

STATES OF JERSEY



ELECTORAL REFORM 2020 (P.126/2019): COMMENTS

Presented to the States on 31st January 2020
by the Comité des Connétables

STATES GREFFE

COMMENTS

1. Overview

- 1.1. These comments are prepared to appraise all States members of the Comité des Connétables' response to the recommendations in the CPA EOM May 2018 Final Report. Of the 18 recommendations in the report, only 2 relate to the subject of this proposition which is titled "Electoral Reform 2020".
- 1.2. At the invitation of the Chairman of the Privileges and Procedures Committee (PPC) the Comité responded in detail addressing all 18 recommendations in the EOM Final Report in December 2018.
- 1.3. We understand that the Comité response has been discussed as a 'B' item by PPC and has therefore not been published, neither is it addressed in the report to [P.126/2019](#). The Comité's response to Recommendations 1 and 3 are therefore attached as **Appendix 1**.

2. Executive Summary

- 2.1. PPC's report says the proposition is "a direct response" to the CPA EOM Mission to Jersey Final Report but it addresses only 2 of the 18 Recommendations.
- 2.2. Any reform of the composition and election of the States must deliver a legislature fit for Jersey's requirements having regard to best practice and to the principles of fairness and transparency in voting and to the will of the people. Removing from parishes their current functions and role will fundamentally alter the structure and make-up of Jersey and have a significant impact on the States budget (see section 3).
- 2.3. Countries which systematically practice degressive proportionality in one form or another are likely to be told to consider changing but, properly understood, that is not to say that they are non-compliant with the Venice Commission, but rather they are judging themselves to be exceptional cases. There is no sign of an international condemnation of that response (see section 5).
- 2.4. PPC proposes the 12 Connétables will be entitled to membership of the States in a non-voting capacity but with the ability to participate in debate and non-executive committee work – we believe this totally misinterprets the views expressed by the electorate (see sections 6 and 11). We see no merit in the Connétable having membership of the States in a non-voting capacity.
- 2.5. Connétables are concurrently elected as father/mother of their parish; in this respect the principle of the equality of the vote is observed since the vote of every elector carries equal weight within the boundaries of the parish (see section 7).
- 2.6. Whilst we're told the survey methodology is robust, comments received together with the refusal to provide the context for the questions and the full survey questions **undermines confidence** in the headline results on which PPC relies in promoting acceptance of its proposition (see section 9).

- 2.7. But the key question is what should be the make-up of Jersey's legislature – the body vested with power to make and repeal laws? And are the proposals an improvement on the current system? We do not consider the practicalities and costs (in time and money) of a 2 chamber administration are appropriate given the Island's size and population (see sections 11 and 12).
- 2.8. The report refers to the removal of the Senators but, in practice, this is the most fair and democratic of the current positions and the preference of many of the electorate (see section 15).
- 2.9. Should there be another referendum? Will the public consider this is money well spent when the question to be put ignores the wishes expressed in previous referenda (see section 16)?
- 2.10. There is no single correct electoral system, and it is universally recognised that this is ultimately a matter for the people of each country (see section 17).
- 2.11. These proposals for 9 districts totally remove representation of the parish administrations from the legislature of the States Assembly. Whilst the proposals are based on the robust methodology of a survey (sample 529) and on small focus groups (47 participants) the views do not align with the expressed wish of the electorate (referenda in April 2013 (16,624 voters) and October 2014 (24,130 voters)) and more recent public meetings.

3. The history of electoral reform

- 3.1. The Privileges and Procedures Committee (PPC) and its sub-committee have clearly spent considerable time and energy in drafting not only this proposition (P.126/2019) but also the previous proposition ([P.46/2019 \(re-issue\)](#)) Reform of the Composition and Election of the States.
- 3.2. PPC invited the Comité des Connétables's comments on the CPA 2018 EOM report and recommendations. The Comité replied proposing it should work with PPC by nominating a couple of Connétables who could join the PPC sub-committee to assist with the review. This "*would enable PPC to benefit from the Connétables' experience as electoral administrators and ensure we work constructively together on a pathway to resolution.*" PPC thanked the Comité for the offer but it was not recruiting for additional members though would welcome the Comité's input in due course and the Connétables had open access to speak to the members of the Sub-Committee.
- 3.3. The Comité is very disappointed that neither PPC nor its Sub-Committee has engaged with the Connétables on all 18 Recommendations.
- 3.4. In response to an oral question (OQ.306/2019¹), the PPC Chairman did update States members on his Committee's work to implement the recommendations. The timeline promised has yet to be published but there are frequent references to future legislative amendments, matters still requiring consideration and other ongoing work with "exciting plans" in some areas.

¹ States Hansard 10 December 2019 [OQ.306/2019](#)

- 3.5. Any reform of the composition and election of the States must deliver a legislature fit for Jersey’s requirements having regard to best practice and to the principles of fairness and transparency in voting and to the will of the people. Commenting to PPC on the EOM Recommendation 1, the Comité said –

Is it the intention to remove from parishes their current functions and role (if so there might be an argument for the Connétable to no longer be a States member)? But to do so would fundamentally alter the structure and make-up of Jersey – including disbanding the cultural framework of the island and honorary service provided by so many parishioners – and would have a significant impact on the States budget.

4. The shadow of Clothier

- 4.1. The Clothier recommendation was for an Assembly of between 42 and 44 members with the vacant seats of the Senators reassigned amongst the Parishes (and that the Connétables should also cease to be *ex officio* members of the States).
- 4.2. Appendix E of the Clothier report (see **Appendix 2**) set out a possible seat distribution for a 42 or 44 member House in which every parish would continue to have representation in the States Assembly.
- 4.3. Rather than being ‘the closest thing’ as suggested in PPC’s report, P.126/2019 is a long way from Clothier as it proposes only 3 parishes will have direct representation. The table below shows the Island, parish and district representation currently and as proposed.

