

STATES OF JERSEY



PUBLIC ELECTIONS (JERSEY) LAW 2002: PROPOSALS FOR CHANGE – CONSULTATION PAPER

**Presented to the States on 8th February 2005
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Introduction

Prompted by a number of comments and criticisms from various quarters, the Legislation Committee began a review last year of the provisions of the Public Elections (Jersey) Law 2002 to assess whether changes should be recommended in the light of experience in the operation of the Law. An initial discussion paper, produced by Committee member Deputy Guy de Faye, was considered by a number of interested parties including the Jurats (reflecting their traditional role as Autorisés), the Comité des Connétables (who deal with most of the administration for elections under the Law) and some States members who had taken a particular interest in this issue.

As part of the review of its future role in the transition towards ministerial government, the Legislation Committee recently concluded that responsibility for electoral law should be transferred to the Privileges and Procedures Committee so that it could be dealt with by a body that was independent from the Executive in the future system. The Privileges and Procedures Committee agreed that this transfer was a logical move, particularly as it already had responsibility for the States of Jersey Law which deals with the election of Senators and Deputies to the States.

Following the transfer of responsibility, the Privileges and Procedures Committee established a Working Party on Electoral Reform under the chairmanship of Deputy Peter Troy, with Senator Paul Le Claire and Deputy Guy de Faye as members. The Working Party considered the preliminary conclusions of the Legislation Committee review and the Privileges and Procedures Committee is now publishing this consultation paper summarising its final recommendations. Once it has received comments from States members and other interested parties the Committee will bring forward appropriate amendments to the Law so that the proposed changes can be submitted to the States for approval.

Reasons for change

The review of the present Law has highlighted a number of possible defects. The public view, vigorously expressed by isolated individuals who have discovered at the polling station on polling day that they were not registered to vote, has been that there is not enough flexibility in the system. There is a perception of apparently arbitrary bureaucratic deadlines. Furthermore, failure to comply with various requirements of the administration process saw an apparent general presumption in favour of the integrity of the process rather than facilitating an individual's opportunity to vote. Whilst cognisant of the absolute need to ensure that the election process should not be open to abuses such as "vote rigging" or other forms of electoral fraud, the general view of the Committee is that the Island's wide spectrum of elections should be as "user-friendly" as possible with the emphasis being one of encouraging electors to register and to vote by making the process as convenient as is practicable. The other frequently expressed attitude from voters was to keep elections cheap, as ultimately they were paying for them.

In the initial consultation conducted by the Legislation Committee, the Comité des Connétables had a slightly different perspective. The Connétables felt that elections had lost an important element of fun due to excessive restrictions, particularly around polling booths. This had contributed to "killing the atmosphere" at the Parish Halls and left the public less interested in taking part in the ballot. The Comité agreed that getting people to vote was excellent in principle, but hard to achieve in practice. In particular, the sheer expense of routine tasks like sending out reminders was very costly.

The Bailiff, responding as President of the Royal Court on behalf of the Jurats, noted a number of difficulties relating to postal ballots as well as some apparent anomalies within the current Law that were probably due to law drafting oversights. In general, there was a clear request for greater flexibility and a higher degree of discretion for Autorisés, to allow them to tackle unexpected problems.

Having taken account of the above the Committee is recommending the following changes to the Law. The relevant Articles of the Public Elections (Jersey) Law 2002 referred to in the report are reproduced for convenience in the Appendix and the full text of the Law (L.12/2002) is available from the States Bookshop or

can be viewed on www.jerseylegalinfo.je

Recommendations

Article 5: Entitlement to be registered

The curious effect of this Article stems from the time requirements laid down for being ordinarily resident. The Article provides that person is entitled to be registered if he or she has been either: (i) ordinarily resident in the Island for a period of at least 2 years, or (ii) ordinarily resident in the Island for a period of 6 months as well as having been ordinarily resident in the Island at any time for an additional period or periods totalling 5 years. The result is that a Jersey-born person or another person who has lived in the Island for a lengthy period, who may have spent decades living locally, but who have recently returned to the Island after a period of non-residency, is faced with a 6-month wait before he or she can register to vote.

