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# **STATES OF JERSEY**



## **ELECTORAL COMMISSION: PROPOSED STRUCTURE**

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**Presented to the States on 7th September 2011  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

## REPORT

### 1. Introduction

On 15th March 2011 the States adopted, as amended, a proposition of the Deputy of St. Mary concerning the establishment of an Electoral Commission (P.15/2011).

Following the adoption of an amendment to the proposition from Senator B.E. Shenton, the Privileges and Procedures Committee has been charged with bringing forward proposals, after consultation, on the possible composition and costs of the proposed Commission.

The sum of £200,000 has been added to the estimates of the States Assembly in the Draft Annual Business Plan 2012 (P.123/2011) to cover the likely cost of the Commission. The purpose of this report is to inform members of the structure that the current PPC believes would be appropriate for the Commission so that members can assess at the time of the Annual Business Plan debate how it is proposed to allocate the £200,000 set aside for this work. PPC nevertheless accepts, as explained below, that the final decision on how and when the Commission should be established will need to be taken by the new Assembly after this autumn's elections.

### 2. The States' decision

In adopting the proposition, as amended, the States agreed that an independent Electoral Commission should be established in Jersey to investigate and report on all aspects of the composition of the elected membership of the States Assembly and the election and voting processes for such members. The States agreed that the guiding principles of the Commission's investigation should be –

- (i) the need to secure the greatest possible acceptance by the public of any new arrangements proposed, and
- (ii) the need to ensure that the views of the electorate are reflected as effectively and as fairly as possible in the make-up of the States and of the Executive, namely the Chief Minister, Ministers and Assistant Ministers.

The States agreed that the terms of reference of the Electoral Commission should be as follows –

1. The Electoral Commission shall consider all the following areas –
  - Classes of States member
  - Constituencies and mandates
  - Number of States members
  - Terms of office
  - The functions of the electoral process
  - Voting systems
  - Voter registration,

and all other issues arising in the course of the work of the Commission which are relevant to the needs stated above.

2. The views of the public in Jersey should be sought and all such views taken into consideration. Formal meetings and hearings of the Commission should be held publicly in Jersey unless the Panel believes that there are reasonable grounds for holding a meeting or hearing *in camera*. The content of all written submissions to the Commission will be made available to the public, unless the Commission believes that there are reasonable grounds for non-disclosure of a submission or part of a submission, and should be attributed unless the submitter explicitly requests that a submission shall be non-attributed and the Commission accepts the reasons for such a request.
3. The Electoral Commission shall review existing studies and research and conduct further research as it sees fit.
4. At the conclusion of its investigation, the Electoral Commission shall put forward a complete package of how the elections to the States should operate in Jersey, with this package being capable of commanding the support of the public, and only to desist from this duty if in all conscience it finds itself unable to do so.

In addition to being requested to bring forward proposals for approval by the States on the structure and cost of the Commission as mentioned above, PPC was requested by the States to take the necessary steps in due course to identify, through a process overseen by the Appointments Commission, the proposed membership of the Commission for subsequent approval by the Assembly.

Although it was recognised at the time of the debate that the present States Assembly could not bind its successors, the Assembly nevertheless expressed the wish that a future Assembly should take account of its view that, if the Electoral Commission was able to recommend a package of election reform (excluding such matters as could be classed as purely administrative improvements), that package should be put to the electorate in a referendum. The clear message from this decision was that a future Assembly should not try to re-open or 'cherry pick' the conclusions of the independent Commission before the referendum. No referendum can be binding on the States, but there was a hope that a clear expression of public opinion might emerge from a referendum to guide a future Assembly when deciding whether or not to enact the appropriate legislation to give effect to the Commission's recommendations.

### **3. PPC's consultation document (R.54/2011)**

On 13th May 2011, PPC presented to the States a report setting out possible options on the composition of the proposed Commission as well as concerns that PPC had about the proposals. PPC invited views in response to the document, but unfortunately only 2 responses were received, one from a member of the public and one from the Deputy of St. Mary.

In R.54/2011, PPC listed 3 possible options for the composition of the Commission and set out the possible advantages and disadvantages of each –

Option 1 – Chairman and 2 members from outside Jersey, 3 members from Jersey;

Option 2 – Chairman from outside Jersey, 3 or 4 local members;

Option 3 – No outside members – Chairman and members from Jersey.

Because of the very limited response to the consultation document as mentioned above, PPC has not been able to rely heavily on the consultation process to inform its recent discussions. The Committee nevertheless took note of the views expressed by the one member of the public who replied, who favoured the options with greater local input whilst recognising that some external expertise might be useful and that option 2 was therefore, on balance, slightly preferable to option 3. The Committee also discussed the options with the Deputy of St. Mary who, although he had initially favoured a structure of a Chairman and 2 outside members with 3 local members in P.15/2011, concluded, on reflection, that a better structure would be for an all-local Commission assisted by an Advisory Panel of experts from outside Jersey. In this way, there would hopefully be greater acceptance of the Commission membership within the Island with no concerns about a solution being imposed by ‘outsiders’, but the local members would nevertheless be able to draw on advice and guidance from the Panel of experts, who would peer-review the Commission’s work.