Current members of States	Island representatives	Parish representatives	District representatives
Senators	8	–	–
Connétables	–	12	–
Deputies * St. Brelade, St. Helier and St. Saviour	–	11	18*
Total	8	23	18
Proposed members of States			
Deputies ** St. Brelade, St. Clement and St. Saviour	–	16**	30

5. The Venice Commission

- 5.1. PPC’s report says that Jersey’s electoral system falls short of the Venice Commission’s standards on equality in voting rights and in equality in voting power. Voters do not have the same number of votes across the Island, and the

power of their votes is unequal. With one exception, which PPC believes can be justified, P.126/2019 proposes all districts elect 5 representatives.

- 5.2. The Venice Commission's central concern is plainly that malapportionment of constituencies may be used to give the wrong party or parties victory in elections (i.e. those lacking majority or plurality support). Malapportionment can be a device for gerrymandering. This concerns does not exist in Jersey [at present].
- 5.3. Jersey remains [at present] what is known as a consensus based system, of which there are few in the world. This means that its politics largely lacks political parties, whereas the Venice Commission when addressing the requirements of democracy assumes that party politics are central to elections. In Jersey, the aim is to elect the people who will have to form a consensus. This makes the relative size of each member's electoral mandate less sensitive. For example, no one thought to compare in the Chief Ministerial election if members supporting the defeated candidate in fact represented more voters than the successful one. As no one was elected for the purpose of backing one or other candidate, it was irrelevant in the Jersey system as presently operating.
- 5.4. All systems and institutions should be called upon to justify themselves from time to time. The principal factors present in Jersey depend on how Parish identity is viewed – how this should be viewed is not a matter of international law. It is a matter of local identity in the jurisdictions where the issue arises.
- 5.5. It is common for countries to ensure disproportionate representation for smaller component parts. Countries which systematically practice degressive proportionality in one form or another are likely to be told to consider changing but, properly understood, that is not to say that they are non-compliant with the Venice Commission, but rather they are judging themselves to be exceptional cases. There is no sign of an international condemnation of that response. One such example would be Andorra – it is not a federation, however, each of its 7 parishes have 2 legislators regardless of size with a further 14 nationally elected members. Other clear examples of this principle in the lower legislative house are India, Spain, Canada, Argentina, France and Australia.
- 5.6. The Venice Commission states that constituency boundaries may also be determined on the basis of geographical criteria and the administrative or indeed historic boundary lines, which often depend on geography. So whilst we might strive to comply with the 'Code of Good Practice in Electoral Matters guidelines' and other international covenants we must be mindful that exceptions are permissible. The permissible departure from the norm, of not more than 10% to 15%, should be only in special circumstances such as the protection of a concentrated minority or sparsely populated administrative entity.

6. An Assembly of 46 Members

- 6.1. PPC proposes the 12 Connétables will be entitled to membership of the States in a non-voting capacity but with the ability to participate in debate and non-executive committee work. The States Assembly could therefore consist of 58 members (46 States members elected as Deputies and 12 Connétables).

- 6.2. This seems quite at odds with the public view which, we believe, is for a slimmed down Assembly with fewer States members. The number has reduced in recent years from 53 to 49 members so it would seem perverse to increase it to 58.
- 6.3. But more importantly, we believe it totally misinterprets the views expressed by the electorate. When voting in referenda it has been to retain the position of Connétable in the States as a voting member. How else is a Parish to ensure its views are reflected in the decision making of the States Assembly?
- 6.4. If Connétales have a voice only, but no vote, most parishes will be denied direct voting. Under P.126/2019 only the parishes of St. Brelade, St. Clement and St. Saviour could consider their elected Deputies might speak for the Parish but even this differs from the representation afforded by the Connétable who is directly involved in the administration of the Parish.
- 6.5. Other parishes will not be so fortunate – should a Parish expect one or more of its 5 representatives to promote its wishes over those of other parishes which the Deputy also represents?
- 6.6. And if a Connétable is also elected as a Deputy (though it should not be assumed this will always be as Deputy of a district for that Parish) they have a vote as Deputy, not Connétable, so the Parish still has no representation as the report (paragraph 4, page 10) says the posts of Connétable and of States Member would be mutually exclusive.

7. Development of the proposal in P.126/2019 – and reference to EOM report

- 7.1. PPC's Sub-Committee which was established to review the EOM Report (paragraph 4, page 9) decided "that the reform of the existing electoral system needed to be its primary focus".
- 7.2. Some of the other recommendations would appear to be less complex than the thorny question of the composition of the States Assembly and an opportunity for quick-wins. It is disappointing that the legislative changes, or process changes, required have not yet been brought forward. Examples include formally proroguing (recommendation 2, agreed in [P.88/2019](#)) and disqualification criteria for a candidacy (recommendation 7).
- 7.3. In relation to 2 of the recommendations, the Sub-Committee's conclusion is that the Connétales should no longer be Members of the Assembly though anyone wishing to stand for election could do so but the posts of Connétable and of States Member would be mutually exclusive.
- 7.4. To this end there is reference on page 11 (paragraph 3) to elections first for the office of Connétable and, subsequently, elections for the office of Deputy. But "One General election only for all Members of the States and for the 12 Parish Constables." was a recommendation of the Clothier Review. Reverting to elections at 2 different times is surely a backward step.
- 7.5. The EOM Report, as would be expected, does indeed reference the seat distribution in the States Assembly, the principle of the equality of the vote and

the Island's international obligations. The Report also acknowledges in footnote 6 (*emphasis added*) –

6. “Connétables are concurrently elected as father/mother of their parish; in this respect the principle of the equality of the vote is observed since the vote of every elector carries equal weight within the boundaries of the parish.”

