

**DISQUALIFICATION OF STATES MEMBERS AND RELATED MATTERS**

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**Presented to the States on 2nd January 2001  
by the Legislation Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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## DISQUALIFICATION OF STATES MEMBERS AND RELATED MATTERS

### Report

1. The Legislation Committee has been giving consideration to whether the present arrangements for disqualification for election to the States of Jersey are adequate in so far as concerns the ability in law for those with previous convictions to put themselves forward as election candidates; as to whether legislative arrangements ought to be made for prescribing information which should be available to the electorate in connection with the candidates; and to the creation of sundry criminal offences for the purposes of preserving the integrity of the electoral process.

### The present position

2. Article 8(1)(k) of the States of Jersey Law 1966 provides -

*“Subject to the provisions of this paragraph, a person shall be disqualified for being elected or for being a Senator or a Deputy if -*

...

- (k) he has, within the seven years immediately preceding the date of his election, or since his election, been convicted anywhere in the Commonwealth of any offence and ordered to be imprisoned for a period of not less than three months without the option of a fine: ...”.*

Article 8(2) of the States of Jersey Law 1966 provides -

*“A person seeking election as a Senator or Deputy shall, at the time of his nomination, be required to make a declaration in writing that he is qualified for being elected by virtue of this Law or any other enactment, and any person who knowingly makes a false declaration shall be guilty of an offence and shall be liable to a fine not exceeding level 4 on the standard scale.”.*

3. It is noteworthy that this statutory provision only applies to Senators and Deputies, and does not apply to the Constables. In the case of a person elected to the office of Constable, the Legislation Committee is satisfied that the Royal Court has an inherent disciplinary jurisdiction over a Constable who commits a criminal offence during the course of his office (as exercised by the Royal Court some years ago in the case of the then Constable of St. John) and also has an inherent jurisdiction to refuse to administer the Oath to a person elected as Constable whom the Royal Court considers unfit for office by reason of a previous conviction.
4. The Legislation Committee has noted that on one analysis, the provisions of Article 8(1)(k) of the 1966 Law are extremely restricted. They apply only to a conviction within the last seven years where a sentence of three months' imprisonment or more has been passed. Accordingly, quite serious convictions which result in a sentence other than one of three months' imprisonment or more would not lead to disqualification. Furthermore the Article applies only to convictions in the Commonwealth; and the Legislation Committee has noted that if the conviction was more than seven years before the election, no prohibition exists, no matter how serious the offence or how long the sentence imposed. Accordingly a person convicted of murder and released on licence would be entitled to take his seat in the States after the material period of seven years had passed; likewise a paedophile convicted of serious assaults on a variety of children over many years would be free to stand for election forthwith if not imprisoned for a period in excess of three months; so too a man convicted of a massive financial swindle for which he was sentenced to, say, ten years' imprisonment, would be free to stand within months of his release, assuming a release before the expiry of his term, taking good conduct into account.

### The position elsewhere

#### House of Commons

5. As far as the United Kingdom is concerned, a person convicted of an offence and sentenced to imprisonment for more than a year is, whilst he is detained or unlawfully at large, disqualified from being nominated or from being a member of Parliament. Persons who have been convicted of corrupt or illicit practices in relation to elections are also prohibited from standing. The period of such prohibition varies from five to ten years from the offence. No prohibition exists in respect of other criminal offences once the sentence of imprisonment has been served. In this respect the position in the House of Commons is less restrictive than Jersey. However, the House of Commons does

have power to expel a member, and might well do so where a person was convicted of a criminal offence of any seriousness. Such an expulsion would not prevent the member standing for re-election.

#### Local elections in England and Wales

6. Under Section 80 of the Local Government Act, 1972, a person is disqualified from standing as a candidate or being a member of a principal council or Parish or District council if “*within five years before the date of election or since his election (he) has been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months.*” This is broadly similar to the position under the States of Jersey Law, although the period is five years as opposed to seven, and conviction in the Commonwealth is not a bar to election.

#### Scotland

7. The statute establishing Scottish Parliament provides that the disqualifications are the same as those for the House of Commons.

#### Australia

8. The position here is that a person convicted of treason or a person who “*has been convicted and is under sentence of subject to be sentenced for an offence punishable by imprisonment for one year or longer under a State or Commonwealth law*” is disqualified. This is marginally more restrictive than the House of Commons in that the person does not actually have to be sentenced to imprisonment for a year (merely that the offence must be punishable by imprisonment for a year or longer) but it is noteworthy that the disqualification only applies whilst the person concerned is in fact subject to a sentence. Once the sentence has been served, the disqualification disappears.

#### Singapore

9. Article 45 of the constitution disqualifies from election a person who has been fined more than \$2,000 or been sentenced to imprisonment for a term of not less than one year. These disqualifications lapse five years after the date of conviction in the case of a fine, or five years from the date of release from custody in the case of a person sentenced to a custodial term. Again it is noteworthy that a person convicted of a serious criminal offence is eligible for election only five years after release from prison.

#### Guernsey

10. A person is only eligible for election in Guernsey if he has not during the five years immediately preceding the date of the election been sentenced in the United Kingdom or any of the Channel Islands or the Isle of Man to imprisonment for a period of six months or more. Guernsey is thus less restrictive than Jersey in that the period is five years, and the relevant sentence of imprisonment is six months rather than three months.

