

# STATES OF JERSEY



## **PUBLIC ELECTIONS: AMENDMENTS TO LEGISLATION AND ADMINISTRATION**

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**Lodged au Greffe on 18th September 2013  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

## PROPOSITION

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

- (A) that amendments be made to the Public Elections (Jersey) Law 2002 and to the practical procedures relating to the organisation of elections to provide that –
- (a) persons due to attain their 16th birthday on or before the day of an election and residents who will have met the residence requirement on or before the day of an election may register in advance during the 3 month period prior to the closure of the supplementary register, namely 7 days before the day of an election;
  - (b) the Parish secretary shall prepare, maintain and amend the electoral register, make the necessary arrangements for the holding of nomination meetings and assist the Autorisé to organise public elections;
  - (c) online electoral registration be introduced as soon as practicable;
  - (d) in addition to the main electoral register which closes the day before nomination day, a supplementary register be introduced; and
    - (i) persons should be able to request that their name be added to a supplementary electoral register up until 7 days before the election;
    - (ii) for the purposes of any election the electoral register for the district is the one in force 7 days before an election;
  - (e) in the year of a public election, a card be sent to all households as soon as may be after the statement is sent to each household –
    - (i) notifying the householder of the persons registered to vote at that address, with information on how to check the Register, the cards to be sent out sufficiently in advance of the deadline for registration to allow for corrections to be made;
    - (ii) notifying the householder where no-one was registered to vote at that address with information on how to register;
  - (f) the period between nomination day and election day to revert to a period of no more than 4½ weeks;

- (g) the registered long-term sick or disabled persons and prisoners on remand should be entitled to vote by post;
- (h) the removal of the need for a witness to the declaration of identity form which accompanies an application for a postal vote;
- (i) pre-poll voting be offered on a Saturday before election day in a town location and 2 separate out-of-town locations on at least 2 Saturdays;
- (j) procedures for recounts should be amended, to include –
  - (i) that a provision is included to make clear the Autorisé's ability to count the votes again in order to double-check the result before making an announcement;
  - (ii) that (as recommended by the Royal Court in the case of P.V.F. Le Claire v. H.M. A.G. Judgment (2011)) the spoilt votes are shown to the candidate in the event of a close result;
  - (iii) that the Autorisé should inform the candidates or their appointed representatives who are present on the provisional result of the count prior to it being formally announced;
  - (iv) that where the result reveals a close vote between 2 candidates, the candidate or his/her duly appointed representative may demand a recount within 24 hours of the announcement of the result, providing that they or their representative was present for the count (The recount may not necessarily be able to be executed the same day.);
  - (v) the ability for candidates to demand a recount if the difference between 2 votes is 1% or less of the total number of votes cast;
  - (vi) the provisions relating to a recount on the basis of a disputed election should make clear the circumstances in which a recount may be requested of the Royal Court at this stage;
- (B) to request the Comité des Connétables to implement the administrative improvements as set out on pages 10–13 of the report of the Public Elections Sub-Committee set out at the Appendix of this report;

- (C) to agree the administrative improvements as set out on pages 10–13 of the report of the Public Elections Sub-Committee set out at the Appendix to this report to include –
- (a) sample canvassing to establish reasons for non-registration;
  - (b) increase opportunities to include names on the electoral register;
  - (c) an online facility to request a pre-poll ‘sick vote’ or a postal vote;
  - (d) revision of the statement/registration form issued by the Parishes;
  - (e) increased public awareness and information campaigns;
  - (f) I.T. for electoral purposes to be reviewed and improvement of ‘street order list’;
  - (g) ballot papers to be larger, and photos of candidates in polling booths;
  - (h) the guidelines for the Autorisés be reviewed regarding candidates’ supporters and procedures in the event of a name being left off the electoral register owing to administrative error;
  - (i) the arrangements for casting a ‘sick vote’ on election day to be well publicised;
  - (j) more eye-catching advertisements publicising pre-poll voting;
  - (k) web-streaming of hustings meetings;
  - (l) a review of procedures for counting, to include where a count needs to resume on a second day, and of procedures for pre-poll voting in a second and subsequent location;
  - (m) a review of procedures for recounts, to include showing spoilt votes to candidates in the event of a close result and the ability to demand a recount within 24 hours of the announcement of a result at the close of the count;
  - (n) the revision of the Return made by the district at the end of an election;
- (D) to request the Privileges and Procedures Committee to –
- (a) conduct a feasibility study on the use of the Names and Addresses Register for electoral registration, with a view to enabling legislation to be prepared to allow the provision of a

service under the Register of Name and Addresses (Jersey) Law 2012 or the Control of Housing and Work (Jersey) Law 2012 (as appropriate);

- (b) investigate electronic voting, and prepare a report within 12 months on real-time technology and electronic touch-screen technology to enable electronic voting at a polling station;
  - (c) investigate and bring forward for approval an amendment to require Jersey Post to deliver one addressed envelope to each elector jointly from candidates in the district; and
- (E) to seek to implement the administrative improvements as set out on pages 10–13 of the report of the Public Elections Sub-Committee set out at the Appendix of this report;
- (F) to request the Privileges and Procedures Committee to bring forward the amendments to the States of Jersey Law 2005 to achieve the following –
- (a) to remove the citizenship requirement for candidates to be elected members of the States;
  - (b) that the States Assembly should not meet after nominations are announced, save for the deliberation of emergency matters, and ensure that no new policies are formulated, promoted or approved during the election period;
  - (c) save for the deliberation of emergency matters, the States should not make decisions during the election period;
  - (d) the newly elected States members to sit in the States Assembly as soon as may be after they have been elected and the swearing in of members to take place at an appropriate time to accommodate this.

## PRIVILEGES AND PROCEDURES COMMITTEE

## **REPORT**

The Privileges and Procedures Committee established a Public Elections Sub-Committee early in 2012 to review the Public Elections (Jersey) Law 2002 and the practices and procedures in place for public elections.

The Sub-Committee had particular regard to the following principles –

1. The public should find it as easy as possible to register to vote and to cast their vote, with all unnecessary impediment being removed.
2. The Public should be informed about the election process and about any candidates for election, so that they fully understand the process and they have all the information they need and in good time to make their selection when they vote.
3. All electoral information should be accurate, up-to-date and complete, and electronic options should be pursued where these lead to improved efficiency and mirror voter expectation. Candidates should have access to accurate and helpful information for campaign purposes.
4. Once elected, States members should be sworn in and commence work as soon as possible.

The Public Elections Sub-Committee has prepared a comprehensive report, which broadly follows the sequencing of the Articles in the Law, and there is a summary of recommendations on pages 8 to 13 of the report. These recommendations have been grouped in the summary into those recommendations which require amendment to legislation, those that require administrative change to be made, and those that are incomplete and require the Privileges and Procedures Committee to undertake further study.

The Privileges and Procedures Committee has reviewed, and endorses the recommendations of the report and commends them to the States.

### **Finance and manpower implications**

The financial and manpower implications are set out on pages 72 to 75 of the Sub-Committee's report.

Date: 5th September 2013

# APPENDIX

## PUBLIC ELECTIONS (JERSEY) LAW 2002 – REVIEW

### REPORT OF THE PUBLIC ELECTIONS SUB-COMMITTEE

#### Introduction

The Privileges and Procedures Committee appointed a Sub-Committee to examine and make recommendations for amendments to the Public Elections Law. This Sub-Committee was comprised as follows –

Deputy J.A. Martin of St. Helier, Chairman  
Deputy R.G. Le Hérisier of St. Saviour  
Deputy G.P. Southern of St. Helier  
Deputy E.J. Noel of St. Lawrence  
Deputy J.M. Maçon of St. Saviour.

The Sub-Committee reviewed each Article of the Law, and consulted the following groups –

Jurats and Judicial Greffier  
Comité des Connétables  
Parish Secretaries  
States members  
Privileges and Procedures Committee  
States Assembly and Constitution Committee, States of Guernsey  
Mr. Adrian Lee, formerly of Plymouth University, expert in elections systems  
The general public in a questionnaire published in the JEP and on the Internet,  
and at a public meeting.

This report goes through proposed changes to the Articles of the Law and is set out in Article order after a few general sections.

## **SUMMARY OF RECOMMENDATIONS REGARDING THE PUBLIC ELECTIONS (JERSEY) LAW 2002**

These recommendations have been organised to show those that require amendments to the Law, those that require administrative action, and those that require further consideration and investigation by the Privileges and Procedures Committee.

### **LAW –**

#### **RECOMMENDATION 2**

The Sub-Committee recommended that advanced registration be introduced during the 3 months prior to an election for those who will attain 16 years of age on or before election day, and for recently arrived residents who will have met the residence requirement on or before election day.

Article 5 relating to ‘Entitlement to be registered’ will require an amendment to show that where a person is registering in advance in anticipation of qualification, the relevant day on which the 16th birthday should occur or the relevant residence has been accumulated should be the election day, and not the day on which they register.

#### **RECOMMENDATION 3**

The Sub-Committee recommended that Articles 6 – 9, 11 – 12 of the Law be amended to state that the parish secretary shall prepare, maintain and amend the register, hold nomination meetings and organise any public election.

#### **RECOMMENDATION 6(a)**

The Sub-Committee recommended –

online electoral registration be introduced as soon as practicable (amendment to Part 3 of the Law required).

#### **RECOMMENDATION 7**

The Sub-Committee recommended that new electors should be able to request that their name be added to a supplementary electoral register up until one week before the election. (Consequential amendment required to the Referendum (Jersey) Law 2002.)

#### **RECOMMENDATION 8**

The Sub-Committee recommended follow-up by way of a registration notification card sent out to electors in the year of a public election for members of the States as part of the process of maintaining the register in order to ensure completeness. It was agreed that a card be sent to all households as soon as may be after the statement is sent to each household –

- (a) notifying the householder of the persons registered to vote at that address, with information on how to check the Register, the cards to

be sent out sufficiently in advance of the deadline for registration to allow for corrections to be made;

- (b) notifying the householder where no-one was registered to vote at that address with information on how to register;

### **RECOMMENDATION 13**

The Sub-Committee decided to recommend that the period between nomination day and election day revert to a period of no more than 4½ weeks. Once the elections move to the Spring, it will be necessary to ensure sufficient time, given possible intervening Bank Holidays (e.g. a late Easter), so the description of time (weeks/days) needs to be clear.

### **RECOMMENDATION 20**

The Sub-Committee recommends amendments to Article 39 to enable the following to also be able to vote by post –

Prisoners on remand;  
Elderly, and long-term sick or disabled persons.

### **RECOMMENDATION 21**

In order to enhance the voter experience, the Sub-Committee recommended that pre-poll voting be offered on a Saturday before election day in a town location and 2 separate out-of-town locations on at least 2 Saturdays. It is desirable for the Judicial Greffier to be able to nominate locations other than the Judicial Greffe for the purpose of pre-polling.

### **RECOMMENDATION 26**

The Sub-Committee recommended that Article 44(2) be amended so as to remove the need for the declaration of identity form (required to accompany a postal vote) to be witnessed.

### **RECOMMENDATION 29**

The Sub-Committee recommended the following amendments to the procedures for recounts (administrative), with amendments to the Law if required –

- (a) that a provision is included to make crystal clear the Autorisé's ability to count the votes again in order to double-check the result before making an announcement;
- (b) that (as recommended by the Royal Court) the spoilt votes are shown to the candidate in the event of a close result;
- (c) that the Autorisé should inform the candidates or their appointed representatives who are present on the provisional result of the count prior to it being formally announced;

- (d) that where the result reveals a close vote between 2 candidates, the candidate or his/her duly appointed representative may demand a recount within 24 hours of the announcement of the result, providing that they or their representative was present for the count. (The recount may not necessarily be able to be executed the same day.)

### **RECOMMENDATION 30**

The Sub-Committee recommended that it would be appropriate to have the ability to demand a recount if the difference between 2 votes is 1% or less of the total number of votes cast.

### **RECOMMENDATION 32**

The Sub-Committee recommended that the provisions relating to a recount on the basis of a disputed election should make clear the circumstances in which a recount may be requested of the Royal Court at this stage.

## **ADMINISTRATIVE ACTION –**

### **RECOMMENDATION 1**

The Sub-Committee recommended that PPC commission some sample canvassing to establish the levels of registration in sample areas, to include in particular the more urban areas where property is more likely to be rented to establish the extent to which those eligible to vote are not registered and/or do not vote and to undertake thereafter a drive to improve once again registration levels. (Administrative)

### **RECOMMENDATION 5**

The Sub-Committee decided to recommend that Parishes offer the public the opportunity to check electoral registration at the time of any applications for licences, etc. (Administrative).

The Sub-Committee further recommended that opportunities that present themselves when residents moved house, such as house sale/purchase, new leases, enquiries regarding housing status or individuals should trigger the distribution of information relating to electoral registration. This might involve lawyers including electoral registration forms in the packs provided at the time of property sale/purchase, and the appropriate States' department providing information when applications relating to the occupation of property are received.

### **RECOMMENDATION 6(b)**

The Sub-Committee recommended –

an online facility to request a pre-poll 'sick vote' or a postal vote.  
(Administrative)

## **RECOMMENDATION 9**

The Sub-Committee recommended that the statement/registration form be re-worded and re-designed (possibly a folded A3 sheet) in such a way that the information was not concentrated into too small a space, and there was room to draw attention to key information and deadlines. (Administrative)

## **RECOMMENDATION 10**

The Sub-Committee recommends that public awareness and information campaigns take place in the year of an election to coincide with the timing of the registration forms/statements while these continue to be sent out. Registration forms to be made available and collected in secondary schools and forwarded to Parish Halls.

Prior to an election, information and assistance should be offered to first-time voters, and voters should be encouraged to turn out and vote. (Administrative)

## **RECOMMENDATION 11**

The Sub-Committee recommended that –

- (a) I.T. use for electoral purposes be evaluated in conjunction with the Connétables and the PPC;
- (b) steps be taken to improve the ‘street order list’ (‘walk list’) supplied to candidates;
- (c) the way in which the candidates’ ‘street order list’ could be prepared should be reviewed if the Names and Addresses Register were used to compile the electoral roll.

## **RECOMMENDATION 14**

The Sub-Committee recommended that those presiding at nomination meetings should take note that it is their duty under Article 9(2) of the States of Jersey Law 2005 to read out candidates’ declarations of eligibility to stand and criminal convictions, either spent or unspent. (Administrative)

## **RECOMMENDATION 15**

The Sub-Committee recommended that –

- (a) ballot slips be larger in size; and
- (b) photographs of candidates be placed in voting booths to assist the voter. (Administrative – amendment to Article 26 may be required)

## **RECOMMENDATION 17**

The Sub-Committee recommended that the Judicial Greffier review the guidelines for the Autorisés relating to persons who are present in support of candidates, rather than to vote. (Administrative)

#### **RECOMMENDATION 19**

The Sub-Committee recommended that the provision for sick voters to be visited on election day to cast their vote should be well publicised. (Administrative)

#### **RECOMMENDATION 22**

The Sub-Committee recommended that advance notice of the provisions made for voting (in person or by pre-poll or postal vote) be made more eye-catching, and that advertisements should be placed in the popular media. (Administrative)

#### **RECOMMENDATION 23**

The Sub-Committee recommended that the Judicial Greffe request assistance from the Parishes in connection with pre-poll home visits. No Law change is therefore required. (Administrative)

#### **RECOMMENDATION 25**

The Sub-Committee suggested that the Privileges and Procedures Committee investigate web-streaming of hustings meetings or other head-to-head meetings in conjunction with the Comité des Connétables.

#### **RECOMMENDATION 27**

The Sub-Committee agreed that guidelines issued to the Autorisés should be reviewed so that the requirements for registration on the day of the election in the case of administrative error could be simplified to be more practicable, and above all, consistent across districts. (Administrative)

#### **RECOMMENDATION 28**

The Sub-Committee recommended that the Autorisés, in conjunction with the Comité des Connétables, review the policy and procedures for counting, and the procedure which would be required to ensure secure storage if there is a need to stop counting and resume on another day or for pre-poll voting in other locations. (Administrative)

#### **RECOMMENDATION 29**

The Sub-Committee recommended the following amendments to the procedures for recounts (administrative), with amendments to the Law if required –

- (a) that a provision is included to make crystal-clear the Autorisé's ability to count the votes again in order to double-check the result before making an announcement;

- (b) that (as recommended by the Royal Court) the spoilt votes are shown to the candidate in the event of a close result;
- (c) that the Autorisé should inform the candidates or their appointed representatives who are present on the provisional result of the count prior to it being formally announced;
- (d) that where the result reveals a close vote between two candidates, the candidate or his/her duly appointed representative may demand a recount within 24 hours of the announcement of the result, providing that they or their representative was present for the count. (The recount may not necessarily be able to be executed the same day.)

### **RECOMMENDATION 31**

The Sub-Committee recommended that the Return be revised so as to make it simpler and more comprehensible. (Royal Court/Administrative)

## **FURTHER REVIEW BY PRIVILEGES AND PROCEDURES COMMITTEE –**

### **RECOMMENDATION 4**

The Sub-Committee recommended that the Privileges and Procedures Committee invite a suitably qualified professional to conduct a feasibility study on the use of the Names and Addresses Register for electoral registration, with a view to enabling legislation to be prepared to allow the provision of a service under the Register of Names and Addresses (Jersey) Law 2012 or the Control of Housing and Work (Jersey) Law 2012 (as appropriate) and administrative change to be made in time for the 2018 elections.

### **RECOMMENDATION 12**

The Sub-Committee considers that it is necessary to await the outcome of the States' deliberation on possible changes to the electoral system, before consideration is given to any change in the arrangements for refunding electoral costs to the Parishes. The matter should therefore be kept under review by the Privileges and Procedures Committee if necessary.

### **RECOMMENDATION 16**

The Sub-Committee recognised that in time, electronic voting would come, and recommended that the Privileges and Procedures Committee be requested to prepare a report within 12 months on real-time technology and electronic touch-screen technology to enable electronic voting at a polling station. Any amendments to IT should be flexible enough to allow for this to be added in due course without significant additional cost. No change is recommended to be made to the Law at this time.

### **RECOMMENDATION 18**

Growing familiarity with the system of electing 3 categories of member on one day (should this continue) and continued education of the public about the procedure, possibly with a simple leaflet to be handed out on entering the polling station, would assist to dispel confusion. The Sub-Committee recommended that this matter be kept under review by the Privileges and Procedures Committee.

### **RECOMMENDATION 24**

The Sub-Committee recommends that the Privileges and Procedures Committee review the production of a manifesto document, and considers introducing an amendment to require the Jersey Post Office to deliver one addressed envelope to each elector from candidates in the district.

