

STATES OF JERSEY



STATES OF JERSEY LAW 2005: PROPOSED AMENDMENT – STATES MEMBERS' QUALIFICATIONS FOR ELECTION

Lodged au Greffe on 20th December 2016
by Deputy M.R. Higgins of St. Helier

STATES GREFFE

PROPOSITION

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

to request the Privileges and Procedures Committee to bring forward amendments to the States of Jersey Law 2005 to –

- (a) repeal Articles 4A, 7 and 8 of the States of Jersey Law 2005 and to replace them with a new Article or Articles to standardise the requirements relating to the qualification and disqualification for election in the States Assembly, so that all members (Connétables, Senators and Deputies) are subject to the same requirements;
- (b) further amend Article 8 of the States of Jersey Law 2005, in order to bring the disqualification period for bankrupts into line with the Bankruptcy (Désastre) (Jersey) Law 1990.

DEPUTY M.R. HIGGINS OF ST. HELIER

REPORT

Over the last 8 years, the States has enacted various changes to the [States of Jersey Law 2005](#) that have had the effect of removing virtually all the distinctions between the various types of States Member other than their titles – Senator, Connétable and Deputy. All Members serve the same terms of office, are elected on the same day and can serve in any capacity in the States Assembly – backbencher, Assistant Minister and Minister.

One area, however, which has not been updated are the different legal provisions regarding who may or may not stand for election to the States of Jersey, or the grounds on which a Member may cease to be a Member.

At present there is only one provision relating to persons wanting to stand for election as a Connétable, and many more relating to those who wish to stand as a Senator or Deputy. And there are a number of provisions that will disqualify a sitting Senator or Deputy from staying in the Assembly, and none that apply to the Connétables. This is wholly inequitable, bearing in mind that all States Members have equal status and voting rights.

Standing for elected office in the States of Jersey

According to Article 7 of the States of Jersey Law 2005, a person who seeks to stand for the States Assembly as a Senator or Deputy must be someone who complies with the following requirements –

7 Qualification for election as Senator or Deputy

- (1) *A person shall be qualified for election as a Senator or a Deputy if he or she –*
 - (a) *is of full age; and*
 - (b) *is a British citizen who has been –*
 - (i) *ordinarily resident in Jersey for a period of at least 2 years up to and including the day of the election, or*
 - (ii) *ordinarily resident in Jersey for a period of 6 months up to and including the day of the election, 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.*
- (2) *... ..*
- (3) *A retiring Senator or Deputy who is not disqualified by this Law or any other enactment shall be eligible for re-election.*

There are no equivalent provisions in the States of Jersey Law for Connétables.

Disqualification from the States of Jersey

Under Articles 7 and 8 of the States of Jersey Law 2005, a person will be disqualified for election as or for being a Senator or Deputy for the following reasons –

7 Qualification for election as Senator or Deputy

- (1)
- (2) *A person shall be disqualified for election as a Senator or Deputy, if he or she is a paid officer in the service of the States or any administration of the States, unless he or she is permitted, by or under the Employment of States of Jersey Employees (Jersey) Law 2005¹, to stand for election as a Senator or Deputy.*
- (3)

8 Disqualification for office as Senator or Deputy

- (1) *A person shall be disqualified for election as or for being a Senator or Deputy if that person –*
- (a) *holds any paid office or other place of profit under the Crown;*
 - (b) *is a member of the States of Jersey Police Force;*
 - (c) *is compulsorily detained or subject to a guardianship order under the Mental Health (Jersey) Law 1969²;*
 - (d) *has a curator of his or her person or property;*
 - (e) *has an attorney without whom he or she may not act in matters movable or immovable;*
 - (f) *subject to paragraphs (3) and (4), has become bankrupt or made a composition or arrangement with his or her creditors;*
 - (g) *has been convicted of an offence under the Corruption (Jersey) Law 2006³ by virtue of that person being, within the meaning of that Law, a public official or a member, officer or employee of a public body; or*
 - (h) *within the 7 years immediately preceding the date of his or her election, or since his or her election, has been convicted, whether in Jersey or elsewhere, of any offence and ordered to be imprisoned for a period of not less than 3 months, without the option of a fine.*
- (2) *A person shall be disqualified for being a Senator or Deputy upon –*
- (a) *ceasing to be a British citizen; or*
 - (b) *not being resident in Jersey for a period of more than 6 months.*
- (3) *The disqualification attaching to a person by reason of his or her having become bankrupt shall cease –*
- (a) *if the person pays his or her debts in full on or before the conclusion of the bankruptcy proceedings, on the day the proceedings are concluded;*
 - (b) *in any other case, on the expiry of 5 years from the day the proceedings are concluded.*

¹ [chapter 16.325](#)

² [chapter 20.650](#)

³ [chapter 08.090](#)

- (4) *The disqualification attaching to a person by reason of his or her having made a composition or arrangement with his or her creditors shall cease –*
- (a) *if the person pays his or her debts in full, on the day on which the payment is completed;*
 - (b) *in any other case, on the expiry of 5 years from the day on which the terms of the composition or arrangement are fulfilled.*

The only disqualification provision relating to Connétables in the Law is contained in Article 4A, which states –

4A Disqualification for election as Connétable

A person shall be disqualified for election as a Connétable if he or she is a paid officer in the service of the States or any administration of the States, unless he or she is permitted, by or under the Employment of States of Jersey Employees (Jersey) Law 2005⁴, to stand for election as a Connétable.

I think all Members will accept that there can be no justification for these differences, and I urge them to adopt this part of the proposition.

Bankruptcy provisions

It will be noticed that the only States Members who can be disqualified from sitting in the States Assembly by virtue of becoming bankrupt or entering into a composition arrangement with their creditors, are Senators or Deputies, and not the Connétables. Surely, if the bankruptcy rules are to be retained, and there are arguments why they should not, then they should apply to all Members and not just some of them.

There is also one other major inconsistency that this proposition seeks to amend, and that is the difference between the period in which bankrupts are disqualified under the [States of Jersey Law 2005](#) and the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#).

At present, Article 8(1)(f) of the States of Jersey Law 2005 states that a person shall be disqualified for election as or for being a Senator or Deputy if that person – “(f) subject to paragraphs (3) and (4), has become bankrupt or made a composition or arrangement with his or her creditors;”.

Article 8(3) states – “The disqualification attaching to a person by reason of his or her having become bankrupt shall cease – (a) if the person pays his or her debts in full on or before the conclusion of bankruptcy proceedings, on the day the proceedings are concluded; (b) in any other case, *on the expiry of 5 years from the day the proceedings are concluded*.”.

Article 8(4) states – “The disqualification attaching to a person by reason of his or her having made a composition or arrangement with his or her creditors shall cease – (a) if the person pays his or her debts in full, on the day on which the payment is completed; (b) in any other case, *on the expiry of 5 years from the day on which the terms of the composition or arrangement are fulfilled*.”.

⁴ [chapter 16.325](#)

The Bankruptcy (Désastre) (Jersey) Law 1990 deals with the disqualification period of bankrupts at Part 9.

Article 39 states – “This Part applies to debtors who are individuals.”

Article 40(1) states – “Subject to paragraph (2), *at the expiration of 4 years from the date of the declaration* the Viscount shall apply to the court for an order discharging the debtor.

It is argued that there should be consistency between these 2 Laws, and that the States of Jersey Law 2005 should be amended to match the 4-year disqualification period contained in the Bankruptcy (Désastre) (Jersey) Law 1990.

Financial and manpower implications

Apart from the Law Drafting time required, there are no financial or manpower implications for the States in adopting this proposition.