7.6. Without labouring the various issues ad infinitum, it is fair to say the present system and any alternatives need to be analysed by reference to the number of voters and turn out, and not just to population. Use of population is not necessarily the best approach when the proportion of non-voters in parishes varies greatly, a point made by the EOM. The Venice Commission holds all the following to be legitimate approaches and the results differ if based on –

- Parish population
- Eligible voter per parish
- Turnout

7.7. There is no basis in the Venice Commission for saying that multi-member constituency should be of the same size to ensure that each voter casts the same number of votes. The principle that voters should have the same number of votes addresses the problem of discrimination when different classes of voters are given a larger number of votes to make them more important. An example of this was how, prior to 1948, graduates could vote twice, for their home constituency and for university members. The mischief addressed by this part of the Venice Commission's Code of Good Practice simply does not apply to Jersey. The use of First-Past-the-Post in multimember constituencies is very rare, and simply was not contemplated when the Venice Commission was drafted.

7.8. The EU recognises small states should not be bullied by larger states. A U.K. example would be the Shetland Islands and the Isle of Wight (populations of c. 22K and c. 105K respectively). A useful table showing the malapportionment in Jersey compared to other small democracies is found in the table in **Appendix 3** – this was provided in the report “The Jersey States Assembly in Comparative Perspective – A Report for the States of Jersey Electoral Commission” by Alan Renwick, University of Reading; in August 2012.

7.9. PPC appears to hold the firm opinion that it is legally impossible for the Connétables to be members of the States Assembly as this could not be done whilst also providing for equality of voting power across the Island. This conclusion is not supported by a close examination of international law or of international practice.

8. Consultation: States Members

8.1. PPC's report explains that the proposals in the first proposition, P.46/2019 (re-issue), were developed following consultation with States members.

- 8.2. Two members of the Sub-Committee met with the Comité in March 2019. The Comité's response to the EOM Final Report was not discussed; the meeting considered a map of Jersey proposing 9 constituencies each returning 4 Deputies with the number of Senators increased from 8 to 12.
- 8.2.1. The Comité commented that the EOM had not provided any new information and that the Venice Commission did allow for variations in boundaries.
- 8.2.2. The Comité anticipated that the public response to the proposals would be that it would lead to the demise of the parish system.
- 8.2.3. There were currently no complaints from electors about their representation but Connétables were aware that parishioners were concerned about the boundaries and the representation for their parish and they shared their concerns that a decision to change the electoral constituencies was likely to impact the role of the parishes.
- 8.2.4. The Comité said that at a meeting, attended by several Connétables, the CPA representatives had mentioned several times the 'perception' about issues; the Comité considered that recommendations should always be based on evidence of a problem or issue and it was regrettable if the recommendations were based on a 'perception'.
- 8.2.5. The Comité considered the proposals would not be appropriate for Jersey.
- 8.3. No further meetings with the Comité have been sought by PPC or its Sub-Committee.
- 8.4. It is unclear how many meetings in total were held, and whether any record is available, but there is a view that PPC has not adequately kept members informed of its work. The Connétables of St. Clement and St. Lawrence recall in previous years PPC has held workshops with States members and were guided by these meetings/workshops as it developed policy.

9. Consultation: Roadshows, focus groups and surveys

- 9.1. Following feedback from the roadshows, P.46/2019 (re-issue) was withdrawn and has been resubmitted as P.126/2019. The principle differences being the offer of a non-voting seat for Connétables (see comments in section 6 above) and a referendum.
- 9.2. On page 11 the report says "a clear message of concern to preserve the office of Constable was palpable and to which these revised proposals respond". This seems disingenuous – **it is the preservation of the Connétable as a voting member of the States which was the message and the proposition does not provide for this.**
- 9.3. The other message, particularly from those rural parishes which will no longer have the parochial election, was that they don't want larger electoral districts. This is not addressed in P.126/2019.

- 9.4. A summary of the attendance at, the views and votes taken (if any) at Parish roadshows is in **Appendix 4**.
- 9.5. Turning to the focus groups and surveys, there appears to be a lack of transparency and openness. We have received the following replies to our questions –

Question	Response
Could you provide me with a full copy of the survey questions please?	No, I am afraid not. Elements of the survey are included within the appendices to the Proposition.
Was the online survey link publicly available? If so when and how was it advertised?	The survey link was not made public– it was through 4Insight accessing their representative general public panel of over 2,800 people and also random sample street selection. This was a professional survey run by 4Insight, who were employed to undertake the work independently using their chosen methodology. In order to participate in the survey, Islanders contacted 4Insight and were taken through a series of screening questions, which excluded anyone in the media or actively involved in politics. They were asked questions regarding their socio-demographics, about whether they were registered to vote and about their voting habits. 4Insight sought to ensure a broad demographic for the responses.
Is Appendix 1 the survey results in full i.e. no other questions?	No – as mentioned at point 1, the appendices include elements of the survey.
Do you have the ‘preamble’ which was put to survey respondents with each question to elicit the responses?	No.

- 9.6. A number of Connétables have been approached by parishioners invited to take part in the survey who have expressed surprise at how difficult it was to answer as they wished. The simple yes/no/don’t know answers seemed too simplistic for such a significant change and questions seemed to have a heavy bias towards the proposition. Another commented that in their view it was completely biased and was structured in such a way that there was almost only one possible outcome.