In the event the manifesto document continues to be produced, this must be distributed earlier and contain information for those with mobility or other difficulties.

**SUMMARY OF RECOMMENDATIONS REGARDING THE STATES OF JERSEY LAW 2005**

**LAW –**

**RECOMMENDATION 33**

The Sub-Committee decided to recommend that the States of Jersey Law be amended to provide that there should be no citizenship requirement to stand as a candidate for Senator or Deputy for the States and that the residence requirement should mirror that in Article 5(1)(c) of the Public Elections (Jersey) Law 2002. In the event that this is adopted, the Oath of office would also require review.

**RECOMMENDATION 34**

The Sub-Committee recommended that the States of Jersey Law 2005 should be amended to provide that –

- (a) the States do not meet after nominations are announced, save that the Presiding Officer may call a meeting of the States for either emergency or ceremonial reasons;
- (b) no new policies should be formulated or promoted during the election period;
- (c) once an election has been called, no matters can be approved by the ‘old’ States members, save that a matter relating to an emergency may be determined;
- (d) new States members should sit in the States Assembly as soon as they have been elected, and the swearing-in procedure should take place more swiftly to accommodate this, subject to allowing sufficient time for recounts, and time for preparation for the election of a Chief Minister (as recommended by the Machinery of Government Review Sub-Committee).

## **BACKGROUND**

### **Public Elections – recent history of legislation**

The Public Elections (Jersey) Law was adopted in 2002. Before 2002 the legislation was as set out in the Franchise (Jersey) Law 1950. There were a number of issues that required improvement, such as –

- There was an annual registration process with electors having to satisfy the eligibility requirements on one given day. Anyone who attained 18 years of age (then the age at which a person could vote) after that particular day could then not register until the following year.
- The person responsible for providing details of all electors at a residence was the ‘head of the household’. He (or she) was responsible for gathering details of electors and completing the relevant form. There was concern that, in households with multiple occupancy, not all those eligible would be added to the register – lodgers were cited as a particular group which were likely to be overlooked.
- The law also disenfranchised those people suffering from mental illness or catered for by attorneyship or curatorship.

These and other issues identified by the Franchise Working Party were addressed by the adoption of the Public Elections (Jersey) Law 2002. The principal changes, which were designed to encourage maximum participation in elections, were –

- A rolling register, compiled from scratch every 3 years following each general election, so that a person could add their name when they became eligible at any time during the year.
- The franchise was not removed from people suffering from mental illness or catered for by attorneyship or curatorship.
- The electoral return would be sent to every household in every unit of dwelling accommodation in the parish.
- The polling hours would be 8 a.m. until 8 p.m. on a Wednesday.
- Postal voting and pre-poll voting was introduced.

The legislation was extended to cover the election of the Procureurs du Bien Public, given the importance of that role in overseeing the affairs of the Parish and the use of its funds. It was amended in 2008 to lower the voting age to 16 years and, subsequently, to allow candidates to be endorsed by a political party and for this to be reflected on the ballot paper.

**The Public Elections (Jersey) Law 2002 was amended by the States on 17th March 2011** following work undertaken by the Public Elections Working Party in 2009/2010 and subsequently approved by the Privileges and Procedures Committee. The changes made in 2011 included amendments to –

- clarify administrative arrangements where there are multiple elections on the same day, with different nomination meeting dates, and that a candidate may not stand in more than one election;
- enable a candidate to use a commonly used name on the ballot paper;
- practical arrangements with regard to administration at polling stations resulting from multiple elections on the same day, including in relation to ballot papers and ballot boxes;
- changes to the postal voting and pre-poll voting systems (postal voting would only be available to those out of the Island on polling day but pre-poll voting was widened).

It is generally considered that the improvements to pre-poll voting were a success in the 2011 elections, although perhaps postal voting had become a little restrictive.

The Referendum (Jersey) Law 2002 also depends upon the procedures set down in the Public Elections (Jersey) Law 2002. Article 2 of the Referendum Law states – “A person shall be entitled to vote in the referendum if, at midday on the day that is 21 days before the date of the referendum, the person’s name is on an electoral register kept for the purposes of public elections to the States.”

In 2011, work was undertaken by the States Greffe to increase the numbers of people registered to vote and to increase the numbers of people voting. The individual objectives of the voter registration and turnout campaign 2011 were –

- (a) To inform Islanders –
  - about the 2011 election;
  - that to vote they needed to be registered;
  - whether they were entitled to vote;
  - how, where, when and why they should register to vote.
- (b) To target hard-to-reach groups –
  - newly eligible 16 to 18 year-olds;
  - members of the Portuguese and Polish communities;
  - those who had been in the Island for a relatively short period – namely 2 years or more, such as “(j)” Category employees who were eligible to vote but not engaged with the process;
  - those who had been in the Island for only 6 months but could provide evidence of living here for a total period of 5 years;
  - those people, generally speaking under 45 years old, who had never considered voting before as they did not believe it would make any difference.
- (c) To provide information to everyone, including experienced voters, on the following provisions of the Law, which would change the voter experience: changes to –
  - pre-poll voting for everyone, including the long-term sick;
  - postal voting;

- arrangements to allow someone to vote where their name had been accidentally omitted from the Electoral Register; and

that there would be a single election day with 3 elections, and 3 ballot papers to be placed in separate ballot boxes.

(d) To provide independent information to candidates –

- to inform candidates about life as a States member;
- to provide them with all the necessary forms;
- to provide information on requirements immediately after nomination and election.

(e) To publish information on the candidates for election by providing –

- manifestos and photographs on a website ([www.vote.je](http://www.vote.je));
- a printed booklet to be forwarded to all households in Jersey. This booklet would also include the information already uploaded to the website describing the voter experience and giving information on districts, maps showing the polling station for each district and the various ways to cast a vote in the elections.

(f) To sustain interest in electoral registration, in particular during the weeks before the closing date for names to be added to the electoral register. There was continued advertising material on pre-poll voting, etc., and encouraging people to turn out and vote on election day.

As a measure of success in the 2011 elections, nearly 7,000 additional people registered to vote in 2011 over the 2008 figure and almost 4,000 additional people voted in 2011. It would appear that having all 3 elections for Senator, Connétable and Deputy on one day made a particular difference to the voter turnout in the Deputies elections. An extra 9,500 voters turned out and voted in the Deputies elections than did in 2008, giving an average increase of 10% in this particular section of the elections, with 2 Parishes (St. Brelade No. 1 and St. Martin) showing tremendous improvement of over 19% each.

### **Terms of reference**

The Sub-Committee reviewed and agreed the following terms of reference for its review –

- a single electoral register;
- online voter registration;
- review of ‘Rolling Register’ concept;
- voter eligibility (i.e. how long in the Island before being able to be registered as a voter);
- 15 year-olds being able to register if their 16th birthday occurred before election day;
- the period between the nomination meetings and the election day;
- the ability for registration to be extended beyond the nomination day;
- polling cards;
- the timing of the issue of the manifesto document;

- measures for taking pre-poll votes from the spouse or carer of those who are ill, disabled or illiterate;
- the length of time pre-poll voting is available;
- ballot papers registration (the software all of which has and will impact on St. Helier, with approximately 20,000 or more residents);
- opportunities for postal voting;
- electronic voting;
- significant decisions taken by the States Assembly in the lead-up to elections (possibly should be in respect of ‘Urgent’ items only);
- the States Assembly continuing to sit after the elections and prior to the swearing-in of new members;
- need to examine systems in place in other comparable jurisdictions (especially Guernsey ‘Single Register’ system);
- need to consider United Nations Convention on the Rights of the Disabled;
- compulsory voting;
- minimisation of ‘spoilt papers’ (whether all 3 ballot papers should be given out as a matter of course);
- flexibility afforded to Jurats to adjudge proof that voter has returned registration form;
- mechanics of late registration (i.e. ability to update all licences and electoral roll in one transaction).

And in respect of candidates –

- Registers’ software issues (including ‘stability’: should produce lists in walking sequence, as was the case in 1999 but not since);
- Difficulties associated with maps in use by Parishes (re unclear boundaries);
- access to Register online after nomination (not possible in 2011 although it had been in 2008);
- importance for existing timescales envisaged under Public Elections Law to be clear to all interested parties.

### **Completeness and accuracy of the electoral register**

The Sub-Committee commenced its work by reviewing the completeness and accuracy of the electoral register in Jersey. It reviewed the U.K. Electoral Commission report produced in March 2010 entitled “*A completeness and accuracy of Electoral Registers in Great Britain*”. A number of points which came out of the research are relevant in the Jersey context.

“6.5 Incompleteness and inaccuracies on the Registers are strongly associated with population movement. For this reason, there is a clear decline in the Registers between the annual canvass periods. In the most densely populated urban areas, the completeness and accuracy of the Registers may decline by as much 10 – 15 percentage points over the life time of the Registers. It is not surprising, therefore, that under-registration is closely associated with those social groups which are most likely to move home; this includes young people and those living in private rental housing.”

The completeness and accuracy rates of local authority areas are tested in the U.K. by house-to-house surveys. The highest rate of completeness was found in areas where population movement is limited, and considerably lower in areas with a younger than average population profile and high rates of residential mobility.

The U.K. Electoral Commission found (at paragraph 6.12) that –

- The annual canvass, and personal canvassing in particular, had been shown to be broadly effective.
- In contrast, rolling registration, which was introduced to allow for the Register to be updated between canvassing periods was not proving sufficient for keeping track of population movement. While the use of carry-forward may have prevented eligible electors from falling off the Register, it had also meant that many people who moved before the annual canvass remained registered at their old address.
- The Electoral Commission in the U.K. plans to examine how local authorities can assess the quality of their registers. This may include developing tools that they can use to report on the levels of completeness and accuracy. **The Sub-Committee recommends that the progress of the U.K. research is followed closely to establish whether such tools would be appropriate for Jersey.**
- As a result of the report, the U.K. Electoral Commission will be taking immediate action to ensure that eligible, but currently unregistered, electors were aware of the action which they can take (such as voluntary individual registration) to ensure they are able to vote in forthcoming elections.
- In **Jersey**, the Sub-Committee noted that the Statistics Unit estimated from the 2011 Census data that there were 77,560 people eligible to vote in Jersey. In October 2011, 61,987 people had registered to vote, **a registration rate of 80%**. (The number registered to vote in the Referendum in 2013 rose to 63,966.)
- In the comparable jurisdiction of **Guernsey** it was estimated in 2011 that there were 52,270 people aged 16 or over according to the latest available figures, of whom 29,745 people registered for inclusion on the Electoral Roll. Out of these, 29,500 were eligible to vote in the 2012 Election. Using the figure of 29,745, this equates to a registration rate of **56%**. (Guernsey does not have a rolling register, but compiles the electoral roll afresh prior to each election.)
- In April 2011 the Parliamentary Registers in the **U.K. were 82.3%** completed, the comparable figure for the local government registers was **82%** (the Parliamentary Register is used for U.K. Parliamentary elections, rather than for elections to the Northern Ireland Assembly, Scottish Parliament or National Assembly for Wales). The U.K. Electoral Commission's report produced in December 2011 entitled "Great Britain's Electoral Registers" showed that –

Registration rate	Year 2011
U.K.	82%
Jersey	80%
Guernsey	56%

- As regards national levels of accuracy, the April 2011 Parliamentary Registers were 85.5% accurate; the comparable figure for the local government registers was 85.4%. Completeness levels were noticeably higher among those who had not moved since the last annual canvass, whereas only 14% of those who had moved into their homes since the last canvass were on the registers.
- The report also highlighted the variation in levels of completeness for different age-groups. The lowest percentage of completeness was recorded for the 17–18 and 19–24 age-groups (55% and 56% complete respectively). In contrast, 94% of the 65+ age-group were registered.
- Levels of completeness also differed by ethnicity, with 86% registered among white communities and 77% among black minority ethnic communities.
- However, there was very little difference in completeness between socio-economic groups.
- There is a clear relationship between levels of accuracy and completeness and housing tenure. For example, completeness ranged from 89% among those who owned their own property outright and 87% among those with a mortgage, to 56% among those who rent from a private landlord. In relation to accuracy, the rate of ineligible entries at privately rented properties was 4 times that found at owner-occupied addresses.

The Sub-Committee received the dissertation prepared by Danielle Shenk in 2011 as part of her Social Sciences degree course on ‘Electoral Registration and Turnout in Jersey – Voter Participation in a Small Jurisdiction’ which was based on interviews with 14 States members. Whilst in general it reflected the views received through the public consultation exercise, it also painted a somewhat gloomy picture. It also presented a challenging picture of how to turn registered voters into actual voters. The Sub-Committee recognises that some people don’t vote because they find politics boring and irrelevant. While this study focuses on improving the mechanics of voting, the Sub-Committee will need to await the outcome of the reviews being carried out by the Electoral Commission and the Machinery of Government Sub-Committee to see whether these revitalise the interest of the public in voting, or whether the Privileges and Procedures Committee will need to consider further action. A considerable amount of work was carried out prior to the 2011 elections in Jersey, and an additional 7,000 people registered to vote between the years 2008 and 2011. Of these, almost 4,000 extra people voted in 2011. The Sub-Committee has recommended elsewhere in this report annual awareness-raising of the benefits of voting at the time when the annual returns are sent out by the Parishes.

Mr. Adrian Lee had stated that what was observable was the relative completeness and accuracy of the Electoral Register in Jersey. The Jurats had confirmed that in their opinion the registers were accurate in 2011. The Sub-Committee agreed that, while

Jersey's registration rate of 80% of people eligible to vote in 2011 showed a good improvement over 2008, there would be value in continuing with education about the electoral process, with sending an acknowledgement to every household showing who was registered to vote and, where no one was registered to vote, that being shown on the notification to prompt action. In this way, it is hoped to improve on the current 80% registration rate in Jersey.

In the light of the U.K. Electoral Commission findings on electoral registration, **it is suggested that some sample canvassing be undertaken to establish the levels of registration in sample areas**, to include in particular the more urban areas where property is more likely to be rented to establish the extent to which those eligible to vote are not registered and/or do not vote and to undertake thereafter a drive to improve once again registration levels.

### **RECOMMENDATION 1**

The Sub-Committee recommended that PPC commission some sample canvassing to establish the levels of registration in sample areas, to include in particular the more urban areas where property is more likely to be rented to establish the extent to which those eligible to vote are not registered and/or do not vote and to undertake thereafter a drive to improve once again registration levels. (Administrative)

### **Facilitating participation for the disabled**

The Sub-Committee was mindful throughout the review of how to facilitate voting for those with mobility problems or other disability. For this reason it reviewed the rules for postal voting, the venues and timing of pre-poll voting and the need for clearer information both in leaflets sent to households and within the voting booth itself. The Sub-Committee also asked for comments in the public questionnaire on what would have made it easier to vote, and the vast majority of responses related to parking at the polling stations for those with limited mobility. In one instance, assistance would have been helpful due to visual impairment.

### **2012 Review of the Public Elections Law**

The Sub-Committee considered that there is still room for improvement to enable as many residents as possible to vote and exert an influence on the future composition of the States. The Sub-Committee has considered carefully the provisions of the Public Elections Law, and where appropriate possible amendments to the States of Jersey Law. It will, as far as possible, recommend improvements to administrative arrangements (such as amendments to the Guidelines for Autorisés and Parish officials) which will allow a greater degree of flexibility as requirements evolve, and recommend amendments to the Law only where absolutely necessary.

## **EXAMINATION OF THE PUBLIC ELECTIONS LAW AND CONSULTATION RESPONSES**

### **PART 1 – PRELIMINARY**

*No recommendations for Article 1.*

### **PART 2 – WHO MAY VOTE**

*No recommendations for Articles 2–3.*

#### **Disqualification (Article 4)**

The Sub-Committee reviewed the ability of a convicted person detained in prison to vote, having noted that the European Court of Human Rights had upheld a previous ruling that a blanket ban on inmates from voting was unlawful.

The current procedure which enables a remand prisoner to vote is that a member of the Judicial Greffe team visits the Prison to take the vote in person from any remand prisoner who is eligible and wishes to vote. That person's place of residence should be their address before convicted, and if no fixed address, their address shown as the prison.

The Sub-Committee agreed that at the appropriate time it wished to bring forward an amendment to the Law to enable full compliance with the Human Rights ruling. Advice had been received that it would be advisable for Jersey to await the outcome of a judgment in the case of *Scoppola v. Italy* and the reaction of the U.K. government to the ruling having noted that the EU Court had signalled that the U.K. government could decide which prisoners should be enfranchised. The outcome of the U.K. government review is awaited.

In the meantime, a delegation of the Sub-Committee visited Guernsey and consulted the States Assembly and Constitution Committee and found that since 1996 all prisoners in Guernsey may vote, whether they are remand prisoners or otherwise. The mechanism for voting is a postal vote; also the Prison Governor has the discretion to allow a prisoner to vote in person. In Guernsey, a prisoner is registered at their normal place of residence unless they have no fixed abode, in which case they may be registered as a resident of the Prison and fall into that electoral district. Where a prisoner in the Guernsey Prison did not qualify residentially before the commencement of their sentence (i.e. 2 years' residence or more) they could not accrue voting rights during their sentence.

Given that the precedent has been set in Guernsey where all prisoners may vote, the Sub-Committee considered recommending that prisoners in H.M. Prison La Moye be enabled to vote, with their place of residence being attributed along the lines adopted by Guernsey. However, the Sub-Committee is mindful that this matter remains under review in the United Kingdom and therefore agrees that it should be kept under review by the Privileges and Procedures Committee.

The Sub-Committee nevertheless agreed that prisoners on remand, and who qualify to vote, should be able to vote by post. This would form part of amendments to Article 39.

*No recommendation for this Article.*

### **PART 3 – ELECTORAL REGISTERS**

#### **Entitlement to be registered (Article 5)**

Currently a person is entitled to have his or her name included on the Electoral Register if they are –

- (a) at least 16 years old;
- (b) ordinarily resident in the electoral district concerned; and
- (c) the person has been –
  - (i) ordinarily resident in Jersey for a period of at least 2 years up to and including that day, or
  - (ii) ordinarily resident in Jersey for a period of at least 6 months up to and including that day, as well as having been ordinarily resident in Jersey at any time for an additional period of, or for additional periods that total, at least 5 years.

The Sub-Committee had invited Mr. Adrian Lee to address States members in February 2012 on the matter of the Public Elections Law. Mr. Lee outlined his areas of expertise around electoral processes, emphasizing his particular interest in smaller jurisdictions. He suggested that the 3 Crown Dependencies have a remarkable degree of “liberalisation” when it came to deciding who was eligible to vote, with “residence” of votes being the main criterion and not “citizenship” as was the case elsewhere. Jersey had led the way in this through changes which were introduced in 1990.

