

STATES OF JERSEY



CONNÉTABLES AND OTHER PARISH OFFICIALS: EXPLANATORY DOCUMENT AND NEW LEGISLATION

Lodged au Greffe on 6th November 2012
by Deputy M.R. Higgins of St. Helier

STATES GREFFE

PROPOSITION

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

- (a) to request the Chief Minister, in conjunction with the Comité des Connétables, to produce, within 6 months of the adoption of this proposition, a document setting out for the benefit of all Islanders the legal powers and roles of the Connétables, Centeniers, Vingteniers, Constable's Officers, Procureurs du Bien Public, Chefs de Police, Parish Roads Committees and all other officers and bodies associated with the administration, governance and policing of parishes;
- (b) to further request the Chief Minister, in conjunction with the Comité des Connétables, to take the necessary steps to bring forward for approval by the Assembly new legislation in English to consolidate by re-enactment all existing legislation, and to codify customary provisions where necessary, in relation to the roles and responsibilities of the parish officials and bodies referred to in paragraph (a).

DEPUTY M.R. HIGGINS OF ST. HELIER

REPORT

When the Assembly debated the Draft Connétables (Miscellaneous Provisions) (Jersey) Law 201- on 16th May 2012, three facts became apparent.

Firstly, that many of the Laws that govern civil and criminal conduct and actions in Jersey are still written in French. Secondly, that because no English translations of the Laws in French that were being amended were made available to States members, those members who do not speak or understand written French were voting on, and passing, amendments to legislation that they could not possibly have understood. Thirdly, because of the lack of marked-up copies of the amended Laws (in English), members could not appreciate the context or unintended consequences of the amendments they were making. In my opinion this results in bad law.

It was also the reason I abstained from voting on this particular piece of legislation when it was debated, and why I made the comments I did to the Assembly before the vote was taken. I cannot believe that I am the only member of the Assembly who does not speak French or is fully conversant with written French, and therefore did not fully understand the effects of the actions they were taking.

I have also discovered since this debate that some of the translations of French Laws that are in existence are not accurate translations of the original Laws.

I believe, for the reasons stated above, that this is an unsatisfactory state of affairs and can give Islanders no confidence in the States' ability to scrutinize all the legislation that comes before it and in the law that it enacts.

It also raises another important issue – the principle of legal certainty – the law at any time should be reasonably clear and accessible. This is an established legal concept in both civil and common law legal systems. In the former it is defined in terms of maximum predictability of officials' behaviour; and in the latter in terms of a citizen's ability to organise their affairs or behaviour in such a way that they do not break the law. In both legal traditions, it is regarded as the basis for the legality of legislative and administrative measures taken by public authorities. How can officials and citizens of a state apply or follow legislation that they cannot understand? It is, in my view, no excuse to say that individuals can seek advice as to what the law means, when the law is written in a language not in common use, and especially in an Island such as Jersey with a legal system that is beyond the financial means of most citizens due to its lawyers being some of the most expensive in the British Isles.

I also believe that the failure to translate the law into English, and therefore make it certain and available to the majority of the population, could be grounds for an appeal on Human Rights grounds to a wide range of matters relating to the administration of Parishes.

The Council of Ministers should also consider translating all existing laws written in French and publishing them on the Jersey Legal Information Board website.

Financial and manpower statement

At this point in time, the full financial and manpower implications of this proposition are not easily ascertainable, as no-one can appreciate the size of the task and therefore its financial and manpower costs, without first embarking upon the task itself. I nevertheless expect that this work will be prioritised and undertaken within existing officer and law drafting resources.

Paragraph (a) of the proposition will require the Chief Minister's Department (no doubt with the assistance of the Law Officers' Department) and the Secretary to the Comité des Connétables to trawl through the existing statutory legislation and common law pertaining to this area and produce a document in English setting out the legal position. Only when this document has been completed can the financial and manpower costs of consolidating the law in paragraph (b) be determined, as paragraph (a) would in fact constitute the basis of the law drafting instructions for paragraph (b).

The vagueness of the financial and manpower implications should not however detract from the need for the legal powers of Parish bodies, administrators and officers to be readily ascertainable and certain to those applying and having to conform to the requirements of the law.