- 9.7. Whilst we're told the methodology is robust, comments as above together with the refusal to provide the context for the questions and the full survey questions **undermines confidence** in the headline results on which PPC relies in promoting acceptance of its proposition.
- 9.8. Removal of the Connétables from the States and the creation of larger districts were well explained at the parish roadshows but appear not to have been referenced in the surveys. For example, was there a specific question asking if the Connétables should remain a voting member of the States?
- 9.9. The report also omits reference to the results of previous referenda – see summary in **Appendix 1**.

10. Uncontested elections

- 10.1. On page 12 (paragraph 6) it is suggested that the proposal would likely remove the possibility of uncontested elections; each Member would be directly and specifically elected to the Assembly in multi-seat constituencies which traditionally provide a much more attractive prospect for new candidates.
- 10.2. Whilst multi-seat constituencies might attract new candidates in some areas, where it may be perceived as easier to get elected, there is still likely to be an imbalance in the elector's choice across constituencies. Of course this would only be removed by having a single constituency and though this question hasn't been put to the electorate it was asked as part of the Clothier review and half thought that all members should be elected on an Island wide basis.
- 10.3. But the reference to uncontested elections oversimplifies the reason a person stands for election in a particular constituency whether that be as Senator, Connétable of Deputy.
- 10.4. A States member, in whatever position, who is regarded as having done a 'good job' and has the confidence of the electorate will be in a stronger position and this itself may deter others from standing in opposition. In the 2018 elections 2 sitting Deputies were returned unopposed and, in another constituency, a former Deputy was elected unopposed. This has been repeated in previous years.
- 10.5. Reference is frequently made to the Connétables being elected unopposed but in practice the position is equally vulnerable as current Connétables can confirm – several deposed sitting Connétables when they took office and others were returned after contested elections though may have been re-elected unopposed since.

11. Position/role of Connétables and why parish representation is important

- 11.1. One of the reasons Clothier recommended the Connétables should cease to be members of the States was because "In view of the new structure which we propose for the States the Connétables would, if they were to remain, have a heavier workload in the States than they do at present and might well have difficulty in discharging both offices satisfactorily."

- 11.2. In practice this has not been the case. From the outset Connétables have continued to play a full role as a States member both in the Executive and Scrutiny and on other bodies such as the CPA. This has included reform in election processes, for example [P.54/2007](#) which introduced a single election day for all Connétables.
- 11.3. But the key question is what should be the make-up of Jersey's legislature – the body vested with power to make and repeal laws? And are the proposals an improvement on the current system?
- 11.4. What is the relationship between local government – the Parish Assembly – and the States Assembly as the Island's government? As members of the States, the Connétables are able to speak and vote on proposals including legislation which is delivered by the parishes rather than the States.
- 11.5. It's been suggested that the role of the parish would be enhanced by removing the Connétable from the States but we see no evidence of this – rather we believe the parish will become irrelevant, as in Guernsey, and there will be no-one to champion the parochial system, on which Jersey is built, in the Assembly.
- 11.6. On page 15 (paragraph 8) the report says that the proposal maintains the Island's traditional parochial boundaries and respects the importance of those historical boundaries. This is misleading – 9 parishes will cease to have any States member who solely represents the constituents of that parish.
- 11.7. Services in Jersey are delivered at island level, through the Government of Jersey, and parochially through the 12 Parishes, the latter being overseen by the Parish Assembly structure. All work together for the benefit of Islanders. The Connétable is the elected head of the parish and responsible for delivery of these functions and services – this is not the role of any other States member even when elected as Deputy to represent a parish (though a majority of Deputies only represent a district within a parish).
- 11.8. References in the report – for example paragraph 7 on page 13 – to “*Continuing to give Constables a 'free pass' into the elected national parliament is untenable and will lead to ever-growing dissent and dissatisfaction ...*” are inappropriate and offensive – there is no ‘free pass’ as each stands for election (see comments in section 10 above on uncontested elections).
- 11.9. Following the roadshows, PPC have amended the proposition to enable the Connétable to continue to sit in the States as a non-voting member. As mentioned above, we consider this misinterprets the views expressed as a majority of the electorate expect the Connétable to be an equal and voting member of the States.
- 11.10. In conclusion, the Comité sees no merit in the Connétable having membership of the States in a non-voting capacity.
- 11.11. Is there any alternative? It has been suggested that retention of the parishes might be possible with a bicameral assembly so does this have any merits?

12. Bicameral v Unicameral

- 12.1. There are 2 kinds of legislatures prevalent in the world.
- 12.1.1. The **unicameral** legislature is the system of government where a single central unit has the wholesale right to make laws and decide upon government policies.
- 12.1.2. A **bicameral** legislature is one where there are 2 chambers of Parliament, i.e. the Upper house that represents States, and the other is the Lower house that represents people of the country. In this type of legislature, the powers are shared by the 2 houses.
- 12.2. There have been suggestions that the Comité des Connétables might evolve to be a second chamber but this must be discounted given the disadvantages. A bicameral system is more suitable for large countries but decision making on policies is time consuming and deadlocks are common. In comparison the unicameral system, more suitable for small countries, enables quick decision making and deadlocks are rare.
- 12.3. In commenting on the EOM report the Comité wrote to PPC –
- .. we do not consider the practicalities and costs (in time and money) of a two chamber administration – common elsewhere – are appropriate given the island’s size and population.*

13. Other voting options

- 13.1. PPC does not explore other options for improving engagement with the electorate and voter turnout for multi-seat and for single seat constituencies whilst retaining the current membership of the States Assembly. These could include other voting options (see **Appendix 5**).
- 13.2. Dr. Alan Renwick, a reader in comparative politics and Director of Postgraduate Research Studies in Politics at the University of Reading, looked into voting systems and compared Jersey’s current system of first-past-the-post in both single- and multi-member constituencies with alternative methods of voting.
- 13.3. Dr. Renwick was remarkably clear in his advice on the changes that needed to be made and the Electoral Commission was obviously convinced by these findings as they recommended on page 37 of their final report, under Subsidiary Recommendations that –
- ‘A Single Transferable Vote System should be introduced in elections for Deputy in 2018 and should the Constables remain as members of the States, an Alternative Vote System should be introduced in respect of their election.’*
- 13.4. In 2016, and prior to that in 2014, Deputy M. Tadier narrowly lost a proposition to introduce a single transferable voting system (STV) for multi-member constituencies; and an alternative voting (AV) system for single-member constituencies (see [P.88/2016](#)).