#### **Advance Registration**

The Sub-Committee agreed that a facility for advanced registration should be introduced for those 15 year-olds who would be 16 between nomination day and election day so that they can vote. This facility should be available during the 3 months prior to an election., with the cut-off date for registration being 7 days before an election, to tie in with a later recommendation on a supplementary register. This already happens in the U.K. and Guernsey, and would be administratively easy to implement as the fact of a date of birth is easy to confirm. The Sub-Committee had discussed advanced registration with the Guernsey States Assembly and Constitution Committee, and noted that in Guernsey advanced registration was possible for persons who are over 15 years of age in preparation for an election once they have obtained the age of 16.

The Sub-Committee added that this facility should be extended to new residents who have not been resident for 2 years at the time of enrolment but who will be eligible to vote by the date of the election. The Chairman confirmed that, during the 3 month period prior to an election, residents who would be qualified to vote on the day of the election would be able to apply for registration in advance, up until 7 days before an election. In order for the 2 year qualification to be fully met, or the aggregate of 5 years to be met, any person seeking an advance registration under this provision would need to sign a declaration that they would remain continually resident up to the election day.

The Chairman confirmed that in the case of a by-election under Article 17 of the Public Elections Law, an election would be held not earlier than 38 days after the date on which the Royal Court orders than an election be held. This would allow a brief period in which advance registration could still take place, or alternatively, upon attaining 16 years of age or 2/5 years' residence, an elector would be enabled under Recommendation 7 to add their name to the supplementary electoral register up to one week before an election.

The facility for advance registration would relate to all public elections, including Procureur du Bien Public and Centenier.

## **RECOMMENDATION 2**

**The Sub-Committee recommended that advanced registration be introduced during the 3 months prior to an election for those who will attain 16 years of age on or before election day, and for recently arrived residents who will have met the residence requirement on or before election day.**

Article 5 relating to 'Entitlement to be registered' will require an amendment to show that where a person is registering in advance in anticipation of qualification, the relevant day on which the 16th birthday should occur or the relevant residence has been accumulated should be the election day, and not the day on which they register.

### **Electoral Registers (Article 6)**

Under Article 6 of the Law "the Connétable of a parish shall prepare and maintain a separate electoral register for each electoral district that is, or within, the parish". The Sub-Committee had noted some political concern that the Connétable was responsible under the Law for organising the elections and voting arrangements, etc., whilst at the same time potentially "benefitting" from the outcome of those elections.

The Sub-Committee was mindful of the provisions under Article 10 of the Law to appeal against any refusal to register, removal from the register or refusal of an application to register on the part of a Connétable, as follows –

## “10 Appeals<sup>1</sup>

- (1) A person may appeal to the Royal Court against –
  - (a) a refusal to add his or her name to the register (except a refusal under Article 7(5));
  - (b) the removal of his or her name from the register; or
  - (c) the refusal of his or her application, or of the reinstatement in or addition to the register of his or her name, under Article 9.
- (2) An appeal shall be made within the period of 28 days following service of notice of the refusal, removal, reinstatement or addition or, if no notice is served, within the period of 28 days following the person becoming aware of the refusal, removal, reinstatement or addition.
- (3) The decision of the Royal Court on any such appeal shall be final and without further appeal.”

The Sub-Committee had noted the view of Mr. Lee that it tended to be difficult to revise a long-standing and well-established system. However, it was noted that the election organisation was handled by parish secretaries in the parish, and it was thought therefore that a possible solution would be to make parish secretaries responsible for the compilation of the Electoral Register under the Law.

In Guernsey, where the preparation of the electoral register has been centralised, the Deputy Registrar General of Elections (Electoral Roll) and in turn the Home Department, are responsible for the compilation of the Electoral Register, and the Deputy Registrar General does not answer to politicians. The Douzaine does not compile the Electoral Register, and therefore the Douzeniers do not have any conflicts of interest. Similarly a Constable or Douzenier who is standing for election to the States cannot be a returning officer in Guernsey. The returning officers are responsible for the count, and they are assisted by the Constables in supervising the election, subject to the above proviso.

In the consultation with States members, 48% considered that the Connétables should no longer be responsible for compiling the Electoral Register as they may be a candidate, with 27% content with the status quo. More than half believed that the parish secretary should be responsible for compiling the Electoral Register in the future, in advance of any future proposal being investigated to use the Names and Addresses Register to compile the electoral register centrally (See Recommendation 4).

The Privileges and Procedures Committee confirmed that the Parish Secretary should assume the functions previously exercised by the Connétable under the Public Elections Law in relation to the register, namely adding or removing names, making the register available, etc., and that the Parish Secretary should be responsible for holding nomination meetings and organising any election.

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<sup>1</sup> Article 10 substituted by L.39/2008

### **RECOMMENDATION 3**

**The Sub-Committee recommended that Articles 6–9 and 11–12 of the Law be amended to state that the parish secretary shall prepare, maintain and amend the register, hold nomination meetings and organise any public election.**

#### **Automatic Registration**

The Sub-Committee had investigated whether it would be possible for the Names and Addresses Register envisaged under the Control of Housing and Work (Jersey) Law 2012 to be used in order to ensure that all citizens who were entitled to vote were so registered. It was noted that the Register of Names and Addresses (Jersey) Law 2012 allowed a public authority to access the Register for the purposes of providing a service under an enactment, or enabling or facilitating compliance by an individual with a duty under an enactment. The Director – Corporate Policy, Population Office had expressed the view that within the Public Elections (Jersey) Law 2002, the only duty upon an individual was to return the registration form. Consequently, it was considered that giving access to the Register did not assist the customer in meeting their obligations, although it could be contended that providing access to the Register did enable the authority to identify addresses and to register people to vote who would not otherwise be registered – and that it was this that constituted a service. The view of the Director – Corporate Policy was that the matter was sufficiently arguable and important that a separate regulation should be brought under the relevant Law in order to enable access to be gained if such was required. This would facilitate debate of the proposal by the States in public, and thus a clear mandate could be obtained.

The public had been consulted as to whether they would like their name to be automatically registered using information already held about them by the States, and 74% responded in the affirmative and 10% did not mind. Only 16% stated they would not wish to be automatically registered in this way.

The Sub-Committee agreed that automatic registration would be the most efficient route and could automatically lead to individualised registration which would be desirable to avoid household members inadvertently being left off the electoral roll.

The Sub-Committee acknowledged that there will need to be a preparatory stage to this proposed change in the way the public is registered for electoral purposes. At the time of writing this report, the Names and Addresses Register was not yet in place. Indeed, Dr. Peter Boden of Edge Analytics Limited, when acting as an expert adviser to the Corporate Services Scrutiny Panel for its report on the Population and Migration Review (S.R.1/2012), stated: “The precise timetable for development of the Register remains unclear and an indication of what point it is likely to be a ‘live’ and ‘accurate’ count of the resident population. Existing methods will be relied upon until it is fully functioning, which is unlikely to be until the end of 2013/early 2014 following reconciliation against other sources and following a successful trial run of its operation as a ‘live’ population register”

There are also issues to be resolved such as the compatibility of the Register of Names and Addresses (Jersey) Law 2012 and the Public Elections (Jersey) Law 2002. These include, for example –

- sharing of the register with the Parishes, the Judicial Greffe and also with candidates for election;
- currently the names of some vulnerable adults are held on a supplementary register with the consent of the Connétable, where their address should not be disclosed;
- producing a ‘street order of the persons’ addresses’ for candidates for election;
- the accuracy of the register at any given point, and in particular whether it can calculate the period of continuous or non-continuous residence for the purpose of proving eligibility to register;
- whether the Names and Addresses register could also be used for other regular functions within the Parishes for which the electoral register is used, such as –
  1. entitlement to vote at Parish Assemblies, including election of Parish officers such as Vingteniers, Constables’ Officers, Rates Assessors, Roads Committee and Inspectors, etc.;
  2. entitlement to vote at Ecclesiastical Assemblies;
  3. public elections for Centeniers and Procureurs du Bien Public;
  4. preparation of jury service list for the Viscount’s Department.

These give rise to issues around the confidential nature of the Names and Addresses Register, as against the ability of the public to inspect, and candidates to obtain a copy of, the Electoral Register, and the possibility that a second register would be required for those names (normally omitted from the public electoral Register) of certain individuals who may nevertheless vote.

The Connétables have also raised the issue that the requirement for notification for change of name under the Register of Names and Addresses legislation is one month, under the Rates Law this is 7 days, whereas the duty under the Public Elections Law is to be registered on the day the person meets the qualification criteria.

The Sub-Committee would want to be satisfied that the Names and Addresses Register can accurately log the eligibility to vote of persons who have been resident for 2 continuous years immediately prior to the election OR have been resident in total for an aggregate of 5 years, this data being sufficiently up-to-date that such persons are able to vote without hindrance. Currently, 80% of eligible persons are registered to vote, and it is important that this rate be sustained or improved upon.

Clearly, there would be a shift in responsibility and administrative activity affecting the Parishes, the Judicial Greffe and the office responsible for the Names and Addresses Register, and the impacts and consequences need to be determined. The Sub-Committee does not consider that the issues can be resolved in time for the 2014 election, but would wish work to proceed to utilise the Names and Addresses Register if appropriate in time for the 2018 election.

## RECOMMENDATION 4

**The Sub-Committee recommended that the Privileges and Procedures Committee invite a suitably qualified professional to conduct a feasibility study on the use of the Names and Addresses Register for electoral registration, with a view to enabling legislation to be prepared to allow the provision of a service under the Register of Names and Addresses (Jersey) Law 2012 or the Control of Housing and Work (Jersey) Law 2012 (as appropriate) and administrative change to be made in time for the 2018 elections.**

### Centralised Electoral Registration

The Sub-Committee noted that the present position was that there was a single register which was maintained by 12 parishes, and the Connétables had expressed the view that this arrangement worked adequately and that a centrally maintained register was unnecessary. It was important for parishes to be notified when electors changed address and that electors were encouraged to re-register upon change of address.

The Sub-Committee considered at some length whether to propose moving towards a centralised electoral register. This had arisen because of the perceived conflict of interest of Connétables who were standing for election. There were a number of issues to consider –

- (a) *Cost* – The cost of setting up printing and other expenses necessary for putting the Law into effect are met by the parish, to include the maintenance of the electoral register, with the exception of the cost of voting for the office of Senator, for which a refund is provided to the Parishes (see Article 15). However, if there were to be a central electoral register, then all of the costs would be borne by a centrally funded office. The Committee noted that in Guernsey it had cost £115,000 to produce the central electoral register for use in 2012, funding additionally recruited staff, the public campaign and the relevant IT requirements. This does not include the use of existing staff who were involved in the process.
- (b) *Completeness and accuracy* – as stated earlier, Mr. Lee had considered that what was observable in Jersey was the relative completeness and accuracy of the electoral register. It was thought that this was due in some measure to it being completed by persons familiar with a small geographical area. Mr. Lee had explained that generally attaining accuracy was not as much of a problem as ensuring completeness. In Jersey, data from the 2011 Census was providing some verification of the Register. Those most likely not to be on an electoral register were generally those who had recently changed address, or who were temporarily resident. A greater degree of inaccuracy tended to occur where canvassing was undertaken on the basis of “householders”, with those living in rented accommodation often being less likely to be on the Electoral Register. It is noted that the United Kingdom was presently moving towards “individualised registration”, and, as in Jersey, opportunities being afforded to people to be added to the Register at any time during the year, as well as close to any forthcoming election.

- (c) *Responsibility for compilation of the register of electors* – Any perceived conflict of interest could be removed by passing responsibility for compilation of the register to the Parish Secretary, as recommended earlier in this report.

The Sub-Committee noted that when the public was asked “Who do you think you should contact to get on the electoral register?” 64% replied: ‘the Parishes’, 18% said: ‘a Central Office’ and 14% did not mind. States members were asked the same question, and 56% thought: ‘the Parishes’, with 32% suggesting a Central Office and 15% not minding.

The Connétables have brought to the Committee’s attention successive Strategic Plans of the States that have referred to the need to support and enhance the Parish system. Jersey has a unique partnership between the ‘central’ government of the States and the ‘local’ government provided by the parishes. If the intention of the Committee is to remove the electoral register from the parishes, the Connétables then seek to clarify: what will remain of the role of the parish and the Connétable?

The Sub-Committee was persuaded of the value of electoral registration being undertaken automatically as part of the Names and Addresses Register. In the meantime, the Parishes are requested to offer individualised registration, which would in any case occur once the Names and Addresses Register were used for electoral registration, and to check that the electoral register was complete at the time of any applications for licences or change of address where this was not already done.

#### **RECOMMENDATION 5**

**The Sub-Committee decided to recommend that Parishes offer the public the opportunity to check electoral registration at the time of any applications for licences, etc. (Administrative)**

**The Sub-Committee further recommended that opportunities that present themselves when residents moved house, such as house sale/purchase, new leases, enquiries regarding housing status or individuals should trigger the distribution of information relating to electoral registration. This might involve lawyers including electoral registration forms in the packs provided at the time of property sale/purchase, and the appropriate States’ department providing information when applications relating to the occupation of property are received.**

#### **Online registration**

The Sub-Committee considered developing online registration, and the ability to check that one is registered online, and noted that currently, the Parish of St. Helier had a facility on its website to check the register, but this was actually an e-mail exchange rather than a real-time check. There had been concerns in the Island about authentication where online systems are used.

It was noted that Guernsey had online registration and that when applying to register online an applicant needed to tick a box making a declaration to say that they are eligible to vote and noting that there is a penalty and likelihood of prosecution if they make a false declaration. Under the circumstances, the Guernsey authorities feel that

ticking a box making a declaration is just as secure as a signature on a physical piece of paper.

In order to increase the completeness of the Guernsey Electoral Register, once registration online is well underway, the Home Department targets areas where registration is low. The Sub-Committee had been interested to note that 20% of the Guernsey electorate had registered online. In addition, in Guernsey the public can make a request online to obtain a postal vote.

It is worth explaining at this point the different ways in which an elector can vote so that the timing of registration can be fully understood –

1. The traditional way to vote is to present at the designated polling station on election day and vote in person. Election Day is currently on a Wednesday and the poll is open from 08.00 to 20.00.
2. Voters who are ill, disabled or illiterate on Election Day may be visited by the Autorisé or Adjoint on the day of the election to enable them to vote (pre-poll 'sick vote').
3. For a period of 3 weeks before the election, voters from any Parish can present at a central location, generally in the heart of St. Helier, and cast their vote by pre-poll.
4. Voters who are ill, disabled or illiterate may request a visit by persons nominated by the Judicial Greffier to cast their pre-poll vote from their home.
5. Voters who will be out of the Island on Election Day (but who may be present during the pre-poll period) may request a postal vote, which they return to the Judicial Greffier.

The Sub-Committee considered it desirable to have online registration in Jersey as it was recognised that there was an issue around the possibility that where the 'householder' was a landlord, he/she could fail to include tenants on the Annual Registration form sent to his/her property. The 2002 Law requires the annual statement to be sent to every unit of dwelling accommodation; previously the Franchise Law placed responsibility on the 'householder' but this is no longer the case. The annual statement is therefore sent to the occupiers of each unit and the computer system includes a separate address for each, e.g. every unit in a lodging house, every flat, etc. receives a separate annual statement for that property.

Part of the reason for failure to register could be put down to people's busy lives, so any means of simplifying the process should be welcomed. The Connétables had agreed that the relatively simple step of overprinting the envelope in which the Annual Registration form was despatched with a summary of the most salient points for the householder to consider would be a useful reminder, and indeed the envelopes are already overprinted with a brief wording to refer to important Parish documents or similar.

Members of the public in the public consultation had commented that online facilities would be more convenient.

## **RECOMMENDATION 6**

**The Sub-Committee recommended –**

- (a) online electoral registration be introduced as soon as practicable (amendment to Part 3 of the Law required);**
- (b) an online facility to request a pre-poll ‘sick vote’ or a postal vote. (Administrative)**

### **Late Registration/Supplementary Register**

In 2011 the period between nomination and the election was over 6 weeks, primarily because there would be 3 elections on the same day for the first time. The deadline for registration was one day before the nomination day and this fell at the end of the holiday period just before the school-children returned to school. There was no facility for late registration, and the Sub-Committee considered whether there should be a facility for late registration, and in practical terms, how this could be achieved.

The subject of late registration applies to 2 Articles, Article 7 relating to the addition and keeping of a name on the Electoral Register, and Article 12, Electoral Register in force for an election.

Article 7(4) states that it is the duty of a person who is entitled to have his or her name included on the Register for an electoral district at any time, and whose name is not so included, to apply for registration as soon as practicable to the Connétable of the parish where the electoral district is located, and in such form as the States may describe by Regulations. Article 12(1) states that for the purposes of any election, an Electoral Register for an electoral district within a parish is the Electoral Register for the district as in force at midday on the day before the day when the nomination for the election is held. Under Article 12(1A), the deadline is the day before the first of the 2 nomination meetings when nominations for separate elections are held on consecutive days.

The Sub-Committee had consulted on a proposal to allow late registration. The Jurats had indicated that in a number of States in the USA, registration can take place on the day of the election, and they considered that this could be chaos. It would be extremely difficult to ensure that an elector did not appear on 2 parish lists – enquiries must be made and this could take significant administrative time on an already busy day, possibly amounting to 20 minutes per person. The Returning Officer needed to be confident that the Electoral Roll was accurate. The concern was expressed that if there was no specific deadline, then electors might habitually leave registration to the last possible moment. The Jurats suggested that it might be possible to start a supplementary Electoral Roll after a given cut-off point. This would enable election candidates to access the main Electoral Roll after nomination day for canvassing purposes, while enabling voters to continue to register until a later date.

The Sub-Committee discussed late registration with the Connétables and the possibility of a supplementary register, and it was suggested that anyone registering late, say, between nomination day and a date 2 weeks ahead of an election, should be required to vote in person, as it would be too late to enable pre-poll or postal voting. The Sub-Committee had also discussed the proposal with the parish secretaries, who

were unsure how many people needed to register after the normal cut-off date and whether the expense would outweigh the benefit. It was clear that those on any supplementary register would be obliged to exercise their vote in person on election day only, as there would be insufficient time to process the late applications and enable postal and pre-poll voting.

It was noted that Guernsey did not have a facility for late registration, and their register effectively started from zero prior to their elections every 4 years.

