN TIME) (JERSEY) ACT 2008**  
Election for Senators and Connétables -  
15th October 2008  
Referendum on Central European time -  
15th October 2008  
Postal and Pre-poll Voting

1. Pursuant to Article 36 of the Public Elections (Jersey) Law 2002 ("the Law"), a person entitled to vote at a public election is entitled to vote by post or cast a pre-poll vote before polling day if that person -
  - (a) is likely to be out of the Island during the hours of polling (between 8.00 a.m. and 8.00 p.m.); or
  - (b) has commitments, or a disability, that would prevent him or her from attending personally at the polling station on polling day.
 Identical provisions apply in relation to voting at the referendum.
2. Any elector entitled to vote at the forthcoming elections for Senators and Connétables or the referendum on the 15th October 2008, who for any of the reasons given above wishes to vote by post or cast a pre-poll vote should make application to the Postal & Pre-Poll Voting Officer, Judicial Greffe, Royal Court House, Royal Square, St. Helier, JE1 1JG, to have his or her name inscribed in the register of postal and pre-poll voters.
3. An application to be registered as a postal voter may be made by post or by attending, in person, at the Judicial Greffe. An application to register as a pre-poll voter and to cast a pre-poll vote must be made by attending, in person, at the Judicial Greffe.
4. Applications to be registered as a postal or a pre-poll voter should be made between 9.00 a.m. - 1.00 p.m. and 2.00 p.m. - 5.00 p.m. on any day other than a Saturday or a Sunday by the relevant closing date and time set out below.
5. An application for registration as a postal voter must be made by no later than 12.00 noon on Friday, 10th October, 2008. If the postal voting papers are to be sent to an overseas address the application must be made in sufficient time so that those papers can be sent to the voter and the voter is able to return the completed ballot paper and other documents in the "pre-addressed envelope" to arrive at the offices of the Judicial Greffe by no later than noon on Tuesday, 14th October, 2008.
6. An application for registration by a person wishing to cast a pre-poll vote must be made by no later than 5.00 p.m. on Monday 13th October, 2008.
7. A separate application is required in respect of each elector wishing to vote by post or cast a pre-poll vote and each application must -
  - (a) be in writing and be signed by the elector personally;
  - (b) give the elector's full name and address as inscribed in the relevant Parish electoral register, and, in the case of an application to vote by post, the address, if different from the address on that register, to which the ballot paper should be sent; and
  - (c) in the case where the application is made on the basis that the elector is likely to be out of the Island during the hours of polling (namely between 8.00 a.m. and 8.00 p.m. on the 15th October, 2008), state the dates and times or probable dates and times of the elector's absence from the Island; or
  - (d) in any other case, either state the nature of the commitments or disability that would prevent the elector from attending personally at the polling station on polling day.

8. Application forms which may be used to apply for registration as a postal or pre-poll voter are available free of charge from the Judicial Greffe, all Parish Halls, the Public Library and States Book Shop, and can be downloaded from either of the following website addresses:- [www.parish.gov.je](http://www.parish.gov.je) or [www.judicialgreffe.gov.je](http://www.judicialgreffe.gov.je).
  9. An elector who applies in person at the Judicial Greffe for registration as a pre-poll voter must bring with them some form of identification such as a passport, driving licence or bank card.
  10. An elector whose name is inscribed on the register of postal and pre-poll voters is disqualified from voting in person at the polling station on election day.
- Advocate P Matthews, Deputy Judicial Greffier,  
Judicial Greffe, Royal Court House,  
Royal Square, St Helier, Jersey JE1 1JG  
Dated this 23rd day of September, 2008.