14. Boundaries Commission

- 14.1. A Boundaries Commission is also proposed so it is not clear how long the districts, as proposed in P.126/2019, would remain. The issue of the Island's traditional parochial boundaries and the importance of those historical boundaries is addressed in section 11.
- 14.2. Gerrymandering is the manipulation of an electoral constituency's boundaries so as to favour one party or class. The proposals in P.126/2019 will significantly alter the current parochial representation as outlined in section 4 above.
- 14.3. It must be repeated, as set out above, that the Venice Commission recognises that constituency boundaries may be determined on the basis of geographical criteria and the administrative or indeed historic boundary lines.

15. The Senators

- 15.1. The report refers to the removal of the Senators but, in practice, this is the most fair and democratic of the current positions and the preference of many of the electorate.
- 15.2. The role, created in 1948, was mentioned in Clothier and the distinction between this role and that of Deputy has been questioned in recent years now that each serves the same term of office.
- 15.3. The reduction in term, and move to a single election day, also gave rise to suggestions that few would contest the seats in future. The high number of candidates in recent elections dispels this myth but in practice few who are sitting States members take the opportunity to move to the Senatorial bench. The reasons may relate to the cost of standing for election (canvassing island-wide rather than within a smaller district) but also the benefit of risking a [relatively] safe seat when the vote of each is equal within the States Assembly regardless of the mandate.
- 15.4. Experienced sitting Deputies are free to step-up but the single General Election Day removes the safety net of a second 'bite of the cherry' for those who are unsuccessful and who could previously stand again as Deputy (report page 15, paragraph 6).
- 15.5. Perhaps we have not sought more up to date methods by which candidates can engage with the electorate – some other jurisdictions do have multiple candidates and we have yet to see how Guernsey manage!

16. Referendum

- 16.1. Should there be another referendum? Electors have already expressed their opinion – twice – in referenda relating to the position of the Connétables in the States.

- 16.2. The cost is estimated at £80,000–£100,000; will the public consider this is money well spent when the question to be put ignores the wishes expressed in previous referenda?

“Insanity is doing the same thing, over and over again, but expecting different results.”

- 16.3. From discussions with members of the EOM, our understanding is that they recognise that a referendum is absolute as it expresses the will of people. We already have the answer.

17. Conclusion – summary

- 17.1. The EOM Final Report says –

“The 2018 Jersey election was well executed, competitive and enabled the electorate to cast their votes in secret and express their will in a transparent, peaceful and orderly manner.”

- 17.2. In the absence of any updates on the Sub-Committee’s work following the roadshows, and in the limited time available between the lodging of P.126/2019 and the debate on 4th February 2020, the Comité has prepared these brief comments.

- 17.3. Much more could, of course, be said but in summary the content of the report is disappointing; it fails to explore the options available and the proposals totally remove representation of the parish administrations from the legislature of the States Assembly.

- 17.4. There is no single correct electoral system, and it is universally recognised that this is ultimately a matter for the people of each country.

RECOMMENDATION 1.

A revision of the legal framework for elections including a revision of the electoral system that take into account the findings of the 2013 Electoral Commission and the outcome of the Consultative Referendum is undertaken based on an inclusive consultative process and Jersey’s obligations under international law related to elections.

From our discussions with the CPA representatives in November 2018, it is clear they agree that within the parish there is an equality of vote but the issue is when the Connétable is a representative in the States Assembly. For them the issue is whether the island follows international standards or the wishes of the voters – and the CPA clearly believes the former should take precedence.

The CPA recommendation is for a revision of the legal framework based on an ‘inclusive consultative process’ – would that imply a further referendum and how would the electorate respond to this given the States chose not to implement the decision of the 2013 referendum?

Of the 3 referenda held in Jersey, the highest turnout has coincided with a general election –

Referendum	Elections held on same date?	Total electorate	% voting
October 2008 – Central European Time	Senators, Connétables	55,198	43%
April 2013 – electoral reform options A, B and C	No	63,966	26%
October 2014 – Connétables as members of the States Assembly	Senators, Connétables, Deputies	62,566	39%

Reference is also made in the recommendation to Jersey’s obligations under international law related to elections although the report comments that *“overall, the electoral legal framework is conducive for holding democratic elections in line with international standards”*.

Electors have already expressed their opinion – twice – in referenda relating to the position of the Connétables in the States.

The referendum on 24 April 2013 allowed voters to express their views on the future make-up of the States – the options included ‘no change’. This followed from the [Electoral Commission final report January 2013](#) which included five core recommendations –

1. The number of elected members of the States Assembly should be reduced to 42.

2. The Island should be divided into six large districts, each electing either seven representatives (“Deputies”) or, if the Constables remain in the States, five representatives (“Deputies”).
3. The Public should decide in the referendum whether the Constables should remain as members of the States Assembly.
4. The decisions of the States to create a general election and to move to a four-year term of office should be affirmed.
5. The above recommendations should be put to the electorate in a referendum in the form of the question set out on page 8.

