

STATES OF JERSEY



ELECTED SPEAKER AND DEPUTY SPEAKER OF THE STATES ASSEMBLY: SELECTION AND APPOINTMENT (P.31/2019) – AMENDMENT

Lodged au Greffe on 11th April 2019
by the Connétable of Grouville

STATES GREFFE

ELECTED SPEAKER AND DEPUTY SPEAKER OF THE STATES ASSEMBLY:
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1 PAGE 2, PARAGRAPH (1) –

Before the words “to agree that –” insert the words “subject to paragraph (3),”.

2 PAGE 3, PARAGRAPH (2) –

For the full-stop at the end of paragraph (2), substitute a semi-colon.

3 PAGE 3, NEW PARAGRAPH (3) –

After paragraph (2), insert the following new paragraph (3) –

“(3) paragraphs (1) and (2) shall be void and of no effect unless the majority of the people voting in 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, have voted against the Bailiff remaining the President of the States.”.

CONNÉTABLE OF GROUVILLE

Note: After this amendment, the proposition would read as follows –

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

- (1) subject to paragraph (3), to agree that –
 - (a) the States Assembly should select its Speaker either from amongst the elected members of the Assembly, or by appointing a person who is not a Member of the Assembly but who would be eligible for election to the Assembly;
 - (b) the States Assembly should select a Deputy Speaker from amongst the elected members of the Assembly;
 - (c) the selection and appointment of the Speaker and Deputy Speaker should be the first items of business for any new States Assembly and, should either office become vacant during the term of an Assembly, be the first item of business at the next scheduled meeting of the Assembly;
 - (d) the Speaker and Deputy Speaker should be elected to serve for the duration of an Assembly term, or for the remainder of the Assembly’s term if (for any reason) they are elected mid-term;

- (e) the process for electing the Speaker and Deputy Speaker should follow a similar format as those for the election of the Chief Minister, Ministers and Scrutiny Panel Chairmen;
- (f) provision should be made for the Speaker and Deputy Speaker to resign and/or be removed from office by the States Assembly;
- (g) the Speaker should be required to act impartially, and be seen to act impartially, at all times. To that end, the Speaker may not lodge propositions, table questions, participate in debates or vote on propositions. Upon being elected, the Speaker would be required to resign from any membership of a political party;
- (h) the Deputy Speaker should be required to act impartially when chairing meetings of the Assembly and undertaking official duties related to their role as Deputy Speaker. When not acting as Deputy Speaker, the Member elected to this post may continue to lodge propositions, table questions, participate in debates, vote on propositions and sit on scrutiny panels;
- (i) the functions of the Speaker shall include –
 - (i) fulfilling all the functions of the Presiding Officer as set out in the States of Jersey Law 2005 and the Standing Orders of the States of Jersey;
 - (ii) representing the States Assembly both within Jersey and overseas;
 - (iii) promoting the development of the States Assembly and democracy in Jersey;
- (j) the functions of the Deputy Speaker shall include –
 - (i) fulfilling the functions of the Speaker in the absence of, or at the request of, the Speaker or at any other time when the office of Speaker becomes vacant;
 - (ii) supporting the Speaker in representing the States Assembly within Jersey and overseas;
 - (iii) supporting the work of the Speaker in promoting the development of the States Assembly and democracy in Jersey;
- (k) the additional resources required to support a Speaker and Deputy Speaker should be provided for within the current structure of the States Greffe;
- (l) the Bailiff should remain as the Civic Head of Jersey, continue to swear in Members of the States Assembly in the Royal Court, Preside in the Assembly during the process of electing

a Speaker, and be invited to Preside in, or address the Assembly, on ceremonial and other appropriate occasions;

- (2) the Privileges and Procedures Committee should bring forward all necessary actions, including legislative amendments, to implement these changes in time for the Assembly to select and appoint a Speaker and Deputy Speaker at the meeting of the States on 22nd October 2019;
- (3) paragraphs (1) and (2) shall be void and of no effect unless the majority of the people voting in 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, have voted against the Bailiff remaining the President of the States.

REPORT

The general Public have not been consulted on the subject of whether we should replace the Bailiff with a speaker of the Assembly. This cannot be right. A major change to Jersey's constitution must have the backing and acceptance of the majority of Islanders. A referendum will determine whether or not the Public wish to see such a change.

On the last 2 occasions when changes to the constitution have been proposed, a referendum took place. In 2013, the 'a, b, c option' referendum was held. The turnout was only 26% as it was a standalone event. It is thought by some that a 3-way referendum is less than ideal, and the results show that more voters did not opt for a second option than did. The end result shows that more than half the people who took part in that referendum did not want option b either as a first or second choice.