The Sub-Committee asked the public in the consultation exercise to advise whether they would like to be able to register after the candidates are known. 32% did wish to be able to register at this time, 28% stated they did not wish to register late, and 40% did not mind either way.

The Sub-Committee considered that there could be circumstances which prevented a new elector from registering within the normal timeframe, and agreed that late registration should be permitted up to one week before the election. Those members of the public who register late under this provision will only be able to vote in person.

The Sub-Committee noted that the Privileges and Procedures Committee had expressed concern at the administrative impact of a secondary register remaining open until one week before the elections (which would require an amendment both to the Public Elections (Jersey) Law 2002 and to the Referendum (Jersey) Law 2002); however, the Sub-Committee firmly believe that this improvement is necessary.

#### **RECOMMENDATION 7**

**The Sub-Committee recommended that new electors should be able to request that their name be added to a supplementary electoral register up until one week before the election. (Consequential amendment required to the Referendum (Jersey) Law 2002.)**

#### **Addition and keeping of name on the electoral register (Article 7)**

##### **Annual returns**

It was noted that not later than 1st June every year the Connétables sent out a statement to each unit of dwelling accommodation showing the names of persons registered to vote for checking, signature and return to the Parish. The public are required to return the statement to the Connétable every year showing those eligible to vote, even if there is not an election during that year.

The Sub-Committee had been concerned that as the electoral register was now a rolling register over a 3 year period, there might be confusion in the Public's mind as to whether they knew that the forms had to be returned every year.

The Sub-Committee heard from the Comité des Connétables that when the return of a registration form remained outstanding, the parishes did follow up those non-returns and undertake investigation – at some cost – prior to removing names from the Register. The Connétable of St. Mary emphasized that registration was currently for a period of 3 years and that names were not removed from the Register until a non-return had been recorded for 3 consecutive years.

There were differing views, and while Parishes said that they mostly followed up non-returns, St. Helier had confirmed that it did not currently have the resources to follow up non-returns.

The Sub-Committee was reminded of the U.K. study that: “In the most densely populated urban areas, the completeness and accuracy of the Registers may decline by as much 10–15 percentage points over the lifetime of the Registers” .... “under-registration is closely associated with those social groups which are most likely to move home; this includes young people and those living in private rental housing.”

There would therefore appear to be merit in targeting densely populated urban areas to improve registration rates and voter turnout.

It was noted that in Guernsey, the registration process commences in the September preceding the quadrennial elections, with a publicity campaign and website launch, and registration forms are sent out to every household. Two months later in November, a card is sent out by the Department to each address stating the persons in the household who were registered to vote, and where no-one at the address is registered to vote, a card sent to the household showing that no-one is registered to vote at this address. This card acts as an acknowledgement of registration and prompts action where there has been an omission.

The public were consulted on whether they wanted to see a polling card with each elector’s name, address and electoral number on it sent out 2 weeks before an election for States members. 47% responded positively, 25% did not want such a card, and 28% did not mind either way.

The Sub-Committee agreed that follow-up is important to ensure people are registered, and it would appear to be a more useful procedure to send out a card as a reminder every year after the statements have been sent out. The Sub-Committee considered that the rolling register had created some confusion, as some electors did not know whether they needed to register every year or whether they did not need to contact the Parish again once registered, and it was felt that a reminder card would help to make clear whether an elector was registered or not.

It was also noted that the Parishes also used a ‘Change of Address’ form (also available on parish websites) dealing with all areas of parish administration, but there is no objection to this being handled by lawyers also.

The Privileges and Procedures Committee agreed that a card should be sent out in the year of an election only.

Once the dates for elections was moved to the Spring, it would be appropriate to consider the best time for the Annual Statement and the registration notification card to be sent out to ensure that the public took note of their contents.

## RECOMMENDATION 8

**The Sub-Committee recommended follow-up by way of a registration notification card sent out to electors in the year of a public election for members of the States as part of the process of maintaining the register in order to ensure completeness. It was agreed that a card be sent to all households at the appropriate time, say, approximately one month after the statement is sent to each household –**

- (a) notifying the householder of the persons registered to vote at that address, with information on how to check the Register, the cards to be sent out sufficiently in advance of the deadline for registration to allow for corrections to be made;**
- (b) notifying the householder where no-one was registered to vote at that address with information on how to register.**

### **Appearance of statement/registration form**

It was noted that there was a lot of information on the form, in densely packed type, and it was not easy to read or pick out information. In particular, the Sub-Committee believed that there continued to be confusion as to whether the statement had to be returned every year, or only every third year before elections. The issue of there being a rolling register, where a name will only be removed after 3 years' non-returns, and the fact that the statement should be returned every year, appeared to have become conflated.

The Sub-Committee noted that the Connétables had considered a follow-up letter in accordance with Article 8 of the 2002 Law where the person has not made a return in 3 years. The provision in Article 8(4) and (5) was added to enable the electoral registers to be tidied up by removing the names of any elector from whom there had been no contact in 3 years; which assumes they may have moved away from the Island. The letter would be sent to the elector at the address at which they are currently registered and the elector would have 28 days to respond before the name is actually removed. If they responded after this period, i.e. after the name had been removed, there is a right of appeal to the Royal Court, but the name would in any case be added back immediately if the elector confirmed they were still eligible as an elector.

The Sub-Committee recognised that the Parishes did follow up non-returns, but felt that it should be made extremely clear on the statement that the form has to be returned every year, regardless of whether there was a pending election, to remove all doubt. The Parish secretaries had also expressed the view that the registration form was unclear and needed review. The Sub-Committee agreed that the form should be re-designed having regard to the clearer presentation of information, taking into account the needs of those with a disability.

## RECOMMENDATION 9

**The Sub-Committee recommended that the statement/registration form be re-worded and re-designed (possibly a folded A3 sheet) in such a way that the information was not concentrated into too small a space, and there was room to draw attention to key information and deadlines. (Administrative)**

## **Encouragement to register/PR**

The aspiration of the Sub-Committee was that some work on the electoral process would be carried out every year during the summer months – not just during an election year – to coincide with the time when the annual statements were distributed, to raise awareness of the need to register and to outline the benefits of being ready to vote. It was considered that work similar to that undertaken during 2011 to raise awareness and inform the public about the electoral process should be undertaken every year, and an appropriate budget made available for this purpose.

At the public meeting it was suggested that there should be a mechanism to help first-time voters, through training, education or personal assistance when voting. While all of this was already available, through the manifesto document, media, hustings and parish staff on election day, perhaps this could be more overt with, say, an information telephone line being set up in advance of the election, and on the day, when ballot papers are being given to electors, perhaps electors could be asked if they require assistance.

The Sub-Committee also considered that a greater effort should be directed towards schools and colleges in order to encourage young people nearing the age of 16 to participate. This was considered to be particularly appropriate given that parents who had never registered themselves might not include their children on their annual return, and a greater effort in school premises could generate first-time voters in the family. Once parents see from the registration form sent out by the Parishes that their children are registered, they may feel an impetus to register also.

The Minister for Education, Sport and Culture attended a meeting of the Sub-Committee and agreed that –

- Registration forms would be made available on school premises annually when the parishes send out the registration forms.
- Collection of registration forms would take place in secondary schools for forwarding to the Parishes (Ballot box collections).
- Posters supplied by the body undertaking awareness-raising and information to the public would be displayed in schools.
- Candidates wishing to organise hustings for school pupils outside of school hours would be welcome to do so. This would not be organised by the schools themselves because of the sensitivities surrounding the need to ensure all candidates were invited to ensure fairness and balance.

The Sub-Committee heard anecdotally at its public meeting that University students from Jersey were not always aware of how to vote in Jersey and consequently did not do so, while they did vote in the U.K. elections. Greater use was suggested of modern social media to reach the younger voter.

The Sub-Committee agreed that the States Greffe oversee a campaign run by the Parishes annually in non-election years to raise public awareness to coincide with the

statement being sent out, and it should mount a multi-media campaign in advance of every election to the States Assembly.

The Sub-Committee noted that if the Names and Addresses Register were to be used as the electoral register, then there would be no need for an extensive Voter Registration Campaign, although a registration notification card should be sent and the public should continue to be encouraged to turn out and vote. The cost would depend upon the level of activity of the campaign and whether material was printed/posted and/or whether the website required review. (The Voter Registration and Turnout campaign in 2011 cost approximately £55,000 plus around 0.5 FTE for 6 months, with an estimated requirement of a member of staff for 6 weeks per annum in non-election years.)

### **RECOMMENDATION 10**

**The Sub-Committee recommends that public awareness and information campaigns take place in the year of an election to coincide with the timing of the registration forms/statements while these continue to be sent out. Registration forms to be made available and collected in secondary schools and forwarded to Parish Halls.**

**Prior to an election, information and assistance should be offered to first-time voters, and voters should be encouraged to turn out and vote. (Administrative)**

*No recommendations for Articles 8–11.*

### **Electoral Register in force an election (Article 12)**

#### **Provision of electoral roll to candidates**

The Sub-Committee had considered the type of lists provided to candidates by the Connétables under Article 12(2) for canvassing purposes, and recalled that there are 2 lists, one a numerical list of all electors in the district, and the other – the street order of persons' addresses – informally known as a 'street order list' (sometimes called the 'walk list') organised geographically by roads. (The 'street order of persons' addresses' in Article 6(2) of the Law does not show all addresses in a street, it shows only those where electors are registered.)

The Sub-Committee noted that the electoral register could only be supplied to bona fide candidates who had also registered with the Data Protection Office so as to comply with personal data handling standards. Access to the list could not be granted prior to nomination.

Deputy J.A. Martin of St. Helier raised with the Comité des Connétables the apparent deterioration in the flexibility of the electoral registration computer software which had been in use since 2005, particularly with regard to the street order in which electors' addresses now appeared in the register. It was noted that a copy of the Electoral Roll sorted by name was provided to the Jersey Library and other centres of information, but that other versions of the list defaulted to the LPI (Land and Property Information) address provided by the property registry system maintained by the Planning and Environment Department. The Connétable of Trinity indicated that the situation was further complicated for the Parishes by the assignment to them of a

sequence of numbers within the approximately 57,000 addresses registered on the system. So whereas each Parish might previously have been allocated numbers commencing from one, the range of numbers now allocated to it could be anywhere between one and 57,000. It was noted that the address location was entirely dependent upon the LPI system.

The Sub-Committee ascertained what the position was in Guernsey, and it was noted that in Guernsey candidates are permitted both hard and electronic copies of the Electoral List prepared by the Home Department, a 'walk list' arranged alphabetically by roads and a map of the district. Both the Guernsey and the Jersey Data Protection Law restrict the onward supply of both paper and electronic copies.

The Sub-Committee discussed the arrangements Guernsey makes with their counterparts and noted that the Home Department prepares the Electoral Roll. The Street List/Walk List is considered to be better than ever before and a combination of the Walk Order and the map provided are especially useful to candidates. They were a considerable improvement on the 2008 versions. The Walk Order is generated from the Electoral Roll and the Corporate Address File (CAF). The 2 electronic systems are compatible and generate both the walk list and the map.

The CAF contains every single personal and business address in Guernsey and the file is constantly being updated. All departments of the States and principal service providers (electricity, telephone, gas, water, etc.) all use this standardised form of address. Every CAF address is marked on Digimap. Thus, because the electoral roll addresses are CAF standard, it is possible to produce maps showing every house where an elector is registered.

The Sub-Committee noted that the way in which the candidates' 'walk list' is prepared would have to be reviewed if the Names and Addresses Register were used as the electoral roll.

#### **RECOMMENDATION 11**

**The Sub-Committee recommended that –**

- (a) I.T. use for electoral purposes be evaluated in conjunction with the Connétables and the PPC;**
- (b) steps be taken to improve the 'street order list' ('walk list') supplied to candidates;**
- (c) the way in which the candidates' 'street order list' could be prepared should be reviewed if the Names and Addresses Register were used to compile the electoral roll.**

*No recommendations for Article 13.*

## **PART 4 – GENERAL**

*No recommendations for Article 14.*

### **Cost of election (Article 15)**

The Sub-Committee noted that the costs involved in both the Connétables' election and the Deputies' election are borne by the Parish, while the election for Senator was funded by the States. Electoral registers are used in all public elections and for a referendum, and have always been prepared by the parishes at no cost to the States.

The Parish Secretaries advised that the cost of elections in Jersey was far higher than the amount the Parishes were reimbursed, which amounted to £2,000 per polling station in 2011. One larger Parish estimated the total cost could amount to £10,000 to £20,000. The secretaries urged caution against making changes that would make marginal improvements but disproportionately impact upon the work at parish level. This caution is understood, but ultimately the issue must be driven by what is effective in enhancing public participation in public elections. The Sub-Committee recalled that the Senatorial elections are funded centrally by the States, and thought it was possible that there had been monetary savings for the Parishes by having all 3 elections on one day.

A comparison was therefore prepared by the secretary to the Comité des Connétables to show the costs incurred by a sample of 3 Parishes. The figures show that in 2 out of the 3 Parishes sampled, the refund (which relates to Senators only) amounted to less than 50% of the total cost of holding elections for all categories of member on one day. It is impossible to provide 'like for like' figures capable of meaningful comparison, because there are variables in the Parishes where it is possible that the Connétable or a Deputy was returned unopposed, either at this election or a previous one, and where some Parishes had all 3 elections, others had 2 elections, and in the case of Trinity in 2011, only one.

The following table gives examples of costs, together with the refund made by the States –

	<b>2008</b>	<b>2011</b>
Trinity – 1 polling station; Senator/referendum only	£1,025 refund was £925	
Trinity – 1 polling station; Senator only		£1,084 refund was £1,084
St. Clement – 1 polling station; Senator/Connétable/referendum and 1 polling station for separate Deputy election	£5,952 refund was £925	
St. Clement – 1 polling station; Senator and Deputy elections		£4,985 refund was £2,000
St. Saviour – 2 polling stations for Senators/referendum and 2 polling stations for separate Deputies elections (1 District not contested)	£6,536 refund was £1,850	
St. Saviour – 3 polling stations for Senators/Connétable/Deputies		£14,171 refund was £6,000

The Sub-Committee recalled that it had been interested in the way Guernsey prepares a Central Electoral Register, and noted that it cost £115,000 to produce the Central Electoral Register in Guernsey in 2011. This amount only included additionally recruited staff, but did not include existing staff who were involved and who had been moved across to this function, although it does include sums for IT and sundry matters. The member of staff who moved across dedicated approximately 9 months to this task.

The Sub-Committee was advised that the cost of establishing and maintaining the electoral register has never been considered to be a cost of “setting up, printing and other expenses” as described under this Article. Article 15 costs include the cost of printing the ballot papers, inserting notices, purchasing polling booths, cost of lunch/sandwiches for staff and volunteers assisting on polling day.

### **RECOMMENDATION 12**

**The Sub-Committee considers that it is necessary to await the outcome of the States’ deliberation on possible changes to the electoral system, before consideration is given to any change in the arrangements for refunding electoral costs to the Parishes. The matter should therefore be kept under review by the Privileges and Procedures Committee if necessary.**

*No recommendations for Article 16.*

### **Order for election (Article 17)**

#### **Time between nomination and election days**

The Sub-Committee had considered the period of time between nomination meetings (and therefore also the deadline for electoral registration) and the election day. In 2008, the period had been 4 weeks and 2 days for the Senators’ elections, 4 weeks and one day for the Connétables’ elections, and 3 weeks and one day for the Deputies’ elections. In 2011 the Electoral Register closed on Monday 5th September, with the nomination meetings being held on 6th and 7th September, and the election was held on Wednesday 19th October some 6 weeks and 2 days later. The longer period had allowed preparation for the first time for 3 elections on one day; however this had gone very well.

Discussion with the Parish Secretaries highlighted that a sufficient period between nomination and the election day was necessary in order that –

- (a) The Judicial Greffe had sufficient time for postal and pre-poll voting.
- (b) The printers needed time to produce ballot slips for all 3 elections, in 12 parishes for whatever number of candidates had declared (potentially 30 different elections) to be notified, printed and delivered within one week of nomination so the Judicial Greffe can send out ballot slips as required.
- (c) The Hustings meetings for 3 elections needed to be arranged and held.

- (d) Candidates needed sufficient time in order to canvass electors. (Nomination day also signals the start of the election period and is the date from which a copy of the electoral roll can be given to candidates.)

The Committee had consulted with the Guernsey States Assembly and Constitution Committee and noted that in the recent Guernsey election there had been a 4½ week delay between nomination and election. Each politician had approximately 4,000 residents to cover (2,800 households) and it was just about possible to canvass all of them if the candidate worked steadily throughout the period. In Guernsey, there was just one election, while in Jersey there are currently 3 elections on one day.

### **RECOMMENDATION 13**

**The Sub-Committee decided to recommend that the period between nomination day and election day revert to a period of no more than 4½ weeks. Once the elections move to the Spring, it will be necessary to ensure sufficient time, given possible intervening Bank Holidays (e.g. a late Easter), so the description of time (weeks/days) needs to be clear.**

#### **The day of the election**

There was a lot of discussion on the best day of the week to hold an election. While Sub-Committee members felt that a weekend election might improve election turnout, a change in the day was not especially popular.

In the public consultation exercise, 35% wanted the election to remain on a Wednesday, 23% preferred Saturday and 19% a Sunday; 24% did not mind which day it was. Among existing States members, 32% wanted to stay on a Wednesday, 39% preferred a Saturday, and 16% a Sunday. The Parish secretaries were concerned at the suggestion of elections at the weekend as they feared that there would be a drop in the number of volunteers and the cost of administration would therefore rise.

Given that there was no over-riding interest by the public in change, especially as more relaxed rules for pre-poll voting introduced in 2011 had already made it possible for anyone to vote on a different day, and proposals were in train to extend pre-poll voting to include Saturdays, the Sub-Committee agreed not to recommend any change in the election day (see Articles 37–42). However, later in this report there will be proposals for additional locations for pre-poll voting, to be held on a Saturday.

*No recommendations for Article 18.*

#### **Holding of a nomination meeting (Article 19)**

The Sub-Committee was anxious to discover how valuable the public thought nomination meetings are, given that attendance is not especially high. It was noted that in Guernsey nominations are received in person during a 5 working-day period and the Bailiff releases a news release twice a day detailing the new nominations received since the last news release. The nominations also appear on the Notice Board of the Royal Court. Then they are published in the Gazette Officielle together with the names of proposers and seconders.

The public questionnaire conducted by the Sub-Committee revealed that 63% of respondents thought the nomination meetings were either very valuable or fairly

valuable, while 30% thought they were either not very valuable or not at all valuable. Of States members, 76% thought the nominations were either very valuable or fairly valuable, while 21% thought they were either not very valuable or not at all valuable.

