

STATES OF JERSEY



ELECTED SPEAKER AND DEPUTY SPEAKER OF THE STATES ASSEMBLY: SELECTION AND APPOINTMENT (P.84/2017) – THIRD AMENDMENT (P.84/2017 Amd.(3)) – AMENDMENT

Lodged au Greffe on 9th November 2017
by Senator P.F.C. Ozouf

STATES GREFFE

ELECTED SPEAKER AND DEPUTY SPEAKER OF THE STATES ASSEMBLY:
SELECTION AND APPOINTMENT (P.84/2017) – THIRD AMENDMENT
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PAGE 2, AMENDMENT 3 –

For the proposed new paragraph (3) substitute the following –

“(3) paragraphs (1) and (2) shall be void and of no effect until a referendum on the question of whether the Bailiff should remain the President of the States, held in accordance with the Referendum (Jersey) Law 2017, takes place and shall not be implemented if the result of the referendum shows that a majority of registered voters have voted for the Bailiff to remain President of the States.” ”.

SENATOR P.F.C. OZOUF

REPORT

Preamble

On 4th January 1642, when Charles I entered the House of Commons to identify 5 so-called 'disruptive' members of Parliament, the Speaker, Mr. William Lenthall, behaved with what has been described in history books with great dignity.

Having taken the Speaker's chair and looked round to identify the offending members, Charles I turned to Lenthall standing below, and demanded of him where the members were.

Speaker Lenthall fell on his knees and replied –

“May it please your Majesty, I have neither eyes to see nor tongue to speak in this place but as the House is pleased to direct me, whose servant I am here.”

These words have become the established guiding principles of how Speakers of democratic Parliaments are expected to conduct themselves.

Charles I was subsequently beheaded.

His sons, the future Charles II and later James II came to Jersey to seek refuge.

Later when the Monarchy was restored, Charles II gifted a Royal Mace as a symbol of Royal Authority and loyalty to the Island.

Times change, but the world would be a different place had Jersey not protected the Royal Princes.

Constitutions and democracies' rules of governance adapt and change according to the times. At the heart of a sound democracy is good information and decisions that are based on fact, not emotion.

NOTE: Because of the difficulties I have experienced in seeking approval for the lodging of this amendment to an amendment, despite having started working on this matter on 3rd November, it has only now been possible to get approval from the Bailiff on Wednesday 8th November 2017 for lodging. Even then, the amendment has had to be changed.

This means that the lodging of this amendment to the amendment will actually occur on 9th November.

If it were a Member's amendment to an amendment from another Member, Standing Orders would have allowed such an amendment to be made within 4 days of the proposition.

However, although the amendment made is in the personal name of Senator Sir P.M. Bailhache, notwithstanding that he is a Minister, the principal proposition is in the name of the Chief Minister.

Ministers' propositions – unlike Members' propositions – and their associated amendments have a longer periods of time for lodging before they can be automatically debated.

This amendment to an amendment, albeit that it is one not in the name of a Minister, is caught within the rule of needing to be lodged 7 days before the debate.

Therefore I will seek leave of the States for a shorter period of lodging for this amendment to the amendment.

I hope Members will understand the difficulty with the lodging of what I believed was a straightforward amendment, and that Members will be sympathetic, on this occasion, to such a proposal.

Introduction

The [third amendment to P.84/2017](#) would require a referendum to be held on the question of whether the Bailiff should remain the President of the States.

Some Members may not support the holding of a referendum on the subject of who should be the Speaker of a democratically elected Assembly, and therefore this amendment would fall away.

However, if Members believe there is the need for a referendum, some appropriate safeguards are required.

It is for this reason that this amendment is proposed.

Binding referenda

Jersey does not have legislation which makes referenda binding.

There has been much comment internationally as to whether there should be tests which referenda should pass for their effect to be binding.

The amendment appears to propose that a binding referendum will be held almost 'through the back door'.

Notwithstanding the absence of legislation to bind the Assembly, it appears that, unamended, this amendment is not subject to any safeguards. Unamended, the referendum as proposed appears to have the intention and effect of being automatically binding, simply on the basis of the words of an amendment: "majority of the people voting in a referendum".

Turnouts and why they matter

Jersey has experienced very low voter turnout in the past; for example, the turnout for Senators in 2014 was only 39% and the turnout in St. Helier was only 25%.

These are some of the lowest electorate turnouts seen in the world.

In comparison, the recent referendum held in the U.K. was 72%, and pretty well consistently above 70% in the whole of the United Kingdom.

The Scottish referendum attracted a turnout of 85%.

The turnout for the 2013 referendum on the composition of the States was 26%; with 3,239 or 19.5% of the 16,624 who voted, voting for Option C. Their votes were then redistributed, and this was the only way that Option B passed as the 'leading' option.

In other words, only 6,804 voters originally opted for Option B (223 more than Option A).

On the basis of that referendum, with a turnout of 26%, only 10.6% of voters voted for the option that purportedly "won".

These results would be regarded as, at best, questionable, and at worst, illegitimate, in most legitimate democracies.

Without safeguards, a back-door binding referendum could be argued to be unwise as it is would be potentially undemocratic.

