

3.10 The Connétable of St. Helier of H.M. Solicitor General regarding whether, as a matter of law, Parishes could make use of a referendum in making important decisions and, if so, under what conditions: [1(303)]

Given the impossibility in even the smallest Parish of accommodating all those entitled to attend a Parish Assembly within the Parish Hall, will H.M. Solicitor General advise whether as a matter of law Parishes could make use of a referendum in making important decisions and, if so, under what conditions?

Mr. M.H. Temple Q.C., H.M. Solicitor General:

There is no statutory mechanism for the holding of a referendum as such at Parish level. Under the Referendum (Jersey) Law 2002 the States may by Act resolve that a referendum be held on any matter and the Act may apply provisions of the Public Elections Law in connection with holding of the referendum. The new Draft Referendum (Jersey) Law which was approved by the States on 28th March will make similar provision but with the addition of detailed provisions regarding the appointment of a Referendum Commission, campaign spending, lead campaign groups, and so on. But it is clear that none of these provisions can be invoked by a Parish instead of the States so as to apply at Parish level. So the short answer to the question is therefore, as a matter of law, the Parish cannot make use of a referendum in the statutory sense of a referendum law in making important decisions. However, the essential nature of a Parish Assembly should be kept in mind. Under Article 23 of the Rates Law, a person is a member of a Parish Assembly if, among other things, the person resides in the Parish and is registered for the Parish as an elector in public elections. So the electorate of the Parish forms the Assembly and if the motion is put to the Assembly, that motion is in effect put to the electorate of the Parish. Of course, the practical reality of holding a Parish Assembly is that the entire electorate cannot possibly be accommodated in the Parish Hall to vote on the motion. Moreover, the vote is not a secret ballot in the way that it is in a public election under the Public Elections Law. But on the other hand, there is no legal requirement for the Assembly to be held physically in the Parish Hall. An Assembly can be convened at a location able to accommodate larger numbers of parishioners. There is also no objection in principle to the Parish circulating a questionnaire to parishioners to elicit their views, albeit at an unofficial level on a given matter subject to ...

The Bailiff:

Mr. Solicitor, you should be answering in one and a half minutes, so if you could bring your answer to a close, thank you.

The Solicitor General:

Beyond these limited possibilities, there is no legal mechanism for a referendum in the accepted sense of that word.

3.10.1 The Connétable of St. Helier:

I would be grateful if the Solicitor General could furnish me with his full answer in due course, and the other Constables. Is it not the case that the Parish Assembly could agree in a properly-convened Assembly to hold a referendum on a specific matter? If the Parish Assembly then agreed to hold a referendum and laid out the procedure, then that would have the same standing, same legal standing, as a Parish Assembly decision.

The Solicitor General:

I think the answer again is, no, not in the accepted sense of a referendum under the Referendum Law. The answer is no.

3.10.2 Deputy M. Tadier:

Could the Solicitor General explain whether, if not legally but perhaps in a *de facto* or customary manner, there are Standing Orders which govern the Parish Assemblies, including the tabling of propositions, amendments, lodging periods, *et cetera*? If so, would these apply uniformly across the Parishes?

The Solicitor General:

The procedures for the holding of Parish Assemblies are set out in the 1804 law on the subject of Parish Assemblies. That is a relatively short law which is all that I am aware of that governs the procedure for convening a Parish Assembly, who has the rights to be present and can speak and vote at the Assembly. Beyond that I am not aware of specific procedures that have universal application among the Parishes.

3.10.3 Deputy M. Tadier:

I thank the Solicitor General for that clarification. I was wondering whether the 1804 law had been unofficially superseded by the Parish manual which is called “make it up as you go along” when it comes to Parish Assemblies. I think we all know in reality that we have been at different Parish Assemblies ...

The Bailiff:

I do not think that is a question for the Solicitor General.

Deputy M. Tadier:

We have all been at Parish Assemblies where, for example, amendments are put to a rate where 4 amendments have been put on the floor at the same time and then you vote on the amendment you like, rather than taking the amendments in each order. We have also seen recently in St. Helier that amendments have been tabled almost negating the original one that was put to the Assembly and it seems that nobody really knows how or when or what the procedure is. So the question to the Solicitor General is: would it be helpful if a type of Standing Orders could be looked at so the members of the public and Members of the Assembly for whom of course are the most important individuals within the Parish system arguably know exactly what they can and cannot do when it comes to Parish Assemblies?

The Bailiff:

It is not really a question of law but ...

The Solicitor General:

I think that is more a matter of policy and one really for the Comité des Connétables, not really for me.

The Bailiff:

It is a question for the Comité des Connétables. Deputy of Grouville.

3.10.4 Deputy C.F. Labey of Grouville:

Has there been any consideration to changing the 1804 law should super-constituencies come into place and if there are issues that require the Assembly’s vote? What happens if there are Assemblies held in neighbouring Parishes that form part of the super-constituency that produced conflicting results?

The Bailiff:

I am sorry, that falls outside the scope of the question's permitted supplementary which is about referenda and Parishes. Deputy Higgins.

3.10.5 Deputy M.R. Higgins:

Could the Solicitor General tell us, is the 1804 law written in French or are the other laws governing the Parishes also written in French? Not even current French, I am talking about ancient French, or whatever. Is it not the case that they are so vague as you could drive a coach and horses through them, anybody who wanted to?

The Bailiff:

That also is outside permitted questions.

Deputy M.R. Higgins:

Pardon?

The Bailiff:

That is also outside permitted questions. The question is about referenda through Parishes.

Deputy M.R. Higgins:

Okay, it may be true though.

The Bailiff:

It may or may not be. I know that question time is running shorter than sometimes might have been expected but still. We now come to ...

The Connétable of St. Helier:

Sorry, I have a further supplementary. I have only had 2 questions.

The Bailiff:

A final supplementary. I am sorry, Connétable, yes.

3.10.6 The Connétable of St. Helier:

I am grateful to the Solicitor General for his answers. He did say that a larger venue could be looked at and, of course, that has been done in the past in St. Helier. But with about 18,500 people entitled to take part in decision making at the Parish level, that clearly is not an option for St. Helier and I think even St. Mary would struggle. Does this not suggest that we do need to review the law and come up with a law that is more suitable for the 21st century?

The Bailiff:

I am sorry, Connétable, the Solicitor General's job is to advise the Assembly on what is the law, not what the law ought to be. It is Members' job to decide what the law ought to be.

The Connétable of St. Helier:

I am grateful, Sir. [Laughter]

The Bailiff:

We come now to questions ...

Deputy G.P. Southern:

Sir, with hindsight, given that we have only used something like one hour and 20 of our 2 hours' question time, does the Chair regret at one stage closing down on supplementary questions? We had plenty of time to ask as many supplementaries as we like. Would you

consider, with hindsight - which is today's favourite word - with hindsight that you might have allowed questions to flow a bit more naturally?

The Bailiff:

I am sorry if Members think I have not allowed questions to flow naturally but the Standing Orders provide that a maximum of 2 hours is allowed for question time. It does not say that 2 hours must be taken up every time. I must say that I thought I had permitted quite a long time in relation to some of the questions. For example, I note that the first question to the Chief Minister went on for some 15 or 16 minutes. I beg your pardon, longer than that, nearly 20 minutes.

Deputy G.P. Southern:

Yet, I was refused a supplementary.