Whilst it might seem expedient to insist that such persons should be obliged to immerse themselves in local society for half a year before they can take part in any democratic procedure, this measure is fundamentally anti-democratic and appears to ignore the fact that modern communication systems allow anyone to maintain contact with the Island from anywhere in the world.

The Committee's view is that, whilst it agrees that ability to register after 2 years' continuous residence in Article 5(i) should be retained, there is little merit in combining a continuous residency requirement (6 months with a combined total of residency (5 years).

The Committee therefore recommends that the residency requirement in Article 5(ii) should be amended to provide that a person will be entitled to be registered if he or she is ordinarily resident in the Island and has been has been ordinarily resident in the Island at any time for a period, or any number of periods, that total at least 5 years.

The Committee considers that it would be logical for a similar change to be made to the qualifications for office for members of the States so that anyone qualified to be registered as an elector would meet the residency requirement for election as a States member. If the recommendation above is accepted the Committee will bring forward an appropriate amendment to the States of Law.

Article 6: Electoral registers

Article 7: How information is gathered

Article 8: General publicity

These Articles appear to be out of kilter in respect of the datelines for the triennial preparation of the electoral register, but this is because they were written in anticipation of impending constitutional changes. Unfortunately, given the current pace of constitutional change, this may be a feature that will merit further thought. The States have yet to determine the future electoral terms for members, but the choice is likely to be 4 or 5 years, rather than 3 or 6. However, it could also be possible for a concept of major general elections to be substituted for a more regular system of rolling change, possibly with annual elections.

The requirement for the Connétables to issue forms to every unit of accommodation in their parish by 1st May every year seems to be a potentially unnecessary expense, as is the need for the Judicial Greffier to advertise the general public duty to be registered on the electoral roll 4 times a year, in March, June, September and December. However, regular updates do ensure that the electoral roll remains accurate for elections for Centeniers and Procureurs, which could be held randomly throughout the year. Similarly, the roll is affected by deaths within a parish, as well as regular movement between local residences.

On a matter relating to the issuing of electoral registration forms, the Bailiff and Jurats were concerned that a property-owner might deliberately fail to list all the names of residents entitled to vote. This came to light when a number of voters were effectively disenfranchised by the failure of the property owner to deliver the franchise form to lodgers and tenants to complete and return. The reasons for failure to deliver or return the form properly are varied, but could include a desire by the property owner not to let the income tax authorities and others know

that rental income is being received. One option would therefore be to introduce a criminal offence to tackle the problem. This would be limited in scope, as failure of a voter to register would not be a criminal offence.

The Committee considers that, at this point, no significant changes need to be made to these Articles, although it recommends that in the interests of saving cost and bureaucracy the requirement that the Judicial Greffier should advertise 4 times a year should be reduced to just 2 times a year, in March and September. Further changes, for example to the 1st May deadline for the Connétables to issue electoral registration forms, can be revisited if a decision is made to move the date of the elections for Senators and/or Deputies.

The Committee does not recommend the introduction of a criminal offence for property-owners/heads of households who fail to register family members, lodgers, tenants etc as electors. The Committee notes that everyone has the opportunity to check the electoral roll and this provides a safeguard for anyone who is concerned about his or her registration.

Article 12: Electoral register in force for an election

The Committee considers that this Article provides one of the clearest indications of how the Public Elections (Jersey) Law 2002 has been constructed around bureaucratic convenience rather than the fundamental principles of the democratic process. Its effect is to close the electoral register on the day before nominations for the relevant election are finalised. This is a surprising insistence, given that the publication of exactly who is going to contest an election, following the nomination meeting, is one of the most powerful galvanizing factors in persuading voters to take interest in an electoral process. It is precisely from the time of the nomination meeting to polling day itself, that voters are most likely to check whether they are eligible to vote or not – and the function of Article 12 ensures that any enthusiastic voter who, for whatever reason, has not been registered by the pre-nomination cut-off point is deprived of his or her democratic rights.

The Committee is of the view that this cannot be right, as it must surely be the purpose of any election law to encourage the democratic process, rather than to set up restrictions to prevent eligible voters from taking part in an election.

