

STATES OF JERSEY



ELECTORAL COMMISSION: COMPOSITION AND TERMS OF REFERENCE (P.5/2012) – SECOND AMENDMENT

**Lodged au Greffe on 21st February 2012
by Deputy J.H. Young of St. Brelade**

STATES GREFFE

ELECTORAL COMMISSION: COMPOSITION AND TERMS OF REFERENCE
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PAGE 2, PARAGRAPH (c) –

After paragraph (c) insert the following new paragraph –

“(d) to agree that an external group of experts should be established by the Privileges and Procedures Committee to be available to advise the Commission and validate its work as necessary”.

and renumber the existing paragraph (d) as paragraph (e).

DEPUTY J.H. YOUNG OF ST. BRELADE

REPORT

Introduction and purpose of amendment

So far, the debate on the membership of the Electoral Commission has been dominated by the inclusion of 3 States members in the PPC proposals, and the consequential loss of independence. The need for expert advice and validation of the Commission's process of arriving at its recommendations for constitutional change and electoral reform has been overlooked.

My amendment is intended to enable the States Assembly to ensure that the Electoral Commission has available to it a formal arrangement for obtaining expert advice from non-local advisers; an arrangement which will ensure that the Commission's business and interactions with advisers are as far as possible open and transparent; an arrangement which ensures external validation of the Commission process.

Previous decisions of the States

The principles of the make-up of the Commission were decided in the States debate on 15th March 2011 on the Proposition of the former Deputy of St. Mary (P.15/2011). The former Deputy correctly identified 4 success factors. The Commission requires access to expert advice, focus, public engagement and independence.

His original proposition proposed the Commission comprised 3 local members and 3 expert non-local members; however the States decided to request the Privileges and Procedures Committee to bring forward proposals for membership. That Committee agreed that the non-local expert advisers should be members of the Commission. If this plan had been implemented, the Commission would have achieved the required balance of external experts and local independent members.

Problems with the current PPC proposals

The current PPC proposition gives very little information on the arrangements for expert advice to the Commission and omits the need for validation of its process.

It reduces the number of non-States members to only 3 persons. This is a direct consequence of introducing 3 States members into the Commission. From the remaining allocation of 3 members, PPC's stated intention is to recruit both local independent persons of experience and any non-local experts with Jersey connections who apply. This will make it virtually impossible to achieve a balance between States members, local independents and expert members. By making this change, the current Privileges and Procedures Committee has effectively excluded sufficient non-local experts from full membership of the Commission.

It is stated in the PPC report that, despite their being effectively excluded from membership, external advice would still be available to the Commission when required. However, it is necessary to ensure that a proper balance is achieved between the views influenced by the independent local persons, the States members now proposed, and the external advice they receive.

Achieving the task in time for the next elections in October 2014 may be easier by not having off-Island members of the Commission. There may also be a cost factor, and the Committee may fear a repetition of the mistakes made in the Review of the Machinery of Government by allowing external advisers' input to dominate. However, these concerns may be overcome by another way of providing the Commission with external advice and validation.

Proposed solution

This suggestion was originally put forward by the former Deputy of St. Mary. It offers a possible solution and merits further consideration. He suggested to PPC that external advice could be provided to the Commission, avoiding the logistical problems of making the experts full members of the Commission by –

“... all-local Commission assisted by an Advisory Panel of experts from outside Jersey. In this way, there would hopefully be greater acceptance of the Commission membership within the Island with no concerns about a solution being imposed by ‘outsiders’, but the local members would nevertheless be able to draw on advice and guidance from the Panel of experts, ...the experts do not decide anything. They do not dictate anything. But they do ensure that the local members of the Electoral Commission are fully aware of the key issues and they provide an independent check and balance to the process”.

This suggestion was not taken up, as the former PPC decided in favour of the experts being full members of the Commission. However, now that the new PPC has effectively excluded expert advisers from its proposals, it is important to reconsider this option.

The Advisory Panel would give advice but not decide anything. The Commission would reach the conclusions which ultimately will be put to a public referendum. The experts will not have a say at recommendation stage. Their task will be to validate the process and give technical assistance.

There is a local precedent for separating an advisory role and that of a decision-making body. In the making of the Jersey Island Plan, the Minister's experts make recommendations, from which policy proposals are shaped by the Minister, and approved by the States.

The establishment of an Advisory Panel of experts would also enable the appointment of 3 local independents, bringing greater balance to the Commission.

Conclusions

I propose the arrangements for advice and expertise to be provided to the Commissions be formalised. An Advisory Panel should be established which should ensure there is an audit trail of written advice, e-mail exchanges and notes of discussions between the experts and the Electoral Commission.

It is essential for public acceptability that the Commission's business and interactions with its external expert advisers is as far as possible open and transparent. The expert Panel should also provide the required validation of the Commission's process before its recommendations are put to a public referendum.

The timetable published by PPC does not allow for consultation. If these important details are glossed over or ignored now, there is a danger these will surface too late in the process and the momentum for change will be lost, and public and external credibility damaged.

I have not proposed the terms of reference of the Advisory Panel nor the numbers of advisers nor its *modus operandi*. That would tie the hands of PPC unnecessarily. But it is important that the principle of establishing an Advisory Group is approved.

Financial and manpower implications

The amendment I propose will not add to the manpower requirements of servicing the Electoral Commission.

I estimate the establishment of an Advisory Panel of Experts will add a maximum additional cost of approx £60–£75,000 to the Commission. This is based on 3 advisers being appointed, requiring a total of 40–50 man days at consultancy rates plus occasional travel and expenses. This is within the £200,000 budget set for the Commission, against which the current PPC has reported anticipating a significant saving.