This was further confirmed by a second question asking whether the public were happy for candidates to notify the authority by post of their intention to stand, rather than hold a nomination meeting. The public was 30% in favour of this, with 56% against, and 26% of States members supported the idea, while 68% were against it.

*Accordingly, the Sub-Committee makes no recommendations for change as regards the holding of nomination meetings.*

### **Procedure at a nomination meeting (Article 20)**

The Sub-Committee discussed the procedure on the night of the nomination meetings and the requirements at the meeting. One aspect was discussed in particular which appears in Article 9 of the States of Jersey Law 2005, relating to the reading out of the declaration both of convictions and spent convictions for a number of stated offences at the nomination meeting. This requirement only exists with regard to Senators and Deputies (but not Connétables where a Criminal Records Office check is made and where the Royal Court would decide). In a number of Parishes, the candidates' nominees are requested to read out the declaration, contrary to Article 9(2) of the States of Jersey Law, which states that the person presiding at the nomination meeting shall read out the candidate's declaration. The Sub-Committee noted that the Connétables had invited the proposer to read out the above declaration to avoid the meeting becoming too disjointed; however, the Sub-Committee was of the firm opinion that the Law should be followed in this regard.

There remains strong public support for candidates continuing to make a declaration regarding any criminal convictions at the nomination meeting, with 69% of respondents in favour, echoed by 74% of States members.

### **RECOMMENDATION 14**

**The Sub-Committee recommended that those presiding at nomination meetings should take note that it is their duty under Article 9(2) of the States of Jersey Law 2005 to read out candidates' declarations of eligibility to stand and criminal convictions, either spent or unspent. (Administrative)**

The Connétables have confirmed that they will do this in future.

The Sub-Committee recalled that Article 20(4) provided that candidates for public election shall be made by the production to a nomination meeting of a document subscribed by a proposer and 9 seconders, all 10 of whom shall be persons entitled to vote for that candidate in any poll held for the election. This contrasts with Guernsey, where only 2 counter-signatures are required.

*The Sub-Committee had no recommendations to make for Article 20(4).*

*No recommendations for Article 21.*

## PART 6 – POLL

*No recommendations for Articles 22–23.*

### **Ballot Papers (Article 24)**

It was noted that the Attorney General had clarified in the 2011 election the manner in which a candidate's name should appear on the ballot paper. This was to include their family name and forenames, as required by Article 24(1)(a), and in parenthesis any family name or forename by which the candidate is commonly known and which the candidate wishes to appear on the ballot paper. This would be written in the following way. With Deputy S.S.P.A. Power of St. Brelade's name as an example –

DOOLEY-POWER, SEAN SEAMUS PATRICK AUGUSTINE (SEAN POWER)

### **Ballot papers**

The Jurats had advised that they would prefer the ballot papers to be larger so that when a stamp is put on it does not obliterate a name.

The colour coding of ballot papers for each election of Senator, Connétable or Deputy went well in 2011: there were few mixed papers. The fear was that people would take 3 papers, then only use 2, and take one away, which would have made reconciliation impossible. The staff watched the booths to make sure ballot papers were not left behind.

The Jurats and the public meeting did feel that photographs of candidates would be useful in the booths to assist the public in making their choices, especially when there were a lot of candidates. Article 26 may also need to be amended to provide for information or photographs to be displayed in the polling booth.

The Jurats also asked that the electoral roll continue to be made available in ring-binders as in 2011 so they can be split between different queues.

### **RECOMMENDATION 15**

**The Sub-Committee recommended that –**

- (a) ballot slips be larger in size; and**
- (b) photographs of candidates be placed in voting booths to assist the voter. (Administrative – amendment to Article 26 may be required)**

### **Voting at any polling station**

The Sub-Committee noted that voters in Guernsey could not vote in any polling station anywhere in the Island, despite there being only one Electoral Roll centrally administered. It was noted that the real-time technology existed and it would be possible to see if someone had voted elsewhere in the Island. One consequence of allowing people to vote anywhere in the Island would be that it would be necessary to print many more ballot papers as it would not be known where people would vote. The

meeting had not been clear on what problem Jersey might be trying to solve by allowing polling at any station.

*The Sub-Committee decided not to make a recommendation in this regard as it did not believe that the I.T. available for electoral purposes was able to facilitate this. However, the Sub-Committee felt that when electoral I.T. is replaced, it should be borne in mind.*

### **Electronic voting**

A number of members of the public had raised the issue of online voting. The Sub-Committee consider the options of (1) electronic voting in the polling station and (2) electronic voting from home. The Guernsey delegates thought that electronic voting in the polling station was a definite possibility, as the secrecy of the vote could be preserved and it was possible to ensure that undue influence was not brought to bear by another person. This might not be possible with current technology with voting online at home. The Guernsey Deputy Registrar General of Elections (Elections) had looked at experiments in the U.K. and elsewhere and there is more doubt about electronic voting as it is not secure and the voter could be influenced. However, it could equally be said that postal voting can be influenced by another person and is not necessarily secret. While the method of voting in the polling station is somewhat Victorian in nature, it is secure.

The Sub-Committee noted that Guernsey had prepared for electronic voting at a polling station in that the Law had been amended to accommodate it. Once implemented, it would be possible to see if someone had voted elsewhere in the island. It was possible that this would be used at their next elections.

### **RECOMMENDATION 16**

**The Sub-Committee recognised that in time, electronic voting would come, and recommended that the Privileges and Procedures Committee be requested to prepare a report within 12 months on real-time technology and electronic touch-screen technology to enable electronic voting at a polling station. Any amendments to IT should be flexible enough to allow for this to be added in due course without significant additional cost. No change is recommended to be made to the Law at this time.**

### **Secret ballot (Article 25)**

As part of the public consultation exercise, a small number of persons added comments, unprompted, asking for the number on the back of the ballot paper to be removed. This requirement appears in Article 24(5), and could appear to conflict with Article 25 of the Law which states that “In every public election the poll shall be by secret ballot.” While the Sub-Committee was advised that, in practice, no-one will actually try to trace back how an individual voted, the fact remains that someone could.

The U.K. Electoral Commission has issued a Fact Sheet on Ballot Secrecy which says –

“However, there are also procedures in place designed to ensure that ballot papers can be linked to individual voters after the election where fraud is alleged. Ballot papers are printed in books and both the ballot papers and the counterfoils are numbered. This means that allegations of fraud can be checked by matching the suspicious ballot paper with the counterfoil, on this the clerk in the polling station will have written the voter number as recorded on the electoral register. ... It is therefore theoretically possible for anyone with access to the ballot papers to identify who cast a particular vote. However it is an offence for anyone attending the count to try to find out how any person has voted.”

In Jersey there are both statutory and practical safeguards in place to protect the secrecy of the vote. Correspondence took place between the Deputy Judicial Greffier and the Data Protection Commissioner (DPC) in 2008 following a letter in the Jersey Evening Post and a small number of enquiries received by the Data Protection Commissioner on the subject. The references to Articles are to the Law as it was in force at October 2008 –

- “6. .... Article 25 which states that every public election shall be by secret ballot.
7. Article 32(2)(b) of the Law specifically provides however that the electoral number of the voter must be entered on the counterfoil of the ballot paper given to the voter.
  - (2) The *Autorisé* or *Adjoint* shall –
    - (a) mark off the name of the person on a copy of the electoral register .....
    - (b) **write on the counterfoil of the ballot paper the electoral number of the person”.**
8. Up to the time when the elector places his ballot paper in the ballot box the secrecy of any electors vote is literally in his own hands.
9. Once the voter has cast his vote in the polling booth the Law provides that he or she shall fold the ballot paper up before placing it in the urn.
10. Conditions of privacy in voting at the polling station are provided by law – screen compartments in to which the elector must go unaccompanied save for persons who are blind, have serious sight difficulties or who are illiterate. The *Autorisé* or a senior *Adjoint* will deal with these voters and mark the ballot paper as directed by the voter.
11. Access to the Polling Station is restricted to the *Adjoints*, assistants and to the candidates or their nominated agents and, of course, to electors who are there for the purpose of voting. When giving ballot papers to persons under this Article, the *Autorisé* or *Adjoint* is enjoined by the Law place himself or herself in such a position as not to show the numbers on the ballot papers so delivered, or on the counterfoils attached to them, to the candidates or to their

representatives. Electors can only remain at the Polling Station as long as it is necessary to cast their vote: see Article 63(4)).

12. The ballot box is sealed before the ballot commences and remains so during the ballot. The ballot boxes are opened after the poll has closed under the scrutiny of the *Autorisé* and the ballot papers are to be counted in such a way that the serial numbers contained on the reverse cannot be seen: Article 49(5).
13. The secrecy of the ballot is further ensured by provision that before the votes are counted the counterfoils of used ballot papers and the electoral register are required to be placed in sealed envelopes: Article 48(1). Only parochial officials and volunteers who are directly involved in the count, the candidates and or nominated a representative are permitted to be present during the count.
15. After the count the used and unused ballot papers, the counterfoils and the electoral list are required to be forwarded in sealed envelopes as soon as possible after the election to the Judicial Greffier who is required to retain them for six months after which they are destroyed, unless the Court otherwise orders in the event that a challenge to the result of election is brought before the Royal Court.
16. The sealed packages are stored in a secure location.
17. Article 55 provides the packages containing the used ballot papers and counterfoils shall not be opened except where the Royal Court so orders.
18. It is a criminal offence for a candidate or representative of a candidate to attempt to ascertain a number on a ballot paper or counterfoil or for any person to disclose any vote given secretly other than his or her own.”

The Sub-Committee noted that in 6 of the districts in Guernsey there are 2 polling stations, and in the West, there are 5 polling stations. Electors can vote at any polling station in their district as long as they only vote once. The administrative staff will compare the lists on the election day or the next day to make sure that no one had voted in more than on district. If plural voting is discovered, then there is a check of voters' books to eliminate alleged plural votes. (This can be an administrative error, but if anything is discovered then the police are involved.) The last time this happened was in 2004. However, the actual vote will stand as there is not a number on the ballot slip, so it would not be possible to identify the ballot paper and take it out of the vote. It is written into the Guernsey law that plural voting does not legally affect the result (even if evidence is found of plural voting and the votes were close). They have a number on the stub of a ballot book, but not on the back or front of the ballot slip issued by which a vote can be identified. The authorities would only know that a person had presented to vote, where they had voted, which ballot number they were given (as printed on the stub), but the ballot number of the stub cannot be matched up with a ballot slip given to a voter.

The Sub-Committee noted that in Guernsey, the secrecy of the vote is a fundamental issue and is considered to be more important than the risk of plural voting. While the police have been involved before in the case of plural voting, a prosecution has not been known.

**The Sub-Committee was divided on the issue of removal of the identifier on the reverse of the ballot slip, and the Privileges and Procedures Committee decided this should not be progressed at this time.**

*No recommendations for Articles 26 – 28.*

### **Supervision of polling station (Article 29)**

#### **Control of polling station and vicinity**

The Sub-Committee recalled that in elections some time ago, candidates and their supporters were able to congregate in the entranceway and inside polling stations. This had changed to save voters from ‘running the gauntlet’ of supporters on their way to vote and to ensure undue influence was not brought to bear as voters approached the polling areas. Changes had occurred over time in an effort to find a balance between the full atmosphere during voting time, with lorries, loud-speakers and flag-waving, and producing an atmosphere where all voters felt at ease.

Candidates’ supporters were now allowed to stand outside the polling station, and were not expected to speak to electors on their way in to the polling station, but could speak to them on the way out. Members of the Sub-Committee had received comments from some electors that, because of the numbers of supporters, they felt uncomfortable attending to vote. Others, however, enjoyed the election day atmosphere.

The delegation of Jurats who spoke to the Sub-Committee did not have a view on this matter, as their responsibility was limited to ensuring the complete secrecy and regularity of the vote. The Parish Secretaries felt that supporters at the polling station were part of the atmosphere of the day, but were interested to learn whether any members of the public had been discouraged from voting.

The public were consulted on whether they thought the numbers of candidates’ supporters outside polling stations in 2011 was too many, and 34% thought there were too many, 44% disagreed and 22% did not mind. While those who thought there were too many were in the minority, it is still a matter of concern that a third of voters appear to feel uncomfortable when they present themselves to vote.

This matter was discussed in some detail with the Comité des Connétables. It was noted that many voters did not wish to be confronted by a large number of supporters at polling stations, where they might feel they were being intimidated. It was agreed that there was often only a relatively small area in front of some Parish Halls, for example – mainly incorporating a car park – and that this was a factor in voters feeling that they were ‘running the gauntlet’ to access the polling station. The Connétable of St. Mary recalled that 2 marquees had been erected in her Parish for the use of Candidates’ supporters and that that arrangement had worked very well, with voters being able to approach and converse with candidates and their supporters if they so wished. It was agreed that such arrangements had not been consistent throughout the Parishes, with the Autorisés at some polling stations having instructed candidates and

supporters to move away from the door, which action was considered to have somewhat spoilt the atmosphere of the occasion. Consideration was given as to whether the number of supporters around candidates at each venue should be limited, given that some voters did find the situation outside polling stations to be intimidating. The Connétables indicated that they would welcome clear guidelines on this aspect.

The Public had considered whether they would prefer candidates' supporters to stay within a designated area away from the entrance of the polling station and 53% agreed that they would prefer this arrangement, with 19% disagreeing, and 28% not minding.

#### **RECOMMENDATION 17**

**The Sub-Committee recommended that the Judicial Greffier review the guidelines for the Autorisés relating to persons who are present in support of candidates, rather than to vote. (Administrative)**

*No recommendations for Articles 30–31.*

#### **Giving ballot paper to elector (Article 32)**

There were technically 3 elections on one day in 2011, and there was to be a separate ballot paper for each election, so as to assist reconciliation of votes. The Law provides at Article 32(2A) that every voter attending to vote has to be asked which elections they wish to vote in, and only be given the ballot slips for each election they wish to vote in. This would mean that if there were 3 elections in a particular Parish on election day (for Senator, Connétable and Deputy), the elector could ask for a ballot paper for each of the elections, or only one or two, if they chose to vote in only one or 2 of the 3 elections.

There were a number of problems experienced on the day with this procedure. The Parish secretaries advised that time did not permit a detailed explanation of the number of elections without queues building up. The Jurats confirmed that it was impracticable at peak times of day and in some instances all 3 ballot papers were simply given to each voter and as a consequence a number of blanks were put into the ballot box. Every effort was made to ensure no-one left the polling station still with a blank ballot paper which would have skewed the reconciliation.

It was noted that, in addition to elections for members of the Assembly in the future, it is possible for elections for Centenier and Procureur du Bien Public to be held on the same day.

#### **RECOMMENDATION 18**

**Growing familiarity with the system of electing 3 categories of member on one day (should this continue) and continued education of the public about the procedure, possibly with a simple leaflet to be handed out on entering the polling station, would assist to dispel confusion. The Sub-Committee recommended that this matter be kept under review by the Privileges and Procedures Committee.**

*No recommendations for Articles 33–34.*

### **Ill or disabled voters (Article 35) ('Sick votes')**

Article 35 provides for the Autorisé or the Adjoint at a polling station to take steps to receive the vote of a person who has fallen ill on election day. (This differs from the provision in Article 42(11) and (12) which allows the Judicial Greffier or his agent to attend upon an ill, disabled or illiterate elector.) This is effected by an Adjoint and a Police Officer attending on the sick person up to 5.00 p.m. on election day.

The public were asked whether they were aware that they could request a visit and cast their vote from their home if they were ill on the day. Of those who answered this question, 94% were unaware that they could request this facility.

#### **RECOMMENDATION 19**

**The Sub-Committee recommended that the provision for sick voters to be visited on election day to cast their vote should be well publicised. (Administrative)**

*N.B. See also Article 42 – Procedures for pre-poll voting.*

### **PART 7 – VOTING OTHERWISE THAN AT POLLING STATION.**

*No recommendations for Articles 37 – 38.*

#### **Persons entitled to postal vote (Article 39)**

The Sub-Committee was mindful that home visits are made by Parishes on election day to collect votes in certain circumstances, for example for the elderly, long-term sick or disabled.

In addition to the need to ensure a mechanism for remand prisoners to vote, the Sub-Committee considered that it should be possible for elderly, and long-term sick or disabled persons, to also be able to vote by post if they so chose. This would enable those who preferred not to have a visit in their homes by officers authorised by the Judicial Greffe or by Parish officials.

#### **RECOMMENDATION 20**

**The Sub-Committee recommends amendments to Article 39 to enable the following to also be able to vote by post –**

**Prisoners on remand;  
Elderly, and long-term sick or disabled persons.**

The Sub-Committee welcomes any additional recommendations for this Article.

*No recommendations for Article 39A.*

### **Judicial Greffier to publish notice of arrangements for pre-poll and postal voting (Article 40)**

The enhanced pre-poll voting arrangements introduced in 2011 were a great success, and 2,516 people took advantage of the opportunity to vote in advance. Of the public who responded to the public consultation, 16% had voted by pre-poll, and 90% of respondents voting this way were very satisfied or fairly satisfied with pre-poll voting. There were a few comments that the location was not ideal, and they would like more locations.

On a practical level, the Jurats asked the Sub-Committee to consider how pre-poll voting could be handled if it became more attractive to voters and the numbers increased. Certainly the main location would need to be more capacious and accessible for disabled with some parking nearby.

The current limitations on pre-poll voting arise because there is only one register for pre-polling, so it is not possible for 2 people from the same district to vote at the same time. The reason is that although there is one register which is stored electronically, it is not possible for more than one official at a time to use the database for voting purposes, so Excel spreadsheets are used.

#### **Pre-poll voting at Parish Halls**

The public were equally divided as to whether they would like to be able to pre-poll vote in their own Parish Hall, 46% in favour and 45% not interested in doing this. Nevertheless, 46%, almost half of those responding, clearly hoped for more geographically convenient locations.

The Jurats raised the question as to whether pre-poll voting could take place at Parish Halls. This was discussed with the Connétables, who discussed how this could be implemented. It was acknowledged that disabled access would not be possible at all Parish Halls, so perhaps certain Parish Halls would have to be selected, and that there were security issues to consider with respect to the secure storage of votes cast. It was also noted that while some would value pre-poll voting at their own Parish Halls, others enjoyed the relative anonymity of voting at another location, away from their own Parish Hall. One suggestion was made that a facility for pre-poll voting could be held at Parish Halls on one or two Saturdays before election day. The Sub-Committee recognised that this would add an alternative day for those who found it difficult to vote on a weekday, and act as a useful compromise for those who advocated weekend voting.