The initial Legislation Committee consultation questioned why it would not be possible for eligible voters to be included on the relevant election register up to and including polling day, providing that they could prove their identity and domicile within the pertinent electoral district. It was suggested that this could be a simple matter for any Parish official to carry out up until polling day. Furthermore, even though Parish Halls were often closed for polling day, the consultation suggested that it was not unreasonable to expect that at least one competent person should be available to accept late registration applications. It was pointed out that if registration had not been applied for or been overlooked, the most likely time for this to be discovered was when a potential voter arrived at a polling station with the intention to vote.

During the initial consultation the Connétables were strongly against changing the electoral roll register cut-off point from the midday of the day of the nomination meeting. This was primarily due to administrative reasons, although there was concern that it might offer an opportunity for cheating by “buying votes”.

The Committee believes that any decision on the appropriate cut-off time for registration must depend on a balance between the desire to facilitate voting and the need to safeguard the integrity of the agreed process. Within this must be weighed the distress of the disenfranchised voter against the time and cost of catering for a relatively small number of individuals. Few potential voters are likely to be affected by the midday nomination day cut-off, however they are likely to feel strongly on the issue. In practical terms it is also likely that those who believe they are registered will not discover a mistake until polling day. The logic is therefore that a cut-off point should remain on or close to nomination day, so that candidates can be issued with the “official” electoral roll, however, the roll could continue to be held open for “late” registrations up to close of parish business on the day preceding polling day. Any additional names would either be presented on a list to the Autorisé on polling day, or would be simply added to the central computer database. In the event of a substantial number of new registrations, it would also be appropriate to forward a supplementary notice of the new names to electoral candidates. On polling day, any further registrations should be at the discretion of the Autorisé, with the presumption of the

ability to register and vote being in favour of the prospective voter, rather than against. However, this might be mitigated by a higher level of required proofs of identity and address. Cross-referencing with a central computerised electoral register database should eliminate any attempts at multiple voting.

In summary the Committee therefore recommends that the main electoral roll should be produced the day before nominations, as per the *status quo*. However, the Committee also recommends that prospective electors should be able to add their names to the electoral roll up until 12 noon on the day before election day. A final electoral register should then be produced for use on polling day. The Committee recommends that even if someone was omitted from this second (updated) electoral list, late applicants should still be able to be added, at the discretion of the Autorisé (with a presumption that they would approve late registrations subject to the applicant providing the necessary proof of identity). The Committee believes that, if these recommendations are accepted, practical steps should be taken to ensure that candidates in the election are able to obtain details from the updated list as it is compiled after nomination day.

Article 17: Order for election

The Committee notes that at present any Autorisé must be appointed by the Royal Court. Clearly personal circumstances such as sudden illness, bereavement or other unexpected misfortune could render an Autorisé unable to complete his or her duty. Whilst the initial appointments of the returning officers should continue to be made by the Inferior Number of the Royal Court, it can only meet in proper session and may not sit on Sundays. Thus, if the absence of an Autorisé occurred at short notice, such as on the evening prior to polling day, the Court would be unable to meet to appoint a replacement. Under such circumstances, the practical solution would be for the Bailiff to make the appropriate appointment.

The Committee recommends that Article 17 should be amended to add a provision that in the event that any person, for whatever reason, is unable to carry out their duty as Autorisé, the Royal Court shall nominate a substitute, except in circumstances when the Court is unable to meet or in the 10 days preceding polling day or on polling day itself. In these circumstances the Bailiff should be empowered to act alone on the Court's behalf.

Article 22: Procedure where candidates exceed vacancies

At first glance, this Article seems thoroughly reasonable in respect of giving notice of elections. The historical role of the churches as essential sources of public information is recognised and so is the traditional notification vehicle of the Jersey Gazette. However, in the 21st Century the Committee believes that there must surely be a case for additional advertising of elections in the modern electronic mass media. Whilst television advertising is probably too costly and BBC local radio likely to broadcast Gazette notices for nothing, as a public service, there must be a case for utilising local commercial radio, especially as the use of the Jersey Gazette involves payments to the Jersey Evening Post. This duty might be allocated to the Greffier/Judicial Greffier rather than the Connétables and would be perhaps restricted to Senatorial and Deputies' Elections. However, this would not prevent any parish from unilaterally extending its use of the available media to notify parishioners of parochial elections, or indeed any other matter.