30th September

8. Application forms which may be used to apply for registration as a postal or pre-poll voter are available free of charge from the parish offices, the Jersey Library and the Judicial Greffe and can be downloaded from either of the following website addresses:- [www.parish.gov.je](http://www.parish.gov.je) or [www.judicialgreffe.gov.je](http://www.judicialgreffe.gov.je).
  9. An elector who applies in person at the Judicial Greffe for registration as a pre-poll voter must bring with them some form of identification such as a passport, driving licence or bank card.
  10. This notice is made pursuant to Article 39(2) of the Law.
- Advocate P Matthews  
Deputy Judicial Greffier

11th November

**PUBLIC NOTICES**



Royal Court of Jersey  
**Judicial Greffe**

**PUBLIC ELECTIONS  
(JERSEY) LAW 2002**

**POSTAL AND PRE-POLL VOTING**  
Election for Deputy in the following Electoral Districts:-

- St. Brelade**  
Vingtaines de Noirmont et du Coin (No. 1 District)  
Vingtaines des Quennevais et de la Moye (No. 2 District)
- St. Clement, St. Helier**  
Cantons de Haut et de Bas de la Vingtaine de la Ville (No. 1 District)  
Cantons de Bas et de Haut de la Vingtaine du Mont-au-Prêtre (No. 2 District)
- Vingtaines du Rouge Bouillon, du Mont-à-l'Abbé et du Mont Cochon (No. 3 District)**
- St. John, St. Lawrence, St. Martin, St. Mary, St. Peter, St. Saviour**  
Vingtaine de la Petite Longueville (No. 1 District)  
Vingtaine de Sous l'Eglise (No. 2 District)

1. Pursuant to Article 36 of the Public Elections (Jersey) Law 2002 ("the Law"), a person entitled to vote at a public election is entitled to vote by post or cast a pre-poll vote before polling day if that person -
  - (a) is likely to be out of the Island during the hours of polling (between 8.00 a.m. and 8.00 p.m.); or
  - (b) has commitments, or a disability, that would prevent him or her from attending personally at the polling station on polling day.
2. Any elector entitled to vote at the forthcoming election for Deputies in one of the above electoral districts on the 26th November, 2008, who for any of the reasons given above wishes to vote by post or cast a pre-poll vote should make application to the Postal & Pre-Poll Voting Officer, Judicial Greffe, Royal Court House, Royal Square, St. Helier, JE1 1JG, to have his or her name inscribed in the register of postal and pre-poll voters.
3. An application to be registered as a postal voter may be made by post or by attending, in person, at the Judicial Greffe. An application to register as a pre-poll voter and to cast a pre-poll vote must be made by attending, in person, at the Judicial Greffe.
4. Applications to be registered as a postal or as a pre-poll voter should be made between 9.00 a.m. - 1.00 p.m. and 2.00 p.m. - 5.00 p.m. on any day other than a Saturday or a Sunday by the relevant closing date and time set out below.
5. An application for registration as a postal voter must be made by no later than 12.00 noon on Friday, 21st November, 2008. If the postal voting papers are to be sent to an overseas address the application must be made in sufficient time so that those papers can be sent to the voter and the voter is able to return the completed ballot paper and other documents in the "pre-addressed envelope" to arrive at the offices of the Judicial Greffe by no later than noon on Wednesday, 26th November, 2008.
6. An application for registration by a person wishing to cast a pre-poll vote must be made by no later than noon on Monday, 24th November, 2008.
7. A separate application is required in respect of each elector wishing to vote by post or cast a pre-poll vote and each application must -
  - (a) be in writing and be signed by the elector personally;
  - (b) give the elector's full name and address as inscribed in the relevant parish electoral register, and, in the case of an application to vote by post, the address, if different from the address on that register, to which the ballot paper should be sent; and
  - (c) in the case where the application is made on the basis that the elector is likely to be out of the Island during the hours of polling (namely between 8.00 a.m. and 8.00 p.m. on the 26th November, 2008), state the dates and times or probable dates and times of the elector's absence from the Island; or
  - (d) in any other case, either state the nature of the commitments or disability that would prevent the elector from attending personally at the polling station on polling day.