#### **Discussion**

11. It is quite clear that these different pieces of legislation hold a tension between giving due weight to democratic will, so that if the electorate wish to elect a person with a criminal record it is its right to do so, and to the need for a legislature to have some public acceptability and standing. Subject to the views which may be expressed as a result of this consultative document, the Legislation Committee are prepared to accept these two guiding principles -
  - (i) Democracy requires that the people have the right to vote for those of their choice who have put themselves forward for election. That principle is, however, qualified by the caveat that a real choice is an informed choice as far as possible within the constraints of the rules enabling access to information. Clearly the electorate cannot expect to know everything about the candidates; but the electorate can reasonably expect to be advised if there is anything about the candidate which would be relevant to the second principle set out below.
  - (ii) The organs of government must be respected. Recognising that human fallibility appears in everyone, the Legislation Committee nonetheless takes the view that there are some kinds of fallibility which would have a fundamentally damaging effect on the respect in which the government should be held, or which might pose a risk to the stability of the government or to those who are governed.
12. In many of the jurisdictions reviewed above, there are political parties. A candidate with any realistic chance is normally nominated by a party which will scrutinise carefully the candidate's background and record, and indeed

one assumes that a serious party would not normally select a person unless satisfied that there were no serious criminal offences or indeed other skeletons in his cupboard. Indeed, it may be the risk of such a skeleton which is of itself sufficient to persuade a political party either not to select, or if selected to de-select, a candidate to represent that party at the election.

13. In Jersey, where there is no party system, this vetting does not take place. Anyone who is not disqualified can stand. Furthermore there is no obligation to disclose a criminal record which does not disqualify a person from standing as a candidate, and there may be no way in which the electorate can discover the existence of the record. It is possible in those circumstances that many votes would be cast for a candidate by those voting in the election where, had the voters any idea of the true facts, they might not have voted as they did.
14. Where the balance should be drawn between the freedom of the electorate to make an informed choice of whomsoever they wish, and the need to ensure that the States of Jersey consists of and is perceived as consisting of members of appropriate probity and standing, is absolutely a matter of political judgment. It is a matter for consideration whether the reputation of the States amongst the people of Jersey would be adversely affected by members of the States, or some of them, had serious criminal convictions; and also whether any damage would be caused to the Island's international reputation - for example in connection with the fight against money laundering - if a number of States members similarly had serious criminal convictions.
15. The Legislation Committee considers that the two guiding principles are free-standing principles. It takes the view that it is essential that the organs of government should be respected. If there is a very poor turnout at the time of the elections, there is an increased risk of the electorate returning a candidate who, if elected, might bring government into disrepute. Furthermore, upon the basis that the disqualification of serving prisoners from being members of the legislature is not rooted only in the fact that that person being unable to attend to perform his functions - because such a rationale might well apply to others as well - one must conclude that at least part of the rationale is the protection of the legislature from disrepute.

## Proposals

16. The Legislation Committee proposes for consideration the following rules relating to disqualification from membership of the States and the election process, which it is suggested should apply to all categories of elected member -
  - (i) A person should be disqualified from standing for the States, or if a member, shall be disqualified from remaining as a member, during the period of seven years following any conviction in any part of the world (not restricted to the Commonwealth) which results in a custodial sentence of a period of three months or more without the option of a fine. This would preserve the current rule but enlarge it by removing the references to the Commonwealth.
  - (ii) A candidate for election should be obliged to disclose all convictions which are not spent convictions as defined in the Rehabilitation of Offenders (Jersey) Law 2000. Such disclosure would be achieved by prescribing the details to be inserted on any nomination paper, which would contain a declaration that if no disclosure were made, no such convictions existed.
  - (iii) A candidate for election should also be obliged to disclose all convictions, even if spent as defined in the Rehabilitation of Offenders (Jersey) Law 2000, if the offence of which the candidate had been convicted fell into a class prescribed by Regulation from time to time. It is likely that this class would include the following offences -

Treason  
Murder  
Manslaughter  
Rape  
Sodomy  
Drug Trafficking  
Any offence against children  
Any offence involving dishonesty  
Any offence involving the perversion of the course of justice.

The class of offences would include inchoate offences linked to the offences listed within the class, namely attempted offences, conspiracy to commit offences and aiding and abetting the commission

of offences.

17. The Legislation Committee makes these proposals as the rules for disqualification and disclosure as a compromise of the two guiding principles referred to above. There is a relatively temporary absolute disqualification, and in respect of those wishing to stand for election who have convictions which would not lead them to be disqualified, there are disclosure obligations which should ensure that the electorate is free to make an informed choice.

#### **Other reforms**

18. The Legislation Committee considers it would be appropriate to recognise other abuses have taken place in relation to elections in the past, which should be tackled by amendments to the criminal law, namely -

- (i) It should be an offence knowingly to make to the public a false statement of fact, whether orally or in writing at the time of an election, this offence to be punishable with imprisonment of up to six months or a fine. The purpose of the offence is to prevent interference with an election by making false statements but not to interfere with the right to freedom of speech. The offence might be committed by someone standing for election or by another. The purpose of the offence is not to catch political posturing, which might be liberal in its interpretation of facts, but to catch deliberate dishonesty intended to mislead the public in relation to the election candidates or election issues.
- (ii) It should be an offence to commit corrupt or illegal practices in relation to elections, punishable with a more substantial period of imprisonment, or a fine.

The Legislation Committee publishes this report as a consultative document and invites comments by 31st March 2001, with a view to promoting draft legislation with the aim it is in place for the 2002 elections.

18th December 2000