The Committee does not recommend any formal amendments to this Article at this stage but intends to keep the matter of advertising elections under review in the future.

Article 28: Persons who may be present in polling station

The perfectly reasonable right of a candidate to be present in each polling station where voting for that candidate is taking place is dependent, because of the present provisions of this Article, on the requirement in Article 28(1) to give the Autorisé notice in writing. Although the Committee has been advised that any such notice could, in practice, be given on any scrap of paper on polling day, the Committee is of the view that this qualification of a candidate's right of observation in a polling station is utterly superfluous, especially as the Autorisé already has the candidate's details in respect of name and address and, in many cases, will know the candidate by sight or recognise him or her from election posters. Either the candidate has a right to exercise or not.

The Committee therefore recommends that Article 28(1) should be amended to provide that each candidate shall have the right to be present during the poll in each polling station where an elector may vote for that candidate without the need to give notice in writing.

The Committee has also considered the position of a person other than the candidate who is representing the candidate. The provisions on the procedure for any such person to be present in a polling station are set out in Article 28(2).

The Committee accepts that it seems both courteous and reasonable to notify an Autorisé of the potential presence of that person. The way in which this could be achieved would be for any candidate's representative or representatives to provide written notification of authenticity as a representative from the candidate to the Autorisé. It would, for example, be acceptable for a person to simply carry a note from the candidate, which could be presented to the Autorisé at the polling station. It appears that this is acceptable under the Law as drafted but the Committee will seek advice to ensure that this is indeed the position and, if not, it will recommend that there should be an appropriate re-drafting of Article 28(2).

Article 30: Time when poll opens

During the initial consultation period the Jurats felt that the extended polling hours, resulting in an 8 a.m. start time, placed an unfair strain on parish officials. They favoured a later start time of 10 a.m. The Bailiff felt that the long hours imposed an equally unfair strain on the Jurats acting as returning officers. The Connétables observed that variations of voting hours appeared to make no difference to the number of people voting. Essentially, regular voters adapted to the polling hours, but extending the hours did not bring in any significant number of "new" voters. Therefore, the polling hours were pragmatically a cost issue for employees or a time issue for volunteers at each polling station and a reduction on costs and imposition on people's time would be welcomed.

The Committee does not believe that practical issues such as the hours worked by Parish officials or the commitment required from the Jurats should be a factor that would override any benefit that has been gained since the introduction of the longer hours. The Committee notes that the Working Party on Electoral Reform held the view that the polls should open at 10.00 a.m. because–

- **having had consulted an analysis of the voting times by polling district prepared by the Judicial Greffe, it was clear that voter turnout increased at 10.00 a.m.;**
- **the earlier opening time had not made any real difference to the number of persons voting; and**
- **the easing of the rules associated with postal and pre-poll voting (Articles 37-46) would make this a more common, and for some, convenient, alternative.**

The Committee therefore recommends that the opening hour of the poll should be changed to 10 a.m. A recent amendment to the Law changed the opening time to 12 noon for elections for Centeniers and Procureurs du Bien Public, and this recommended change would therefore only apply to elections for Senators, Deputies and Connétables.

Articles 37 to 46: Postal and pre-poll voting

The Committee believes that the introduction of pre-polling, together with the continued use of postal voting, is very useful aspect of voting procedure and considers that these 2 facilities should perhaps be extended beyond the current restrictions of being out of the Island, having unavoidable commitments or a disability. If it might encourage greater participation in elections, the Committee cannot see why postal votes should not be allowed on request, as well as pre-polling, without placing any restrictions on this form of balloting. At present, as can be seen from Article 38, the Judicial Greffier cannot allow a person to have a postal or pre-poll vote unless the person can justify that they are likely to be out of the Island or have commitments or a disability that will prevent that person attending at a polling station.

In respect of the existing process, the Judicial Greffe issues 3 separate forms (commitments, disability, out of Island) for election candidates or other interested parties to photocopy and pass on to any voter who may require one. The Committee considers that it would be far simpler to have just one form.