The referendum was held using the Alternative Vote system and voters were able to express a first and a second preference –

<p>Option A. Parish Constables will no longer be members of the States. There will be 42 States members known as Deputies. There will be six large districts, each choosing seven Deputies.</p> <p>Option B. Parish Constables will continue to be members of the States. There will be 42 States members: 30 Deputies and 12 parish Constables. There will be six large districts, each choosing five Deputies.</p> <p>No change: option C. The current system will remain. There will be 49 States members from 2014: eight Senators elected island-wide, 29 Deputies elected in constituencies and 12 parish Constables.</p>

Across the Island, 16,624 people – 26% of registered voters – cast their vote for one of the three options. Because none of the options received more than half the votes cast, the ballot papers from Option C (which received the fewest votes across the Island) were re-distributed between Option A and Option B where voters had indicated a second choice on their ballot paper. Voters chose Option B from the three options in the referendum:

1st round ballot	With Option C's ballot papers re-distributed
39.59% voted for Option A	6,707 votes were cast for Option A
40.93% voted for Option B	8,190 votes were cast for Option B
19.48% voted for Option C	–

A simpler question was posed in the October 2014 referendum “*Should the Constables remain as members of the States as an automatic right?*”. Of the total number of valid votes cast, 62.4% were in favour and 37.6% against.

Whilst the EOM finds that the method for seat distribution in the States Assembly is not consistent with the principle of the equality of the vote due to the significant differences in vote weight from one parish to another for the election of Connétables, footnote 6 on page 4 adds that “*Connétables are concurrently elected as father/mother of their parish; in this respect the*

principle of the equality of the vote is observed since the vote of every elector carries equal weight within the boundaries of the parish.”

Clearly this issue has been rumbling on for some time and opinions are polarised. The Connétables have, from the outset, been members of the States Assembly as the administration of the island was based around the parishes. In recent years, more administration has been undertaken by States departments (now moving towards a single administration/department?) but functions under many laws are still delivered by the parishes.

The Connétable is the elected head of the parish and responsible for delivery of these functions and services – this is not the role of any other States member even when elected as Deputy to represent a parish (though a majority of Deputies only represent a district within a parish – see Recommendation 3). Is it the intention to remove from parishes their current functions and role (if so there might be an argument for the Connétable to no longer be a States member)? But to do so would fundamentally alter the structure and make-up of Jersey – including disbanding the cultural framework of the island and honorary service provided by so many parishioners – and would have a significant impact on the States budget. Further, we do not consider the practicalities and costs (in time and money) of a two-chamber administration – common elsewhere – are appropriate given the island’s size and population.

There are further comments under Recommendation 3.

RECOMMENDATION 3.

The State of Jersey Law 2005 should stipulate that electoral constituencies be of equal or comparable size in order to guarantee one of the fundamental principles of electoral rights, the equality of the vote. A mechanism that allows for a regular review of the boundaries to reflect demographic changes in the voter population should be considered, preferably in the form of a boundary commission with a composition and mandate that is defined in the State of Jersey Law 2005 in line with international good practice.

A review of boundaries should follow from a decision as to the make-up of the States, and cannot be done before that decision is made.

The boundary for the Senators is island-wide and so equal for all. As mentioned under Recommendation 1, in respect of Connétables the principle of the equality of the vote is observed since the vote of every elector carries equal weight within the boundaries of the parish. But the boundaries for the Deputy constituencies vary significantly – for 11 Deputies (representing 9 parishes) it is the parish boundary but for 18 Deputies it is a district within one of 3 parishes. Whilst all voters do have an equal number of votes for Senators and Connétable, they do not have a total equal number of votes because the number of Deputies per constituency varies from 1 to 4.

We know that parishioners are concerned about the boundaries and the representation for their parish and we share their concerns that a decision to change the electoral constituencies is likely to impact the role of the parishes.

See <https://statesassembly.gov.je/Reform/Pages/ClothierReview.aspx>

Clothier Review

Appendix E

Analysis of Distribution of Seats in The States

The following analysis shows a possible distribution of seats by Parish, based on a 42-member House and the 1999 electoral register. A 44-member House could be readily achieved by adding two seats where indicated.

The analysis produces a more even distribution of seats per elector that is achieved by the present system.

Parish	Electors	Present House 29 Deputies	Electors per seat Including Constables	42 member house	Electors per seat
St Brelade	6,025	3 (2 districts)	1,506	5	1,205
St Clement	4,759	2	1,586	4	1,189
Grouville	2,925	1	1,462	2	1,462
St Helier	15,636	10 (3 districts)	1,421	13	1,202
St John	1,706	1	853	1 (+1?)	1,706
St Lawrence	2,902	2	967	2	1,451
St Martin	2,396	1	1,198	2	1,198
St Mary	1,060	1	530	1	1,060
St Ouen	2,307	1	1,153	2	1,153
St Peter	2,543	1	1,271	2	1,271
St Saviour	7,504	5 (3 districts)	1,250	7	1,250
Trinity	1,651	1	825	1 (+1?)	1,651
Total electors	51,414			Average	1,224