Safeguards

Jersey has held a referendum through a process of single transferable voting on one of the 3 options on a very low turnout, and the result of the referendum was not upheld by subsequently decision-making of the States.

Senator Bailhache's amendment effectively makes the outcome of the referendum binding without any test of turnout. The proposal is for a simple majority of those that voted for the proposition to be 'void and of no effect'.

This seems to me an insufficient test.

Therefore, I propose that the 'null and void' should be subject to a majority of registered voters as opposed to people voting.

This amendment, if unamended, would be of no effect unless a majority of those voting in the referendum vote against the Bailiff remaining the President of the States.

A decision for the States Assembly

As was outlined in the report within [P.84/2017](#), the decision as to the Speaker of the States Assembly, and how the Speaker is chosen, is one that in my opinion, should be taken by States Members.

However, if a Referendum is agreed, safeguards are needed.

This would be consistent with Jersey's system of representative democracy and also with the relevant international standards.

For example, paragraph 2.2.1 of the Commonwealth Parliamentary Association Recommended Benchmarks for Democratic Legislatures states that –

‘The Legislature shall select or elect presiding officers pursuant to criteria and procedures clearly defined in the rules of procedure.’

Best practice

It is not the international norm for the Speaker of the legislature to be determined by a referendum, and there is no obvious precedent for such a decision being taken in this manner.

Parliaments and Legislative Assembly should be sovereign in deciding how their internal procedures operate – the Public should be properly informed of these facts.

Previous referenda

Past referenda have related only to the Constitution in relation to the elected Members of the Assembly.

The 2013 referendum offered alternative options for the Senators, Deputies and Connétables (and their constituencies).

The 2014 referendum asked the Public if the Connétables should remain Members of the Assembly by virtue of their elected office.

A referendum has not previously been held on how the Assembly should manage its own affairs.

Independent advice

The independent advice which has been provided to the people of Jersey and its elected States Assembly recommended that the States Assembly should elect its own Speaker, either from within or without the ranks of its Members.

The advice did not state that this decision should be subject to a referendum, and particularly not a binding one, without safeguards.

Furthermore, it should be recognised that both the Clothier and Carswell Reviews included a number of eminent and respected Islanders on their Panels, and also consulted with the Public prior to reaching their conclusions.

The Public have, therefore, been given the opportunity to provide their views on previous occasions to independent review Panels, both of which made recommendations that the Assembly should take the decision to elect its own Speaker.

If they are to be asked for a view in a Referendum which appears to be, unlike all others, binding, this should be on the basis of clear information and not emotional arguments suggesting it is wrong that democracies adapt and change.

Civic Head

One of the primary arguments offered for holding a referendum is that the original proposition (P.84/2017), if passed, will inevitably impact on the Bailiff's separate role as Civic Head of Jersey.

P.84/2017 made clear that the Bailiff is the Civic Head of Jersey, and this role is held separately from the roles of President of the States Assembly and Chief Justice.

The proposition accepted the recommendation of both the Clothier and Carswell reviews that, if the Assembly were to elect its own Speaker, the Bailiff should continue in his role as the Civic Head of Jersey.

Furthermore, the proposition sets out examples of the engagements that the Bailiff would continue to undertake as Civic Head, and offered to establish the role of Civic Head in statute if such an approach is deemed necessary by Members.

The commitment to the Civic Head role is stated in the Chief Minister's proposition with emphasis.

In any event the term 'Civic Head' is an unusual one and not a term or position that is used widely in any country.

It is used in the context of the leaders of County Councils of the United Kingdom.

Jersey is not a county of the United Kingdom and never has been.

It may be necessary therefore to ensure that we enact legislation as to what the Order of Precedence would be in Jersey, as is commonplace in other jurisdictions, particularly those within the Commonwealth.

That is perhaps an issue for another day – but it does bring to Members' attention the current legislative inadequacy, and that the concept of Civic Head is not found in any legislation of any sort.

Rather it is in an unwritten custom and practice or tradition.

It is certainly not embedded in any constitutional document or statute.

Conclusion

Should the Assembly agree to the 'in principle' proposition to hold a referendum, it must have an appropriate safeguard, and should ensure that the Public is properly informed.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from this proposed amendment.

APPENDIX

I had wished to lodge an additional amendment in these terms –

Amendment 2 to Senator Bailhache's Amendment

“After the proposed paragraph (3), insert a new paragraph (4) –

- (4) Any Referendum held in accordance with paragraph (3) must be accompanied, and informed, by a properly resourced meaningful public engagement campaign, which should incorporate the provision of independent information to the public on the role of a Speaker, as well as the holding of public hustings and, if deemed appropriate, focus groups in order to engage with the maximum number of Islanders.”.

However, after a lot of to-ing and fro-ing, the amendment to the amendment was not judged in order.

It was unclear how the resolution, if adopted, would stand alongside the amendment of Senator Bailhache, if both were passed.

It is not precise in its terms, and some of what is proposed is already addressed within the [Referendum \(Jersey\) Law 2002](#) and the responsibilities of the Referendum Commission.

If the Assembly agrees to have a referendum, there will need to be a Referendum Act debated, and I will propose this amendment at that time.

Out of courtesy, I thought Members should be aware of this. I would appreciate it if the Bailiff would publish his rulings on the attempts I have made to amend this amendment.