Similarly, the postal voting process is currently a convoluted one. Having obtained an application form (for disabled people this means either telephoning the Judicial Greffe or applying by post), this has to be filled out and returned to the Judicial Greffier. The postal vote form is then despatched to the applicant for completion and returned. Given that posting to a specific address is a fairly strong guarantee of ensuring that a postal ballot does not “fall into the wrong hands”, the Committee considers that this interchange of documentation could probably be reduced by half. Once a ballot paper is received by the voter it must be returned to the Judicial Greffier, duly sealed in the envelope provided, before midday on the day before the election day.

The Committee accepts that some voters have clearly been disenfranchised due to a rigorous interpretation of the law on the reasons for wishing to pre-poll or obtain a postal vote. In addition there is no provision, once a potential elector has obtained a postal or pre-poll vote, for that person to attend at a polling station with the ballot paper to vote in the usual way. In view of the fact that the Judicial Greffe has records of which electors had been issued with postal votes, the Committee does not consider it would be unreasonable to allow them to be handed in at the polling station, on presentation of proof of identity, if they had missed the previous day’s midday deadline at the Judicial Greffe, although a problem would potentially remain with late posted ballots arriving at the Judicial Greffe on polling day itself.

The Committee has considered concern expressed in the initial consultation process about the practice of some candidates to collect large numbers of application forms from the Judicial Greffe for distribution, during canvassing visits, to the housebound and elderly people in residential and nursing homes. The practice may be entirely altruistic, but there remains a worry that undue pressure or influence may inadvertently be put upon vulnerable voters. It is clear that candidates and their representatives have assisted voters in completing both applications and the postal voting form issued by the Judicial Greffe. (Information from other sources indicates that in some cases, the forms were filled in on the day after nomination day, with the voter having committed a vote to a particular candidate, before having had the opportunity to even read the manifestos of rival candidates.)

The Law provides stringent measures to ensure the secrecy and freedom of voting for people who attend in person at a polling station. By contrast, the Law has no similar safeguards in relation to a postal voter. The Committee is therefore extremely concerned about such practices, particularly in the context of a progressively ageing population.

The Committee recommends that the circumstances in which a person may apply for a postal or pre-poll vote should be amended to allow any person entitled to vote in an election to apply to vote in this way. The Committee believes that the present restrictions are unnecessary and, as a person who has voted in this way is precluded from obtaining a further vote at the polling station, there is no increased risk of fraud.

Secondly, the Committee believes that the Law should be amended to provide that candidates and their representatives should be prohibited from facilitating, interfering or overseeing in any way the postal or pre-poll vote of another person. It would not be an offence for candidates and their representatives to indicate how the process operated and how the necessary application forms could be obtained. For example, it would be an offence to give out or collect application forms or to assist an elector to complete them.

In addition the Committee recommends that the Law should allow the Judicial Greffe to accept requests for postal voting submitted via the internet or communicated for completion over the telephone, as the key requirement is to establish a name and address of a potential voter and that the voter requesting a pre-poll or postal vote is already registered on the electoral roll for the appropriate constituency. In such circumstances, where a name, electoral number and address can be confirmed on the electoral register, a postal vote form could be sent direct to the voter’s address. Such a form could be used as a postal vote, or by presentation at the Judicial Greffe, within the notified hours for pre-polling, as an entitlement to a pre-poll vote.

During the initial consultation stage concern was expressed to the Committee about the fact that once a voter has

obtained a postal or pre-poll vote that person cannot then take it to a polling station on election day. The Committee believes that in the event of a voter failing to use an allocated postal vote, it should be open to the voter, on polling day, to take and present their ballot paper to the returning officer at the polling station. The returning officer would check the voter's electoral number and letter (allotted by the Judicial Greffier) against the list of postal votes drawn up by the Judicial Greffe and the letter allocation made by the Judicial Greffier.

The Committee therefore recommends that appropriate amendments should be made to the Law to allow any person who has obtained a postal vote to cast that vote at the polling station, subject to the safeguards listed above.

The Committee accepts that there are practical and logistical reasons which mean that it would not be practical to amend the provisions of Article 44(3) which mean that postal votes returned to the Judicial Greffe after the midday deadline on the day before election to be discounted.