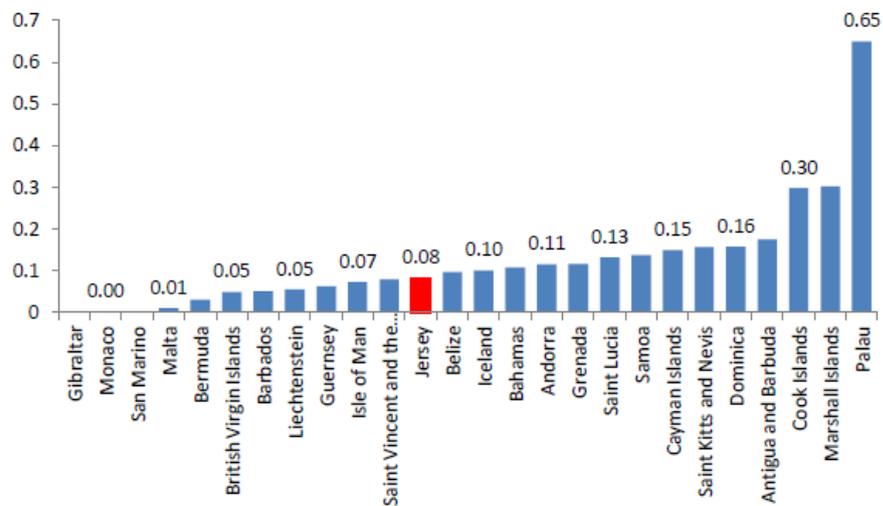
APPENDIX 3

The Jersey States Assembly in Comparative Perspective – A Report for the States of Jersey Electoral Commission; Alan Renwick, University of Reading; a.renwick@reading.ac.uk; 16th August 2012.

See –

<https://statesassembly.gov.je/sitecollectiondocuments/states%20assembly/the%20jersey%20states%20assembly%20in%20comparative%20perspective,%20dr.%20alan%20renwick,%20university%20of%20reading.pdf>

Figure 4. Malapportionment: Jersey compared to small democracies



Note: In nineteen cases, the data shown here are based on numbers of registered voters at the last election. In five cases (Barbados, the British Virgin Islands, Dominica, Grenada, and the Marshall Islands) data for registered voters were unavailable, so I have relied on the number of votes actually cast in each district. This may produce inaccuracies if turnout is substantially different in different districts. In Palau and Saint Lucia, finally, the only data available related to total district populations. Sources: See data file.

APPENDIX 4

Parish roadshows in 2019 organised by PPC to consult on P.46/2019 (re-issue)

These meetings were organised by PPC and held in every Parish; as they were not parish meetings no minutes were taken but the following is a summary of the approximate attendance and views/votes of the meeting.

Parish	Approximate attendance and views/votes of the meeting
St. Brelade	About 25 present; no vote taken but general impression that support was negligible
St. Clement	No vote taken; about 100 present; comments evenly spread though parish Deputy position wouldn't change
Grouville	About 60 present; no vote taken but majority against the proposals
St. Helier	About 30 present.
St. John	About 40 present; no formal vote but the meeting was against the proposition
St. Lawrence	About 50 people attended; majority against the proposals, 8 in favour of P.46/2019(re-issue)
St. Martin	About 50 parishioners present; vote taken and a majority supported the Connétables remaining in the States.
St. Mary	About 25-30 present, no vote, lot of concerns and not supportive
St. Ouen	Approx. 70 present; vote taken; only 1 in favour of P.46/2019(re-issue); on a further vote only 8 wanted to remove the Senators
St. Peter	175 attendees; 4 supported P.46/2019 (re-issue) when a vote was taken
St. Saviour	About 30 present; no vote taken but general consensus that the proposals were not supported.
Trinity	Between 150 & 160 present; vote taken and max. of 20 in favour of P.46/2019(re-issue)

Parish meetings held to discuss P.126/2019

Following the lodging of P.126/2019 Parish Meetings were held in St. Peter and St. Ouen as follows –

St. Peter Parish Meeting Tuesday 28 January 2020

48 attended of whom 47 voted; secret ballots held on –

- Do you consider the Connétables should remain as voting members of the States of Jersey Assembly – 47 in favour
- Do you agree with the proposition to create 9 districts in which St. Peter would become merged with St. Ouen and St. Mary – 47 against

St. Ouen Parish Meeting Wednesday 29 January 2020

61 attended; votes taken –

- For the Connétables to remain as a voting member of the States Assembly – 56 in favour
- For the Parish to retain its Deputy – 47 in favour
- To retain the position of Senator and increase from 8 to 12 positions – 53 in favour
- Requesting the Connétable and Deputy to vote against all 3 States propositions on electoral reform – 51 in favour

Examples of other voting options

Single Transferable Vote

The Single Transferable Vote (STV) is a form of proportional representation used in Northern Ireland, the Republic of Ireland, Malta, Scotland and Australia for various elections.

Instead of single-member constituencies, each constituency would consist of several elected members. On election day, voters number a list of candidates, selecting their favourite as number one, their second favourite as number two, and so on, numbering as many or as few candidates as they want. By numbering your preferences, it tells the counters to move your vote if your favourite candidates either has enough votes to win a seat, or cannot win.

There are generally two methods of using a Single Transferable Vote: elimination transfers, or through a quota.

With elimination transfers, it is a simple matter of sequentially identifying the candidate with the least support, eliminating that candidate, and transferring these votes to the next-named candidate on each ballot. This is effectively identical to instant-runoff voting.

Alternatively, candidates may require a set number of votes, known as a quota. This is calculated based on the number of votes cast and the number of seats in the constituency.

Each voter has one vote, and the candidate who has more number ones than the quota is elected (e.g. 50%+1 of all votes cast have the same candidate as first preference). All votes then move to each voter's second favourite candidate. If no candidate reaches the quota, the least popular candidate is eliminated, a cycle that continues until enough candidates have reached the necessary quota to fill all seats within the constituency.

The advantage of STV is that it minimises wasted votes, since it maximises the chance of a candidate you favour being elected. This also makes it resistant to manipulation and tactical voting.

STV is preferable for Jersey in that it maximises the options available to voters and minimises the need for tactical voting, thereby allowing them to vote for which independent or party-affiliated candidates they want without the risk of splitting the vote and allowing a candidate they oppose to come through the middle.