The Sub-Committee was mindful that those persons attending to pre-poll vote were effectively saying that they did not find it convenient to vote at the Parish Hall, therefore, in bringing an element of pre-poll voting to Parish Halls it would have to offer either extended opening hours or the opportunity to vote at the weekend to be offering something new.

The Sub-Committee bore in mind that the responsibility for pre-poll voting currently rests with the Judicial Greffier, rather than the Parishes as on election day, and unless it was possible to delegate responsibility to the Parishes for conducting pre-poll voting at the weekend, it felt that any proposals should not lead to excessive resource

implications. In addition, the Sub-Committee also remained mindful that it was difficult to attract volunteer help at weekends to support Parish staff.

On a practical level, Parish staff would have difficulty supervising pre-poll voting and ensuring appropriate secrecy of the vote alongside normal day-to-day Parish responsibilities, and so the Secretaries felt they could not support it. Furthermore, they advised that pre-poll votes and postal votes add to the burden on election day, as the Parish Secretaries advised that votes cast in this way could tie up the Autorisé and Adjoints for hours on end, taking them away disproportionately from supervising the bulk of the votes being cast in person on election day.

The Sub-Committee agreed that by having pre-poll voting on a Saturday on at least 2 occasions, it would be possible to gauge the popularity of Saturday voting without making a wholesale change. It was recognised however that additional work would need to be undertaken prior to implementation to ensure the security of pre-poll arrangements in locations across the Island, security for transporting ballot papers and the necessary IT systems.

#### **RECOMMENDATION 21**

**In order to enhance the voter experience, the Sub-Committee recommended that pre-poll voting be offered on a Saturday before election day in a town location and 2 separate out-of-town locations on at least 2 Saturdays. It is desirable for the Judicial Greffier to be able to nominate locations other than the Judicial Greffe for the purpose of pre-polling.**

#### **Notices concerning voting provisions – Gazette notices**

The Sub-Committee was not convinced that notices placed in the Jersey Gazette were especially effective, and thought that more imaginative style of adverts, as were used in 2011, should continue to be used, together with the internet, to provide advance notice of the provisions for voting.

#### **RECOMMENDATION 22**

**The Sub-Committee recommended that advance notice of the provisions made for voting (in person or by pre-poll or postal vote) be made more eye-catching, and that advertisements should be placed in the popular media. (Administrative)**

#### **Procedure for pre-poll voting (Article 42)**

##### **Sick, disabled or illiterate**

The Sub-Committee noted that this was the second way in which someone who is ill, disabled or illiterate can vote. Under Article 35, this report has discussed how a 'sick vote' can be cast on Election Day during a home visit by 2 authorised people from the polling station. The following discussion centres on the ability of the sick, disabled or illiterate to vote in advance of Election Day, i.e. cast a 'pre-poll sick vote', when they are visited in their home by a representative from the Judicial Greffe.

The Sub-Committee discussed the collection of pre-poll sick votes with the Jurats, and noted that there were 335 home visits to collect votes from the sick, disabled and illiterate in 2011. The rules had been changed in the most recent revisions to the Public Elections Law, placing a far greater burden on the Judicial Greffier and his staff, and it had been a considerable struggle to attend and collect all votes cast in this way.

This work typically begins once ballot papers have been received and the administrative arrangements for postal voting have been put into place. The Parish Secretaries had queried why sick votes collected in advance (Article 42(11)) required the attendance of one person only, while sick votes collected on election day (Article 35) required the attendance of 2 persons from the Parish. It was noted that in Guernsey, the Deputy Registrar General sends one Parish official, for example a Douzenier, to assist where an applicant is unable to sign/complete the declaration in an application for a postal vote (if they are blind for example), so collaboration between the electoral office and Parish works in that island. The Sub-Committee agreed that 'pre-poll sick votes' should be collected by 2 persons, and not one person visiting alone.

The collection of sick votes was very time-consuming for the Judicial Greffier's staff, and the Jurats had asked whether the Parish officials could provide assistance. The Connétables had confirmed that the Honorary Police already assisted in relation to the collection of pre-poll votes from the sick and elderly and that they might be able to help more. The Parishes were well equipped to deal with locating properties with obscure addresses which had been a particular problem, together with the problem of the sick person not being at home in some instances.

The Connétables advised that the parishes have volunteers who undertake home visits and collect 'sick' votes on election day, and therefore wondered whether it was necessary to offer pre-poll home visits, particularly as these volunteers may not be available during the pre-poll period.

It was noted in one instance, the sick voter did not wish a home visit, but the postal voting rules now precluded him from voting by post. He was therefore unable to cast a vote in the election. An alternative solution to reduce the administrative burden and to preserve the dignity of voters casting their vote from home might be extending the scope of postal voting, to allow voters in this category, who are able to vote without assistance, to vote in advance by another means.

### **RECOMMENDATION 23**

**The Sub-Committee recommended that the Judicial Greffe request assistance from the Parishes in connection with pre-poll home visits. No Law change is therefore required. (Administrative)**

### **Information for voters**

It was noted that Article 42(11) also allowed for the Judicial Greffier to collect the votes of elderly persons from residential retirement homes. In a number of cases, residents of homes had cast their vote before the information on candidates in the manifesto document distributed to all dwellings was available, before candidates' leaflets had been distributed, and before the candidates themselves had been able to

call upon potential voters. This problem also applied to others who had voted in advance, as the Manifesto document had been printed on lightweight glossy paper by a U.K. printer, and was only distributed on Island the week before the election, in the final week of pre-poll voting. Many of the respondents to the public questionnaire pointed out that, while this document contained a lot of useful information, it arrived far too late.

The Sub-Committee was advised that the full colour 52 page manifesto document printed in 2011 in the U.K. had been considered better value than a lower number of inserts in the local newspaper. The manifesto had been delivered to 38,000 dwellings in the Island, as opposed to a newspaper circulation of some 21,000.

However, the production of a manifesto document is complex, requiring generic information, with the receipt and inclusion of manifestos from an unknown number of candidates until nomination day. Therefore, the size of the document cannot be planned, nor the layout, as candidates have to appear in a logical sequence, and no candidate should appear to receive better presentation than another. The text and photographs have to be received very quickly to be processed, and with the best will in the world, layout and proof-reading a document of this complexity where errors cannot be entertained will take an absolute minimum of a week and possibly up to 10 days. Printing will take some time, and the Jersey Post Office is unable to deliver all the same day, but will deliver over the course of a week. On the tightest possible schedule, this process will take up to 3½ weeks. In an election period that spans only 4½ weeks, it is difficult to ensure all households receive a copy before they can pre-poll vote. This would concentrate all pre-poll voting into the final week of the election period. This would appear completely unworkable in a 4½ week election period.

Increasingly, the Internet is used, and it may be necessary to give notice that from 2018, only Internet media will be used. In 2011, the manifestos were all online within 48 hours of nomination day. However, it is thought that a significant proportion of those who vote might not have regular access to the Internet (e.g. the elderly and those living in residential homes), hence the suggestion that a document would again be produced in 2014, but from 2018, online media would be the only source of the document.

Another option would be for the States to approve legislation which requires the Jersey Post Office to deliver one addressed envelope per relevant dwelling from each election candidate in a district, as happens in the United Kingdom. In this way, all households would be entitled to receive an addressed envelope from each candidate in their district, and the onus would be on the candidate to produce leaflets or printed manifestos to deliver to the Jersey Post Office for onward distribution. There would then be no need to produce an election manifesto booklet, and the sum that might otherwise have been spent on it could be offered as a grant to the Jersey Post Office.

The Connétables have pointed out that economy could be achieved by combining the posting of the registration card and the manifesto document. One of the purposes of the registration card is to encourage those who find they are not registered to rectify this oversight. If a supplementary register is open until one week before the election, and if the manifesto document reaches households more than a week before elections, then this may assist; however, urgent action on the part of the elector would be required. Unfortunately the timing of the preparation and production of the manifesto document would mean that a registration card might be received after the

commencement of pre-poll and postal voting. This would, in any event, only be helpful in 2014, if the manifesto document is discontinued in 2018 as proposed.

The Sub-Committee was mindful that literature produced should also include some clear instructions to assist those with limited mobility or other difficulties so that voting was easier for them, either by post, pre-poll or voting on the day. This might include parking instructions, and a contact number to arrange a designated helper on the day. These could also be included in information distributed by the Parishes.

#### **RECOMMENDATION 24**

**The Sub-Committee recommends that the Privileges and Procedures Committee review the production of a manifesto document, and considers introducing an amendment to require the Jersey Post Office to deliver one addressed envelope to each elector from candidates in the district.**

**In the event that the manifesto document continues to be produced, this must be distributed earlier and contain information for those with mobility or other difficulties.**

At the public meeting it was suggested that hustings meetings should be web-streamed on the election website ([www.vote.je](http://www.vote.je)). This continues the theme of updating the method of communication to more modern, immediate forms. The Sub-Committee recalled that a few years ago in St. Mary an audio recording had been made available following a 'head-to-head' meeting between 2 candidates, and some parishioners had downloaded this and found it very useful.

Web-streaming might conceivably be achieved by way of in-house production or external production by a specialist company. It might also be appropriate to approach the professional broadcast media and establish whether either company might be willing to cover and stream on their respective websites each hustings meeting in full, perhaps in return for a proportionate subsidy. Provisional scoping work indicates that in-house production would require a budget of not less than £2,000 to produce footage of modest quality, while external production might require a budget of not less than £10,000 (based on 6 hustings meetings).

#### **RECOMMENDATION 25**

**The Sub-Committee suggested that the Privileges and Procedures Committee investigate web-streaming of hustings meetings or other head-to-head meetings in conjunction with the Comité des Connétables.**

It was observed at the public meeting that there is no substitute for candidates trying to meet as many of their prospective parishioners as possible, and that calls door-to-door remained a very powerful canvassing tool.

#### **Application to postal vote (Article 43)**

The public was asked to comment on postal voting. Only 3% of respondents had voted by post, and all were very satisfied with postal voting. The Jurats advised that 517 people voted by post as they were due to be out of the Island, and they obtained their ballot slips in good time.

Nevertheless, the issue raised above regarding the provision of information to pre-poll voters applies equally to postal voters.

#### **Procedure for postal voting (Article 44)**

The Sub-Committee was advised by Mr. Lee that in the U.K., voters could now ask for a postal vote upon registration or at any time thereafter.

#### **Declaration of identity – witness requirement**

The Sub-Committee recalled that a postal vote had to be accompanied by a declaration of identity form countersigned by a witness. There were some public concerns about the difficulty in finding a witness to visit and countersign a declaration of identity where a person lives alone, as required by Article 44(2). The Sub-Committee discussed with the States Assembly and Constitution Committee the procedure in Guernsey, and noted that only the signature of the applicant was necessary there and caused no problems.

The Chairman noted the concern of the Connétables that postal voting does not guarantee a secret vote, and the concerns of a U.K. Queen's Counsel that postal is "an open invitation to fraud". It was noted that in the U.K., anyone can request a postal vote, whereas in Jersey, currently only those who will be out of the Island on election day can vote by post, and the current recommendations extend this to remand prisoners, and to the elderly, sick or disabled as an alternative to a home visit. Given the restrictions in Jersey on the qualification for postal votes, the scope for fraud is very considerably limited.

#### **RECOMMENDATION 26**

**The Sub-Committee recommended that Article 44(2) be amended so as to remove the need for the declaration of identity form (required to accompany a postal vote) to be witnessed.**

*No recommendations for Articles 45–46A.*

#### **Name accidentally omitted from the electoral register (Article 46B)**

The Sub-Committee consulted the Jurats to find out whether many people found that their name had been omitted from the register, whether any who had presented themselves to vote was prevented from doing so. The Sub-Committee was advised there were very few administrative errors and they were rectified on Election Day. This did not mean that voters were always able to vote, but the numbers were very low. The procedure is that the necessary form is completed and the Parish staff then locate the registration form, find the error (if any), and if there was an error, the member of the public was registered and immediately able to vote. If no registration form could be found, then the person concerned could register for the next election (but was unable to vote at the current one). The number of matters dealt with in this way – St. Brelade: 1, St. Martin: 1, St. Mary: 2–3, St. Lawrence: 2, Grouville: 2, St. Saviour: 3–4, i.e. a total of 13 people.

It was noted that in Guernsey, because a card was sent to all households listing all persons registered (or no person registered, as appropriate), the incidence of persons presenting on the day without the ability to vote was very low. However, in Guernsey the electoral roll is started afresh prior to each election, so this card would be sent only in an election year. There may be merit in not sending a reminder on an annual basis, but instead doing so prior to an election for States' members or prior to a referendum which also depends upon the Public Elections Law.

A member of the Sub-Committee was invited to discuss the procedures carried out in a Parish on election day where an administrative error was claimed. The Sub-Committee noted that Deputy J.A. Martin of St. Helier had attended.

As regards the ability for voters to register on election day, it was considered that a lighter burden of proof was needed. The Sub-Committee noted that the difficulties associated with registration on election day where a name had been omitted from the register as a result of an administrative error (Article 3) was a very frustrating aspect of the current Law. As all Autorisés did not necessarily adopt the same criteria, this could give rise to the abuse of electoral staff. It was noted that training was provided to the Autorisés, together with Parish officials, in the lead-up to an election.

The Parish Secretaries had stressed the need to maintain the deadline for registration, as any relaxation of deadlines could lead to significantly more requests to register on the day which would add administrative burden at a busy time.

The Sub-Committee wished to ensure absolute clarity to make sure that there is a consistent approach to the handling of administrative error in all parishes.

#### **RECOMMENDATION 27**

**The Sub-Committee agreed that guidelines issued to the Autorisés should be reviewed so that the requirements for registration on the day of the election in the case of administrative error could be simplified to be more practicable, and above all, consistent across districts. (Administrative)**

*No amendments to Articles 46C–46D.*

#### **PART 8 – COUNT**

*No amendments to Articles 47–48.*

#### **Counting (Article 49)**

It was pleasing to note that there was general agreement between the Connétables that no significant problems had arisen on the first occasion when 3 elections had been held on the same day in 2011.

#### **Counting**

In Parishes where there is more than one polling station, the Jurats had also raised with the Sub-Committee the practice of transferring the count for the Senators and the Connétables to a central location. The counting teams for the Deputies' elections were

already in place and could continue to count the Senators and Connétables' votes, and then transfer the ballot slips together with the tally to be added to the results at the central location. The Parish Secretaries felt that the votes for the Connétables and Senators should be counted in one place, as their results related to the Parish as a whole. They felt that the sooner the polling stations get together, the better.

The Sub-Committee discussed with the Privileges and Procedures Committee a recommendation that the votes for Senator and Connétables should be counted at each polling where they are cast and the totals/ballot papers transferred to the designated central location (likely to be the Parish Hall) for the result. However, it was considered that the risks of doing so outweighed the benefits.

*No recommendation is therefore made.*

### **Secure overnight storage**

The Sub-Committee noted that while a provision had been introduced into the Law to allow for overnight secure storage in the event that the Count could not be completed, the Jurats were concerned that no policy was in place to do so. If there were 3 elections in St. Helier, it is possible that the Count would have to resume the following day. Secure storage would also be required for pre-poll voting outside St. Helier.

In Guernsey, the ballot boxes and other packages are collected by G4S and kept overnight in their vault and delivered to the Greffe the next day. The spoilt ballots are not shown to candidates.

### **RECOMMENDATION 28**

**The Sub-Committee recommended that the Autorisés, in conjunction with the Comité des Connétables, review the policy and procedures for counting, and the procedure which would be required to ensure secure storage if there is a need to stop counting and resume on another day or for pre-poll voting in other locations. (Administrative)**

### **Counting and balancing procedures**

The Parish Secretaries highlighted that there were different approaches to counting in different Parishes. It was felt better to go directly to the count, and deal with balancing (the process by which the number of ballot papers issued is tallied against the number of votes cast) coming later. This removed delays (apart from where a recount was necessary).

**In Guernsey**, the count is carried out at a central place in each district, not at a Polling Station, although it could be. All Polling Stations take their ballot boxes to a central place under the direction of the Returning Officer. The Registrar gives guidance to the Returning Officers as to the method of counting to be employed. Only Constables and Douzeniers and other parishioners who are not closely related to candidates can officiate at the count.

Following consultation with the Privileges and Procedures Committee, the Sub-Committee makes no recommendation on the sequence of counting and balancing.

## Procedures for recount

The Sub-Committee has noted disquiet over the procedures for recount. Please read this section in conjunction with Part 10, Article 57, on page 65.

In relation to the Autorisé being satisfied that the Count is completed satisfactorily before announcing the result on the day in accordance with Article 52(2)(a), he may decide to 'double-check' the count where there is a closeness in the result. This he might do under Article A47(2) (Supervision during count) – 'The Autorisé may give such reasonable directions and take such reasonable measures as are necessary ... To ensure that ... the requirements of this Part [Part 8 'Count'] are otherwise met'. Double-checking the number of votes may be loosely referred to as a 'recount', but is actually the Autorisé satisfying himself that the result is correct before making the announcement. This should be made much more clear in the Law. It may be helpful to define what constitutes a 'recount', who can order one, when it will take place, etc., so that it is clear on the face of the Law or in Regulations what the procedure is.

The Sub-Committee recalled that a recount had been ordered by the Royal Court in No. 1 District in St. Helier in 2011 following a representation from a candidate. The Court noted<sup>2</sup> that under paragraph 3.5 of the English Manual (entitled 'Managing a U.K. Parliamentary general election – Guidance for (Acting) Returning Officers') the Returning Officer is encouraged to make announcements as the process [of counting] continues, in particular as to when the adjudication of doubtful ballot papers is to be carried out. Then, before proceeding with the declaration, the Returning Officer is required to communicate the provisional results to the candidates giving them sufficient time to digest the same and it is at that point that any candidate can request a recount. The Sub-Committee further noted that in the U.K., where the Returning Officer considers that a recount is unreasonable, paragraph 5.3 of the English Manual provides that he can consider offering the candidates the opportunity to inspect the bundles of ballot papers as a means of reassuring them that the result is accurate. Should this be considered as an option in Jersey, then if the serial numbers continue to be printed on the reverse of the ballot slip, then this recounting should be done in such a way that the serial numbers are not visible.

The Sub-Committee recommended that – given that the candidate for whom a vote could have been cast in that district and any of their representatives duly appointed under Article 28 may be present during the count – the Autorisé should inform the candidates or their representatives who are present at the count of the reason for the double-checking of the result, and combined with the recommendation that spoiled votes be shown to the candidate, then it is hoped that the incidence of a candidate or their representative requesting a recount on the basis of the numerical outcome would diminish.