Article 46: Duties of Autorisé on receipt of postal and pre-poll votes

The Law specifies that a person voting by post or pre-polling must insert the ballot paper in one sealed envelope and return that sealed envelope with the declaration of identity in a separate envelope. The Jurats have noted that a relatively small number of electors inadvertently put their declaration of identity and the ballot paper together inside the ballot paper envelope. Unfortunately, the Autorisé is not permitted to open the ballot paper envelope to discover whether the declaration of identity is contained there, when one cannot be found. This means that a small number of votes, where identity cannot be confirmed, are consequently rejected under Article 46(4).

The Committee recommends that Article 46(4) should be amended to allow the Autorisé to open the ballot paper envelope if he or she cannot find the declaration of identity form and suspects that it may be in the ballot paper envelope. The Committee gave careful consideration to this recommendation as it is aware that such action could, in theory, compromise the secrecy of the vote but concluded that the slight risk of the Autorisé seeing the way in which an elector had voted is outweighed by the fact that the vote will not be discounted.

The Jurats also propose that the declaration of identity be amended so that the person who witnesses the signature of the voter is required not only to sign their name, but also print their name and give their address. At present, a signature, which is often illegible, is the only requirement and this, clearly, does not provide an adequate safeguard against electoral fraud. The Jurats note that such a change may be achieved administratively by the Judicial Greffe, rather than requiring a change in the law. **The Committee supports this recommendation.**

Article 49: Counting

Article 49(3) appears to permit the candidates and any number of the candidates' representatives to be present at the location of the count. During the initial consultation phase the Jurats noted that, although no problems have, as yet, arisen in practice, they would like representation at the count to be limited to solely the candidates and one representative per candidate.

The Committee does not recommend making any change to address a potential problem that has not yet arisen. Any such change could potentially kill off the atmosphere during the count and is probably an excessive measure in the light of current practice. However, an Autorisé does not appear to have a power under the Law to expel persons from the count if the person is deemed to be disrupting, impeding or interfering with it. **The Committee therefore recommends that the Law be amended to make it clear that the Autorisé has such a power.**

Article 51: Invalid papers

Recommendation

Following an observation by the Jurats, **the Committee recommends that Article 51(1)(a) should be amended for the avoidance of doubt to make specific reference to Article 35, so that votes from the sick or disabled collected or recorded by an Autorisé or Adjoint are not ruled invalid.**

Article 54: Order for swearing-in

This Article contains curious provisions on the order for swearing-in which do not accord with the actual process adopted by the Court, which is to swear in a number of candidates elected to the same position (for example the 6 Senators or the 29 Deputies) together unless any wish to affirm the oath. The Committee believes that the Article is unnecessary and **recommends that it be repealed to avoid unnecessary confusion.**

Other issues

There are a number of issues that the Committee has discussed during this review but which it believes should be addressed, if appropriate, at a later date. For example it has been decided not to include any recommendations on internet or telephone voting, primarily due to cost considerations and secondarily due to a prevailing expert view that the security of electronic voting systems cannot yet be guaranteed. The issue of the establishment of political parties has been raised, and it has been suggested that the form of the ballot paper should be changed to permit the inclusion of a party name and associated logo. There are legal and practical issues which would need to be addressed and the advice of the Law Officers' Department is being requested in this regard.

The Committee has also given initial consideration to alternative electoral systems, such as some form of preferential voting, in elections where there are a number of places to be filled, such as the current senatorial elections. The Committee's initial view is that an alternative electoral system might be appropriate in such circumstances but it has concluded that decisions on the future composition and election of the States need to be taken first to see whether or not there will be multi-member constituencies in the future. Any such change would require very careful research before being recommended and the Committee does not believe it can justify the commissioning of that research until the issues referred to above have been resolved.

Consultation period

The Committee welcomes comments on the recommendations contained in this consultation paper and will welcome any further constructive suggestions relating to aspects of the current Law that has not been included in this paper.

Comments should be submitted no later than 25th February 2005 to the Privileges and Procedures Committee, c/o States Greffe, Morier House, St. Helier, Jersey, JE1 1DD or by email to i.clarkson@gov.je

PUBLIC ELECTIONS (JERSEY) LAW 2002

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