A binary question was put before the electorate in 2014. The question in essence was whether the Connétables should remain in the Assembly by virtue of their office or not. This referendum was held on the same day as the general election, and so the turnout was a more representative 38%. As it was a 'yes or no' question, the result was quite clear. 62% voted to retain the Connétables and 37% voted to remove them from the Assembly. St. Helier was the only Parish to vote in favour of removing the Connétables, but this was only by 22 votes, and District 2 actually voted to retain the Connétables.

Surely removing the Bailiff from the States and undermining his position as civic head of the Island is just as important a matter as the 2 questions asked in the 2 previous referendums.

It is clear that holding a referendum on election day encourages a better turnout, but when the Referendum Commission looked at this same matter last time, they concluded that a standalone day for the referendum was preferable for a matter of such importance. The Referendum Commission has also intimated that the background work to determine how this question would be put was done only a short while ago, and therefore it would not be necessary to repeat that exercise.

The removal of the Bailiff as 'speaker of the house' is not a simple political issue. It is a major change to our constitution, and that it is why it is essential that such a move has the support of the people. States Members are already thought of in a poor light. If we make a dramatic change to our constitution without the electorate's support, we will be thought of with even less esteem.

The Bailiff's role as President of the States is inextricably linked to his or her role as civic head of the Island. To suggest that a ceremonial visit on Liberation Day each year, and a visit from time to time to preside when a new Speaker is to be elected, would somehow maintain this link, cannot be taken seriously. In the current situation, the Bailiff is in regular contact with all States Members including, of course, the Ministers and Chief Minister. He is well known to all of us. If the Bailiff is removed as Presiding Officer, relationships with States Members will soon fall away. Sir Michael Birt, a former Bailiff, explained this point in a letter to a previous Privileges and Procedures Committee on 25th January 2011, commenting on the 'Carswell Review' (at paragraph 6(iii)) –

“[I]n modern times it is [the Bailiff's] position as President of the States which has underpinned his status as civic head of the Island. I know of no country or jurisdiction where a person who is merely the Chief Justice is the civic or

ceremonial head of the country or jurisdiction. I accept that, if, for example, the legislation enacting any reform provided in law for the Bailiff's position as civic head, this would underpin it for a while. However, I do not believe that it would last for more than a few years. It would simply not be sustainable over the longer period. The Bailiff would become a remote figure unknown to members of the States because he would have no regular interaction with them. Nor would there be any good reason for him to be the person to receive visiting dignitaries such as royalty, ambassadors etc. or for him and members of the Royal Court to lead important ceremonial occasions such as Liberation Day and Remembrance Sunday or to attend the many community and charitable events as an apolitical representative of the Island. It is his status as President of the States as well as his historical role which gives legitimacy to the performance of those functions. In my view pressure would soon mount for such functions to be undertaken by the newly elected president of the States [Speaker]."

The Bailiff also acts as the guardian of the constitution. This duty is reflected in his oath of office –

"You swear and promise before God ... that you will uphold and maintain ... the privileges and freedoms of this Island and that you will vigorously oppose whomsoever may seek to destroy them ...".

The current way in which he can fulfil this duty is to have sight of, and approve, propositions before they are lodged *au Greffe* and draw to the attention of Ministers when propositions have implications for the constitution. Should the Bailiff not sit in the States he will not have that ability. Another major constitutional change.

The final constitutional change that would result from the proposed changes would be the effect on constituency representation. It is true that the proposition does allow for a non-member to be Speaker, but that is not guaranteed. If the Speaker is chosen from among States Members and, using St. Peter as an example, it might be the case that the Connétable or Deputy of St. Peter could become Speaker, and the Parish would effectively lose half its representation. That can't be right. There are proposals to change our system to have super-constituencies with a view to achieving voter equity. The latest proposals suggest 9 super-constituencies, with 8 districts having 5 representatives, and one having 6. If the north-western district were to lose one of its 5 representatives it would immediately reduce that constituency's representation by 20% and undermine equity within the new system. The aim of the new system is to make our electoral system 'Venice-compliant'. Having an elected Speaker would immediately destroy that aim.

It is clear that this matter is a major constitutional change on a number of levels. It is wrong to make those changes without the support of the general Public. The general Public are not calling for change and, indeed, the feedback that I get from parishioners from Grouville is that they are dead against it.

Financial and manpower implications

The cost of running the standalone referendum in 2013 was £70,000. Allowing for inflation, the cost of a referendum now is likely to be around £80,000.