The Jurats considered that the candidates should be the first to learn the result. In Guernsey, it was noted that the declaration is the first thing that the candidates hear about the count. The candidates or their agent can be at the count, although very few are actually present.

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<sup>2</sup> [2011]JRC229 Elections – application for a recount of votes cast in relation to the election for Deputies in St. Helier No. 1 district.

The Royal Court, in considering the application for a recount of votes cast in relation to the election for Deputies in St. Helier No. 1 district, was of the firm opinion that there should be consultation with the candidates over the provisional results prior to an announcement being made. The Sub-Committee considers that the candidates or their representatives, when present, should be informed of the provisional result prior to the announcement. This will allow a little extra time during which they might consider requesting a recount.

On being consulted prior to announcement of the result, the Sub-Committee recommends that a candidate or his appointed representative may request a recount and the Autorisé **may** authorise a recount if he/she is of the opinion that the circumstances would justify a recount. (This coincides with the opinion of the Court that the decision as to whether there should be a recount is for the Autorisé alone.) If the Autorisé agrees to a recount, it shall proceed in accordance with Article 49, which may mean that the recount takes place on another day.

The Court stated “All of this pre-supposes the co-operation of the candidates or their representatives. If they or their representatives do not make themselves available to the Autorisé to be consulted over the provisional results, they can hardly be seen to complain if the result, when announced, is close. Should candidates or their representatives, who are consulted over the provisional results, fail or decline to ask for a recount where the result is close, then it is most unlikely that the Court would subsequently entertain an application for a recount on that ground.” Where a candidate or his appointed representative is not present for the count, then the Sub-Committee believes that they forfeit the right to request a recount on the basis of the numerical outcome.

The Sub-Committee discussed with its Guernsey counterparts the system they operate for recounts. Once the Douzeniers feel that there is a fair result, the ballot slips are bundled up. At his discretion if the vote is very close, there can be a complete recount or just a recount for 2 people if only 2 are affected by a close result. A recount might happen after the declaration of the result. This is set out in the Reform (Guernsey) Law 1948, as amended. If the difference between being elected and not being elected is less than 2%, a candidate can demand a recount within 24 hours. The Guernsey Law states as follows –

“41. If the total of the votes cast for any successful candidate does not exceed by more than two per centum of the total number of persons voting in the District concerned the total of the votes cast for any unsuccessful candidate, such unsuccessful candidate may, by notice in writing delivered to the [Presiding Officer] of the States not later than twenty-four hours after the public declaration of the poll by the Returning Officer, demand a recount, and such recount shall be carried out in the Royal Court building[, or in such other place as the [Presiding Officer] of the States may direct,] as soon as practicable thereafter by independent scrutineers appointed by the [Presiding Officer] of the States. The candidate demanding the recount and any other candidate at that election for that District may be present during the recount, and such recount shall be final and conclusive as to the result of the poll in respect of that District. On completion of the recount, the scrutineers shall report the result of the same to the [Presiding Officer] of the States, who shall publish such result by causing a notice to be posted in the vestibule of the Royal Court.”

In 2012 there were 2 recounts, one of them in the Vale where there was a 58 vote margin, and therefore it was not likely that the outcome was inaccurate, and in another district where there was only 3 votes' difference, and the result could have changed.

A recount in Guernsey is undertaken in a different way to the usual count. A scrutineer is appointed by the Bailiff, normally a Jurat who was not involved in the election, and a Law Officer, and civil servants actually carry out the recount. Given that the candidate only has 24 hours in which to ask for a recount, this will normally take place by the Friday after the Wednesday elections. There is a need for speed because the Guernsey members are sworn in quite quickly and nominations for Chief Minister are already opening. The candidates can be present for a recount. It is necessary to recount the whole election not just the 2 persons involved, and there is always the risk that an entirely new order could, in theory, result.

In order to offer guidance to the Returning Officers, the Sub-Committee considers that where the result shows that there are 10 votes or fewer between 2 or more candidates, then it would not be unreasonable to request a recount, and that a request for a recount should be made on the same day as the count unless there are extenuating circumstances. Generally speaking it would be expected that a request for a recount would be made immediately after the result is announced. However, the Privileges and Procedures Committee expressed the concern that votes are placed in bundles of 25, and it was theoretically possible for a bundle of 25 to be placed in the incorrect pile, so distorting the result.

The Sub-Committee considered the procedure for recounts, and agreed that greater clarity would be beneficial.

The Sub-Committee reviewed the following issues relating to recounts –

- (a) **A provision is included to make crystal clear the Autorisé's ability to count the votes again in order to double-check the result before making an announcement;**

When the matter was before the Court, H.M. Attorney General had not been able to ascertain whether there was any authority in Jersey law as to when the Autorisé should exercise his discretion to order a recount. The guidance given in Part E of the Electoral Commission's 2010 General Elections Returning Officers Manual indicated that the Returning Officer has discretion as to whether to order a recount, and he/she should only do so where the result is "very close".

The Autorisé in Jersey may order a recount at his discretion if he considers there is good reason for doing so. This may happen before the result is announced and can be interpreted as a form of 'double-check' of the count. The Jurat's Manual for Public Elections (under review) makes it clear that –

'10.37 If the Returning Officer is then satisfied as to the result he may then declare it. Any question of the justification for a "recount" is solely a matter for the Returning Officer who should not be influenced by "demands" for one.'

In Guernsey, once the Douzeniers feel that there is a fair result, the ballot slips are bundled up. At his discretion if the vote is very close, there can be a complete recount or just a recount for 2 people if only 2 are affected by a close result. A recount might

happen after the declaration of the result. This is set out in the Reform (Guernsey) Law 1948, as amended. If the difference between being elected and not being elected is less than 2%, a candidate can demand a recount within 24 hours.

In the case of the Le Claire recount, the Royal Court stated –

“37. In relation to the closeness of the votes, we wish to make it clear that this factor on its own would not have been sufficient in our view to justify our ordering a recount. The Autorisé clearly did not consider the vote to be sufficiently close to justify a recount and the members of this Court, who themselves have considerable experience of acting as Autorisé, would not have been inclined to question his decision. There is no definition of what is or is not close and it is a matter of judgement on the particular facts. It will depend we suggest on how close the votes are in relation to the total number of votes cast and the assessment of the Autorisé as to the process and the accuracy of the results.”

The Sub-Committee has recommended that guidance be given to the Returning Officer as to matters he might take into account when considering whether or not to order a recount. This might include guidance on the difference between 2 votes that are close, so that there is a recognised point at which a recount might be ordered by the Autorisé.

**(b) Invalid ballot papers (Article 51)**

In accordance with Article 49(3) of the Public Elections (Jersey) Law 2002, the count shall be carried out in the presence of any candidates for whom a vote could have been cast in that electoral district and who wish to be present at the count, and any of their representatives duly appointed under Article 28 that wish to be present at the count. However, while the decision of the Autorisé shall be final as to every question as to the validity of a disputed ballot paper (Article 52(2)), he is not required to show disputed ballot papers to candidates. It is understood that in some Parishes, spoilt votes have been shown to candidates in a close vote, while in others this has not occurred.

The Sub-Committee believes there is merit in showing spoilt votes to candidates in the event of a close vote, as this may, in conjunction with the opportunity to observe the count, serve to avoid a recount from being called for. The PPC supports this view and requested action be taken at an administrative level, and the Guidance notes to the Autorisés be amended accordingly.

**(c) Announcement of provisional result to candidates**

The Jurats considered that the candidates should be the first to learn the result as happens in the U.K. In Guernsey, candidates were not notified before the announcement is made. The candidates or their agent can be at the count although very few are actually present.

The Connétables have raised the likelihood of results being broadcast by candidates or their representatives using social media before the Autorisé has formally announced the result. While this is undesirable, it is possible that there may not be a means of preventing it. This had occurred in 2011 and in fact had led to a successful candidate being erroneously advised through social media that they had not been successful and they did not then attend the declaration of results. Quite clearly, the only reliable

method of obtaining the correct result is to attend the declaration of results by the Autorisé.

The Royal Court, in considering the application for a recount of votes cast in relation to the election for deputies in St. Helier No. 1 district, agreed that there should be consultation with the candidates over the provisional results prior to an announcement being made. The Sub-Committee considers that the candidates or their representatives, when present, should be informed of the provisional result prior to the formal announcement. This will allow a little extra time during which they might consider requesting a recount.

The Sub-Committee considered that it might be helpful to advise the candidates of the result prior to the public announcement. This would put a candidate on notice of any closeness in the vote and prompt him or her to seek reassurance from the Autorisé as to the count and to consider what action, if any, they would wish him to consider.

**(d) Candidate's right to request recount**

The Sub-Committee noted that a candidate does not have the right to request a recount unless he makes an application to the Royal Court. This procedure is unwieldy, and for the strict purpose of checking the result of the count, possibly unlawful.

In considering the Le Claire Judgment, the Court stated –

“We concluded that Deputy Le Claire had raised issues as to the process sufficient to persuade us that there was a real dispute justifying the ordering of a recount. In doing so we took into account the following in particular –

- (i) His alleged exclusion from the count or part of it and the alleged lack of communication over the provisional results giving him no real opportunity of asking for a recount.
- (ii) The closeness of the votes between him and Deputy Martin.
- (iii) The fact that the application had been brought without delay and in time for a recount to be undertaken before the successful candidates took their oaths.”

In order to remove delay, and to provide a candidate with a right to a recount in certain circumstances, the Sub-Committee agreed that, subject to guidance on the difference between two votes that are close as proposed in (a) above, the Law should be amended to provide that a candidate could request a recount. The Autorisé should be bound to listen to the arguments and consider the request, before [exercising his discretion to order a recount] [ordering a recount].

The Sub-Committee was minded to recommend that where the result reveals a close vote between 2 candidates, the candidate or his/her duly appointed representative may request a recount within 24 hours of the announcement of the result, providing that they or their representative was present for the count. (The recount may not necessarily be able to be executed the same day.)

## RECOMMENDATION 29

The Sub-Committee recommended the following amendments to the procedures for recounts (administrative), with amendments to the Law if required –

- (a) that a provision is included to make crystal-clear the Autorisé's ability to count the votes again in order to double-check the result before making an announcement;
- (b) that (as recommended by the Royal Court) the spoilt votes are shown to the candidate in the event of a close result;
- (c) that the Autorisé should inform the candidates or their appointed representatives who are present on the provisional result of the count prior to it being formally announced;
- (d) that where the result reveals a close vote between 2 candidates, the candidate or his/her duly appointed representative may demand a recount within 24 hours of the announcement of the result, providing that they or their representative was present for the count. (The recount may not necessarily be able to be executed the same day.)

## STATISTICAL RESEARCH

The Statistics Unit was invited to research and comment on the issue of recounts and the point at which they should reasonably be triggered. The advice received was as follows –

- Guernsey Reform Law 1948 states “If the total of the votes cast for any successful candidate does not exceed by more than two per centum of the total number of persons voting in the District concerned the total of the votes cast for any unsuccessful candidate, such unsuccessful candidate may, by notice in writing delivered to the Presiding Officer of the States not later than twenty-four hours after the public declaration of the poll by the Returning Officer, demand a recount”.
- This was the only U.K.-based figure the Statistics Unit could find. In all English, Scottish and Irish legislation found, the Recording/Returning Officer has the authority to call for a recount at their discretion and any candidate can ask for a recount but the RO has the final say as to whether a recount is conducted.
- The 2012 Mayoral and London Assembly Elections, Report of the London Assembly's Election Review Working Group, November 2012 has stated the need to look into the process of a recount of the Mayoral election if the results are close enough to warrant one – the decision is due in 2016.
- In America, Florida will recount if the difference between 2 candidates is less than 0.5% of the total number of votes cast, whereas in Colorado a recount

occurs if the difference between 2 candidates is less than 0.5% of the top candidates votes.

- These were the only places the Statistics Unit found that had a specified percentage difference in their legislation, everywhere else it looked allowed the Returning Officer to use their discretion and for candidates to be able to request a recount.
- If one were to specify a percentage, there are a number of ways of calculating it –
  - The difference between 2 candidates, as a percentage of all votes cast in that area
  - The difference between 2 candidates, as a percentage of the votes for the top candidate
  - The difference between 2 candidates, as a percentage of the eligible electorate in that area
  - If more than one position is available in an area, then the difference between the bottom winner and the top loser, as a percentage of the bottom winner is also possible.

Having reviewed figures provided by the Statistics Unit on various calculations of percentage differences in the Senatorial Election of 2011, as shown in Appendix 2, the Sub-Committee decided to recommend that it would be appropriate to have the ability to demand a recount if the difference between 2 votes is 1% or less of the total number of votes cast.

### **RECOMMENDATION 30**

**The Sub-Committee recommended that it would be appropriate to have the ability to demand a recount if the difference between 2 votes is 1% or less of the total number of votes cast.**

### **Return (Article 52)**

The Sub-Committee noted that the Return (formerly known as the ‘Procès verbal’) which was completed at the end of the Count is complex and difficult to complete. The Parish Secretaries requested that it be made much simpler and more comprehensible. After 2 very long days when both the Jurat and the staff were exhausted, the complexity of the form was overwhelming.

### **RECOMMENDATION 31**

**The Sub-Committee recommended that the Return be revised so as to make it simpler and more comprehensible. (Royal Court/Administrative)**

## **PART 9 – AFTER RESULT OBTAINED**

*No amendments to Articles 53–56. (Article 54 now blank)*

## **Part 10 – DISPUTED ELECTIONS**

### **Application to Royal Court (Article 57)**

The Sub-Committee recalled that in determining the request for a recount in No. 1 District in St. Helier in 2011, the Royal Court considered carefully the procedure for asking for a recount and the grounds upon which such a request could be granted. The Sub-Committee noted that the Court stated –

“We agree with the Attorney General that Articles 57, 58 and 59 should be read in conjunction with each other. As a matter of construction Article 59 does not stand alone but is concerned with public election disputes brought under Article 57 which require for their determination that the sealed packages containing the ballot papers (both valid and invalid) and the counterfoils be opened; setting out the various cases where this can be done in paragraphs (1), (2) and (3) (and then re-sealed under paragraph (4)), but there must first be a disputed public election. There are a wide number of circumstances in which an election may be disputed ranging for example from allegations of making inducements or threats, to allegations of interference with postal or pre-poll voting, misconduct inside the polling station or interference in the poll, to allegations of voting without right and to allegations concerning the validity of the ballot papers and of the count itself. If the dispute relates to the count or to the ballot papers then Article 59 empowers the Court to have the packages opened. We further agree that before the Royal Court can exercise its powers under Article 59, it must first be satisfied that there is a real dispute under Article 57.”

In the Le Claire judgment, the following points are made –

#### **“59 Examination of papers**

- (1) If the count is disputed, or the decision of the Autorisé as to a disputed ballot paper is disputed, the Royal Court may order that the packages containing the relevant used ballot papers (both valid and invalid) be opened.
- (2) If the validity of the ballot papers is disputed, the Royal court may order that the parties may examine the relevant used ballot papers (both valid and invalid) at the Judicial Greffe.
- (3) If the Royal Court upholds an objection to a vote, the packages containing the relevant ballot papers and their counterfoils may be opened and, if so, the relevant ballot paper and its counterfoil shall be taken out and kept apart.
- (4) In all cases referred to in this Article, the Royal Court shall cause the packages, if opened, to be re-sealed as soon as the examination which made their opening necessary has been completed.”

12. The Attorney General, whose submissions were made as Partie Publique to assist the Court, submitted that there were 2 approaches to these provisions. The first is to treat all 3 Articles as to be read

together. Accordingly, the application would be considered (as it states) as an application under Article 57 disputing the election. Alternatively, Articles 57 and 58 would be considered to apply to disputed elections whereas Article 59(1) applies to a disputed count. If that were so then the application would be best considered as made on the basis that the count was disputed. This is relevant only when considering what procedure might apply and whether the Court need follow the requirements of Article 58.

13. The better view, in the opinion of the Attorney General, was that the 3 Articles should be read together and a disputed count should be seen as a form of disputed election. If Article 59(1) should however be read as separate from the preceding Articles, then he submitted that it was clear from its terms that the Court had a discretion whether or not to order the packages to be re-opened (presumably, although the Law is silent, for the purposes of a recount).
14. What is required, argued the Attorney General, is that the Court should first satisfy itself that there was a sufficient basis for it to exercise its jurisdiction. In other words, it must be satisfied that there is a real dispute over the outcome of the election under Article 57 or, alternatively, if Article 59 is viewed as separate, that there is a proper basis to order the packages to be opened for a recount. There must be a “good reason” to do so.
15. In the view of the Attorney General, there was a public interest in ensuring the result in an election is correct and reflects the will of the electorate but at the same time it is equally clear that no candidate has a right to demand a recount and that no recount should be ordered unless there is a sufficient basis for doing so. If not, then any election would be susceptible to a recount on the whim of a candidate or “any person” for a period of 12 months.”

The question which has not been clear is whether the term ‘disputed election’ refers to the process or procedure of counting, for example where there was considered to be a flaw in the counting process or some other irregularity, or whether it can also encompass the fact that there was a close vote between 2 candidates. Ordinarily, one would expect the Royal Court to become involved where it is required to rule on a point of Law or procedure set out in a Law, rather than simply ask that votes be recounted. The above ruling shows that the Court has accepted that a “disputed count” should be seen as a “disputed election”.

It may therefore follow that the Court will be approached again in the future to order a recount in the event of a close vote. This might be avoided if the recommendation in (d) above is approved, although the period during which a recount may be requested, at 24 hours, is very short. The question is whether Articles 57, 58 and 59 of the Law should be reviewed to provide more clarity, and what guidance the Committee would wish to give.

## **RECOMMENDATION 32**

**The Sub-Committee recommended that the provisions relating to a recount on the basis of a disputed election should make clear the circumstances in which a recount may be requested of the Royal Court at this stage.**

*No amendments to Articles 58–61.*

## **PART 11 – OFFENCES**

*No amendments to Articles 62–68.*

## **PART 12 – MISCELLANEOUS**

*No amendments to Articles 69–74.*

## **STATES OF JERSEY LAW 2005 – RECOMMENDATIONS FOR AMENDMENT**

The Sub-Committee is mindful that the States of Jersey Law 2005 lays down requirements for candidates for the office of Senator and Deputy, but not for the office of Connétable. The Connétables sit in the Assembly by virtue of their office (Article 2, States of Jersey Law 2005).