However, its complexity in contrast to the traditional first-past-the-post method would require an educational campaign from the government to improve public awareness and understanding in time for the next election to avoid misuse.

Single Transferable Vote – Electoral Reform Society: <https://www.electoral-reform.org.uk/voting-systems/types-of-voting-system/single-transferable-vote/>

Australian electoral systems – Parliament of Australia: https://www.google.com/search?q=australia+stv&rlz=1C1GCEB_en&oq=australia+st

v&aqs=chrome..69i57j69i60l2j69i59j69i60l2.1871j0j4&sourceid=chrome&ie=UTF-8&safe=active&ssui=on

Bartholdi, J.J. and Orlin, J.B., 1991. Single transferable vote resists strategic voting. *Social Choice and Welfare*, 8(4), pp.341-354.:

<https://link.springer.com/article/10.1007/BF00183045>

Alternative Vote Plus

Alternative Vote Plus (AV+) uses a mix of seats, with some elected via the Alternative Vote and others by a list.

Conceived by the Jenkins Commission in 1998, this system is not currently in use, but carries similarities with Jersey's current electoral system.

Step 1: Alternative Vote

Voters first vote once with the Alternative Vote. This system works by voters ranking their candidate by order of preference, with candidates being eliminated by order of fewest votes until one candidate is left (akin to the Elimination Transfer method of STV, but minded to work for single-member constituencies). The Jenkins Report recommended that between 80% and 85% of seats should be elected using this system.

This system is used by the Australian House of Representatives, as well as the President of Ireland. It works favourably when electing a single person, but is not wholly proportional, since it favours candidates who are able to appeal to a broad range of voters and can lock out smaller groups, an issue that is avoided with STV due to the larger number of seats available in each constituency.

Step 2: The List

Voters then vote again on a small top-up list to make the overall result more proportional. The List often encompasses the entire jurisdiction. For example, voters may vote for a local candidate and for a jurisdiction-wide candidate.

Through the use of Island-wide Senators, Jersey has a variation of this, known as an Open List (where voters may vote for an individual candidate standing in the List). However, unlike in some jurisdictions, Islanders cannot run in both a constituency and a List.

The remaining seats would be filled using open lists for each county or metropolitan area. The advantage is that this system provides a key local representative whilst allowing voters greater freedom to proportionally express their views.

Jersey

In theory, AV+ provides a strong foundation for electing members with different roles and briefs (such as the recommended constituency MP and List MP) under different electoral systems whilst still allowing for a more proportional voting system to be introduced.

Alternative Vote Plus – Electoral Reform Society: <https://www.electoral-reform.org.uk/voting-systems/types-of-voting-system/alternative-vote-plus/>

Alternative Vote – Electoral Reform Society: <https://www.electoral-reform.org.uk/voting-systems/types-of-voting-system/alternative-vote/>

Party List – Electoral Reform Society: <https://www.electoral-reform.org.uk/voting-systems/types-of-voting-system/party-list-pr/>

Voting Systems: The Jenkins Report – Parliament.uk:
<http://researchbriefings.files.parliament.uk/documents/RP98-112/RP98-112.pdf>

Curtice, J., 2013. Politicians, voters and democracy: The 2011 UK referendum on the Alternative Vote. *Electoral Studies*, 32(2), pp.215-223.:
<https://www.sciencedirect.com/science/article/pii/S0261379412001436>

None of the Above

None of the Above (NOTA) or Re-open Nominations (RON) is a ballot option available in some jurisdictions and political parties to allow voters to indicate their disapproval of the candidates in their constituency, and withhold their consent from electing a candidate.

Countries that use this system include India, Greece, the US State of Nevada, Ukraine, Belarus, Spain and Colombia. It is also used in Leadership Elections within the Green Party of England & Wales. RON is available in most student union elections.

If NOTA is listed on the ballot, it creates the possibility of no candidate receiving a majority or plurality of the vote, and thereby “winning the election”. Standard procedures vary, with some offices remaining vacant after a NOTA victory until a second election is held following a re-opening of nominations, or it can have no effect (such as in India or Nevada), where the next highest total wins regardless.

In 2013, the Indian Supreme Court ruled that the registering of “none of the above” should apply in elections, and ordered the Electoral Commission to provide this option, with the suggestion that this would improve voter turnout. In a survey conducted by the campaigning organisation 38 Degrees that asked participants the question “What would make you more likely to vote in the 2015 General Election?”, NOTA was the most popular choice, being picked by over 18,000 of the 84,000 responses.

NOTA could have some useful applications in Jersey, since it would prevent candidates from being elected unopposed, and require voters to consent to their election (thereby preventing candidate from being elected before polling day), provided sufficient regulations are in place to prevent the option from being abused.

Indians who don’t like any candidate have a better choice than not voting – Quartz:
<https://qz.com/india/1607866/india-election-2019-what-is-nota-none-of-the-above/>

Voter engagement in the UK – Political and Constitutional Reform – Commons Select Committee (House of Commons): <https://www.parliament.uk/voter-engagement-in-the-uk>

Like our students, UK voters should have the option to vote for ‘Re-open Nominations’ – LSE Democratic Audit UK:

<http://eprints.lse.ac.uk/63180/1/democraticaudit.com->

[Like%20our%20students%20UK%20voters%20should%20have%20the%20option%20to%20vote%20for%20Re-open%20Nominations.pdf](http://eprints.lse.ac.uk/63180/1/democraticaudit.com-Like%20our%20students%20UK%20voters%20should%20have%20the%20option%20to%20vote%20for%20Re-open%20Nominations.pdf)