The position of the Connétables appears in the Code of 1771, and the Royal Court by custom and practice rules on matters of discipline for the Connétables. The requirement for Connétables to attend the States is enshrined in their Oath of Office set out in the Code of 1771, The relevant section reads as follows “assistant aux Etats lorsque vous en serez requis, et de [tout ce], promettez faire votre loyal devoir, sur votre conscience.” i.e. “attending the States whenever required to do so [all of] which you promise as your loyal duty, on your conscience”. The other duties of the Connétables relate to their policing role and their guardianship of the ‘bien public’ of the Parish.

### **Qualification for election as Senator or Deputy (Article 7)**

The Sub-Committee had noted there was a discrepancy between eligibility to register to vote and eligibility to stand as a candidate in the election under Article 7 of the States of Jersey Law. While there is no citizenship requirement restricting entitlement to be registered to vote, in Article 7(1)(b) of the States of Jersey Law 2005 in order to qualify for election as a Senator or Deputy a candidate has to be a British Citizen.

In the event that a change in the Law is adopted, then the Oath of Office may require change because it may be inappropriate for foreign nationals to ‘bear true allegiance to Her Majesty The Queen’. The Oath currently reads –

#### **“FORM OF OATH TO BE TAKEN BY SENATORS AND DEPUTIES**

You swear and promise before God that you will well and faithfully discharge the duties of (Senator) (Deputy); that you will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to Law; that you will uphold and maintain the laws, privileges, liberties and franchises of Jersey, opposing whomsoever may wish to infringe the same; that you will attend the meetings of the States whenever you are called upon to do so; and generally that you will fulfil all the duties imposed upon you by virtue of the said office. All of which you promise to do on your conscience.”

In most other jurisdictions there is a nationality requirement for candidates for national parliaments, for example in the United Kingdom and in France. However, as voters of all nationalities are now allowed to vote in Jersey, subject only to a residence requirement, the Sub-Committee decided to test the Assembly’s view in relation to elected members.

Interestingly, there is no citizenship requirement for the Connétables, and a person of any nationality can seek election in this role.

After consultation with the Privileges and Procedures Committee, it was agreed that the provisions relating to standing as a candidate should mirror those in relation to electors, namely that there should be no nationality requirement, and the residence requirement should be the same as in Article 5 of the Public Elections Law.

### **RECOMMENDATION 33**

**The Sub-Committee decided to recommend that the States of Jersey Law be amended to provide that there should be no citizenship requirement to stand as a candidate for Senator or Deputy for the States and that the residence requirement should mirror that in Article 5(1)(c) of the Public Elections (Jersey) Law 2002. In the event that this is adopted, the Oath of office would also require review.**

#### **Criminal records check**

The Parish Secretaries advised that the Connétables are required to undergo a Police check before election. This check is undertaken locally by the States of Jersey Police and involves a check of criminal convictions and local police intelligence. (It is sometimes referred to as a 'modified' check as it is not the full police check carried out for officers of the States of Jersey Police or certain legal departments.) The Sub-Committee considered whether there should be a Police check for Senators and Deputies. If so, this would require an amendment to the States of Jersey Law 2005.

There are a number of issues, and the Privileges and Procedures Committee should decide what kind of check they consider might be necessary, if any, and a starting point would be a review Articles 8 and 9 of the States of Jersey Law 2005 to determine whether these Articles remain relevant in today's world and whether they cover all areas which are considered necessary. (For example, Article 9(1)(c)(vi) relating to sodomy is out of date and would conflict with the U.K. Protection of Freedoms Act, and there might perhaps be an argument for including an Article mirroring 9(1)(c)(vii) regarding vulnerable adults.) The Police checks for Connétables are carried out on the basis that they are exempt from the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002. That is to say, all convictions have to be disclosed and none will be considered as 'spent'. The reason for this is that the Royal Court, which has oversight of Connétables' appointments, must satisfy itself that the Connétable is a suitable person to exercise that office given its policing component before he or she is allowed to be sworn in to that rôle. It is a matter for consideration whether any proposed police checks for States members who are not Connétables would need to be as stringent.

It must be recognised that checks that could be carried out would only reveal criminal convictions, but would not reveal where someone has been brought in under suspicion of unlawful activity but no prosecution followed.

Further issues relate to the practicality of carrying out approximately 100 police checks in a small window of time. The Law would need to place an onus on candidates to engage with the States of Jersey Police in this matter, and to deliver to the Police a declaration of convictions, etc. for checking. The earlier this occurs the better, and requires about 4 weeks' work. Given that the Sub-Committee recommends that the election period should last no longer than 4½ weeks, this process will need to begin early. If this work began 2 weeks before nomination day (or even sooner if someone knows well in advance, and was able to continue until 2 weeks after

nomination day (which might conflict with pre-poll and postal voting), then it might be practicable.

Where candidates have arrived recently in the Island, from the U.K. as well as elsewhere, it may be necessary for the candidates to provide details of their prior addresses up to 5 years before the nomination date. There can be timing issues with consulting other Police Forces – the Metropolitan Police for example, can have as many as 100,000 police checks underway at any one time. The candidates would also need to provide consent under data protection legislation to the police to enable them to undertake these checks.

In the event that the Committee decides to recommend that the nationality requirement in Article 7(1)(b) of the States of Jersey Law 2005 be removed, to enable non-British citizens to stand for election, then the checks would be further complicated by the possible need to look to other countries for details of criminal convictions under a different legislative régime.

This may be a new departure, as the Sub-Committee is informed that Police checks into Members of Parliament does not take place in the United Kingdom.

The Sub-Committee remains concerned that the declarations made by candidates are not checked, and are not called into question unless a member of the public raises the declaration as an issue. The Sub-Committee has been unable to resolve the difficulty that might be presented by carrying out a check on a non-British candidate in a different way, which would give rise to a two-tier system.

**No solution has emerged to the concerns the Sub-Committee has, and accordingly no recommendations are made at this time.**

### **States of Jersey Law (Article 9)**

#### **Procedure at a nomination meeting (Article 20 of the Public Elections Law)**

The Sub-Committee discussed the procedure on the night of the nomination meetings and the requirement. One aspect was discussed in particular which appears in Article 9 of the States of Jersey Law 2005, relating to the reading out of the declaration both of convictions and spent convictions for a number of stated offences at the nomination meeting. This requirement exists with regard to Senators and Deputies (but not Connétables where a Criminal Records Office check is made and where the Royal Court would decide). In a number of Parishes, the candidates' nominees are requested to read out the declaration, contrary to Article 9(2) of the States of Jersey Law which states that the person presiding at the nomination meeting shall read out the candidate's declaration.

There remains strong public support for candidates continuing to make a declaration regarding any criminal convictions at the nomination meeting, with 69% of respondents in favour, echoed by 74% of States members.

### **Meetings of the States Assembly prior to the election (States of Jersey Law 2005)**

The Sub-Committee considered whether the States Assembly should continue to meet in the period just before an election for States members, and reformed after the election, and consulted the public on this specific question and on how the States function in the election period at present.

The Public were asked whether –

- (a) there should be restrictions on what Ministers and States members can do during the election period. 54% of the public believed that there should be restrictions, with 22% voting against and 24% not expressing a preference. Therefore, Ministers should not continue to be allowed to promote new policies, and other States members should not lodge propositions and ask questions in the run-up to elections;
- (b) the ‘old’ States members should continue to meet as an Assembly for a time after elections have taken place and new members have been elected. 63% felt that this should not continue, with 34% happy for the current procedure to continue and 1% not expressing a preference;
- (c) the States should not meet during the election period. 56% agreed that they should not meet, with 33% voting against this proposal and 11% not expressing a preference.

It may be necessary to include in Article 53 a suitable delay between the count, and any possible recount, and the day for swearing-in.

### **RECOMMENDATION 34**

**The Sub-Committee recommended that the States of Jersey Law 2005 should be amended to provide that –**

- (a) the States do not meet after nominations are announced, save that the Presiding Officer may call a meeting of the States for either emergency or ceremonial reasons;**
- (b) no new policies should be formulated or promoted during the election period;**
- (c) once an election has been called no matters can be approved by the ‘old’ States members, save that a matter relating to an emergency may be determined;**
- (d) new States members should sit in the States Assembly as soon as they have been elected, and the swearing-in procedure should take place more swiftly to accommodate this, subject to allowing sufficient time for recounts, and time for preparation for the election of a Chief Minister (as recommended by the Machinery of Government Review Sub-Committee).**

## FINANCIAL AND MANPOWER IMPLICATIONS

Recommendation Number	Summary	Note	Cost	Cost borne by
1	Registration – sample canvassing, once per electoral cycle		<b>£2,500</b>	PPC
2	Advance registration		N/A	
3	Parish Secretary to maintain register	In practice happens now	N/A	
4	Use of the Names and Addresses Register for electoral registration	Feasibility study	<b>£5,000</b>	PPC
5	Check register		N/A	Parishes
6	Online sick/postal vote	ISD to provide	<ul style="list-style-type: none"> <li>• <b>£8,800–£13,200</b> for contract staff to design the form and process.</li> <li>• To integrate the Electoral Roll system with Digital IN project – <b>£10,000–£20,000</b></li> </ul>	States
7	Supplementary register		Administrative time	Parishes
8	Registration notification card	This replaces the 2nd reminder that was used pre-2008		Parishes
9	Registration form – re-design	Underway		Parishes
10	Awareness-raising in election year		<b>£55,000 every 4 years</b> (current expenditure. Previously every 3 years)	PPC

<b>Recommendation Number</b>	<b>Summary</b>	<b>Note</b>	<b>Cost</b>	<b>Cost borne by</b>
11	Improvement of IT for elections and street order list			
12	Increase of States reimbursement to Parishes	<i>P.64/2013 recommends reimbursement of all costs associated with Deputies' elections</i>	<i>P.64/2013 to be debated 16th July 2013</i>	States
13	Election period revised to 4½ weeks	This simply reinstates the period taken pre-2011	N/A	
14	Nomination meeting – procedure		N/A	
15(a)	Ballot slips be larger in size	Local provider has confirmed	No additional cost	N/A
15(b)	Candidates' photographs in booths	Assume photographs for each separate district supplied by PPC from photos supplied by candidates for the manifesto booklet. Say 250 printing cost and distribution and 250 staff	<b>Say £500</b>	PPC
16	Electronic voting – feasibility	Review real-time technology and electronic touch-screen technology to enable electronic voting at a polling station	Information requested	PPC
17	Autorisé guide to be reviewed		N/C	Judicial Greffe
18	Keep education materials under review		N/A	PPC
19, 22	Publicity more eye-catching	This excludes cost of radio/TV adverts	7,500–11,000 <b>Say £10,000</b>	Judicial Greffe

<b>Recommendation Number</b>	<b>Summary</b>	<b>Note</b>	<b>Cost</b>	<b>Cost borne by</b>
20	Postal votes – enable additional groups		Negligible	Judicial Greffe
21	Pre-poll – pre-poll voting on a Saturday	Based on: 6 temporary staff , caretaker and hall hire X 3 Saturdays Plus time to liaise with venues and arrange honorary police	<b>Say £10,000</b>	Judicial Greffe
23	Pre-poll visits	Judicial Greffe request assistance from the Parishes	N/A May increase efficiency	JG/ Parishes
24	Manifesto – delivery	Introduce by law JerseyPost responsibility to deliver election candidates’ material to all residential addresses	There would remain a requirement for PPC to provide information to the public on why, how, where and when to vote. (Candidates to focus on ‘for whom’) Potential saving on manifesto document – £17,000	PPC
25	Web-streaming of hustings meetings or other head-to-head meetings		<ul style="list-style-type: none"> <li>• In-house production – <b>£2,000</b> to produce footage of modest quality</li> <li>• External production – not less than <b>£10,000</b> (based on 6 hustings meetings)</li> </ul>	PPC

<b>Recommendation Number</b>	<b>Summary</b>	<b>Note</b>	<b>Cost</b>	<b>Cost borne by</b>
26	Witness to declaration form – remove requirement		N/A	
27	Registration – review Autorisé’s procedures	For review of administrative error	Objective – to simplify N/A	Judicial Greffe
28	Counting procedures – Secure storage	Local provider’s estimate	<b>£1,300</b> (as at 2013)	Judicial Greffe
29	Recounts – review of procedures		N/A	Autorisés, Parishes, Judicial Greffe
30	Recount – 1% margin			
31	Return to be made to Royal Court – revise		N/A	Judicial Greffe
32	Recount procedures	Make clear the circumstances in which a recount may be requested of the Royal Court at this stage.	N/A	Royal Court
33	No citizenship requirement to stand as a candidate for Senator or Deputy 2002	The residence requirement should mirror that in Article 5(1)(c) of the Public Elections (Jersey) Law	N/A	PPC
34	Dissolution of States at end of term	Revised procedures	N/A	PPC

<p><b>TOTAL COSTS</b></p> <p>One-off set-up</p> <p>Per general election</p>			<p>£23,800–£38,200</p> <ul style="list-style-type: none"> <li>• £2,500 new</li> <li>• £55,000 existing; less £17,000 on manifesto booklet if the Law is changed on election leaflet delivery</li> <li>• £2,000–£10,000 web-streaming of hustings</li> </ul> <p>Add Law drafting time</p>	
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**Background Information – Documents consulted**

**Public Elections Review 2012**

Electoral Commission Fact Sheet on Ballot Secrecy

Jersey Legal System and Constitutional Law – Institute of Law Jersey

Managing a U.K. Parliamentary General Election – Guidance for Returning Officers

Public Elections (Jersey) Regulations 2002 – Revised Edition 01-01-10

Public Elections Working Party Report (R.94/2010)

Reform (Guernsey) Law 1948 (Consolidated Text Incorporating 2003 Law)

Registration of political parties – use of party logo on ballot papers

Single Transferable Vote – How to conduct an election

**Electoral Registers**

Dissertation: Electoral Registration and Turnout in Jersey by Danielle Shenk

Electoral Commission: Research on Eligible Voters

Electronic Registration: Electoral Roll falls short of target

Eligible Population Registration (2011 election census figures)

Great Britain's Electoral Registers 2011

Guernsey: Electoral Roll media guidance pack

Guernsey: Electoral Roll final figures

Jersey Pre-poll, Postal and Home Visit Figures 2011

Registration: Use of Name and Address Register

Review of Voter Registration for Election 2011 Report

The Completeness and Accuracy of Electoral Registers in Great Britain (March 2010)

The Electoral Roll: Proposed Amendments of Reform (Guernsey) Law 1948

Voter figures and turnout 2008–2011 (Jersey)

Electoral Registration: Link to Population Register (P68/2007): PPC

## **Guernsey Election Information**

Guernsey Election 2012 – Arrangements

Guernsey Elections – General Information

## **Jurats' Manual**

Jurats' Manual for Public Election

Autorisé Aide Memoire

Detailed Guidance Notes

## **Voting Recounts**

P.V.F. Le Claire v. H.M. A.G. Judgement – Vote recount

Submission of H.M. A.G. to Royal Court re recounts

U.K. Guidance for Returning Officers (Recounts)

## **Voting Rights For Prisoners**

B. Millar, Governor, H.M. Prison La Moye – Prisoners' disqualification from voting

BBC News – Prisoners will not get the vote says David Cameron

BBC News – Q&A U.K. Prisoners' right to vote

BBC News – U.K. obliged to allow some prisoners to vote

European Court of Human Rights – Rulings re prisoners' voting rights

Prisoners' Voting – House of Commons Hansard Debates 10-02-11

Prisoners' Voting Rights – Parliament Briefing Note September 2011

## **Consultation**

### **Public Elections Review 2012**

D. Wimberley Comments re Electoral Commission v.3

D. Wimberley Memorandum to PPC

D. Wimberley Proportionality Figures Addendum to P.15 circulated in the States Chamber

Judicial Greffe re Public Elections Law Review

Questionnaire Summary and responses

## APPENDIX 2

**Workings provided by the Statistics Unit on percentage differentials between results, such as to trigger a potential recount. Such percentage differentials can be calculated in a number of different ways –**

- (a) The difference between 2 candidates, as a percentage of all votes cast in that area.
- (b) The difference between 2 candidates, as a percentage of the votes for the top candidate.
- (c) The difference between 2 candidates, as a percentage of the eligible electorate in that area.
- (d) If more than one position is available in an area, then the difference between the bottom winner and the top loser, as a percentage of the bottom winner is also possible.

**2011 Senatorial Election**

<b>SENATORS ELECTION</b>	<b>2011</b>	<b>2011</b>	<b>2011</b>	<b>2011</b>
	<b>Electorate</b>	<b>Number voting</b>	<b>Spoilt papers</b>	<b>% poll</b>

**TOTAL/  
AVERAGE**      **61,987**      **28,212**      **133**      **45.5**

	<b>Votes</b>	<b>% of voters</b>	<b>% of electorate</b>	<b>Difference to next above</b>	<b>% difference voters</b>	<b>% difference electorate</b>	<b>% difference top winner</b>	<b>Difference to top winner</b>	<b>% difference voters</b>	<b>% difference electorate</b>	<b>% difference top winner</b>	<b>Difference to bottom winner</b>	<b>% difference voters</b>	<b>% difference electorate</b>	<b>% difference top winner</b>
Bailhache	17,538	62%	28%												
Gorst	15,614	55%	25%	1,924	7%	3%	11%	1,924	7%	3%	11%				
Le Gresley	14,981	53%	24%	633	2%	1%	4%	2,557	9%	4%	15%				
Farnham	11,095	39%	18%	3,886	14%	6%	22%	6,443	23%	10%	37%				
Colley	8,253	29%	13%	2,842	10%	5%	16%	9,285	33%	15%	53%	2,842	10%	5%	26%
Cohen	7,922	28%	13%	331	1%	1%	2%	9,616	34%	16%	55%	3,173	11%	5%	29%
Syvret	6,402	23%	10%	1,520	5%	2%	9%	11,136	39%	18%	63%	4,693	17%	8%	42%
Forskitt	2,813	10%	5%	3,589	13%	6%	20%	14,725	52%	24%	84%	8,282	29%	13%	75%
Corby	2,489	9%	4%	324	1%	1%	2%	15,049	53%	24%	86%	8,606	31%	14%	78%
Richardson	1,570	6%	3%	919	3%	1%	5%	15,968	57%	26%	91%	9,525	34%	15%	86%
Pearce	1,562	6%	3%	8	0%	0%	0%	15,976	57%	26%	91%	9,533	34%	15%	86%
Lagadu	1,332	5%	2%	230	1%	0%	1%	16,206	57%	26%	92%	9,763	35%	16%	88%
Whitworth	1,296	5%	2%	36	0%	0%	0%	16,242	58%	26%	93%	9,799	35%	16%	88%