#### **4. PPC’s preferred structure for the Electoral Commission**

PPC agrees that there will be a better chance of the Commission being accepted and respected in the Island if a majority of its members are local residents. PPC nevertheless believes that some external expertise will be required, and has concluded that it would be more efficient and effective to bring this outside expertise into the Commission itself rather than to have a separate external Advisory Panel as suggested by the Deputy of St. Mary in his response to the consultation process. PPC considers that the setting-up of a totally separate expert Panel could confuse the work of the Commission, and those giving evidence may not understand why they could not speak directly to the external advisers who were peer-reviewing the work of the Commission. In addition, the external advisers would not hear the evidence given ‘first-hand’ and the Commission members would not be able to benefit from the assistance of the external Panel during meetings and hearings.

PPC’s recommended structure is therefore for a Commission of 5 members, with a local Chairman, 2 members from Jersey and 2 expert members from outside the Island. In this way, the external experts would be an integral part of the Commission, able to hear the evidence given at hearings and able to offer advice and guidance to the other members at all times. Although it will be important for all members to have appropriate skills and experience, it is anticipated that the external members would be selected for their particular expertise in matters that the Commission will have to consider.

The process for the selection of members would, as already agreed by the States, be overseen by the Appointments Commission, and it will be essential to ensure that those who apply do not come with preconceived ideas or existing strong views on the matters to be addressed by the Commission. PPC accepts that it may be difficult to find local residents who meet this requirement, but who still have appropriate skills and sufficient interest in the subject-matter to be willing to give their time, but the Committee is hopeful that this will not prove to be impossible. Recent experience with the review of the role of the Crown Officers, chaired by Lord Carswell, shows that local Panel members can be selected who approach a task such as this in a totally objective way.

## **5. Potential problems and issues**

In the consultation document issued in May 2011 (R.54/2011), PPC identified a number of potential problems and issues that could affect the effective operation of the Electoral Commission and the implementation of its recommendations in due course. These concerns remain, and PPC can do no more at this stage than suggest possible mitigations of the risks that have been identified. It will be for the new Assembly and the new PPC after this autumn's elections to consider these matters in greater detail, once the position is clearer on issues such as the proposed review of the machinery of government.

PPC remains concerned that the valuable work of the Commission could be wasted if a future States Assembly is not willing to take the recommendations forward to a referendum and, after that referendum, to debate and approve the necessary legislation to implement the recommendations. No reform package can be implemented without the involvement of a future States Assembly, and the Assembly will need to agree both the precise details of the question to be submitted to the electorate in a referendum and the necessary legislation to give legal effect to any proposals. The present Assembly and its recent predecessors have not have a good record in relation to taking forward the recommendations of external bodies looking at reform issues. Many of the recommendations of the 2001 "Clothier" report were never taken forward and, to date, there appears to be little political will to implement the recommendations of the "Carswell" report, even though both of these reports cost a significant sum to produce.

In order to mitigate the risk of the Commission's recommendations being ignored, it will be important for the next States Assembly to signal, when formally establishing the Commission, that States members intend to take the outcome of the Commission seriously and for them to give a political commitment not to ignore its recommendations. It will then be necessary for the Commission itself to undertake its work in a manner that engages the public and that will satisfy the public and States members that the process is both thorough and fair. As long as States members are satisfied that the Commission has undertaken its work in an open way and with adequate expert input, it is not unreasonable to expect the next Assembly to give a political indication in advance that the reform package proposed will be made the subject of a referendum. It is then very difficult to imagine that the Assembly could choose to ignore or significantly vary the reform package if it was supported in the referendum, unless there was perhaps an extremely low turnout or a very close margin.

PPC's second concern in R.54/2011 was that the Electoral Commission is being established with the remit to look at the issues relating to the composition of the States with a completely "blank sheet of paper". PPC pointed out in the consultation document that many Electoral Commissions or similar bodies in other jurisdictions are established to implement a particular political decision relating to the composition or membership of the legislature. That is clearly not the case for this Commission, as one of the overriding reasons for agreeing to establish a Commission was to take this issue out of the political arena and to ask a totally independent body to make recommendations.

There is clearly a risk that the Commission will find it difficult to operate without any predetermined guidelines on matters such as the appropriate number of elected members, whether or not some form of Island-wide mandate is necessary, or whether the Connétables should remain as members of the States. Nevertheless, this lack of constraints does have a positive aspect, as the Commission will be able to approach its work without any predetermined agenda and will be able to make whatever recommendations it wishes after hearing the evidence given to it. PPC is pleased that the States have continued in recent months to show support for the package of reforms contained in the States of Jersey (Miscellaneous Provisions) Law 2011, which means that the term of office of all 51 elected members will expire at the same time in October 2014, enabling whatever composition is recommended by the Commission to be put in place at that time without the need for any transitional arrangements.

If the Commission is to be worthwhile, members of the next Assembly will need to accept that, if they proceed with the proposal, it must be on the basis that the Commission will have the freedom to make what some may see as radical recommendations, and members will need to be willing to set aside their own personal preferences when they agree to place the recommendations before the electorate in a referendum. If a majority of members of the next Assembly are not willing to commit in advance to doing that, it would be better not to embark on the establishment of a Commission at all.

The last concern expressed by PPC in R.54/2011 related to the announcement that had been made by the Chief Minister that a review of the current machinery of government was desirable and that the Council of Ministers intended to propose such a review. This proposal was initially taken forward with the lodging of the proposition 'Machinery of Government – Review' (P.76/2011) by the Council of Ministers on 16th May 2011, but shortly before the publication of this report, that proposition was withdrawn. There will therefore be no debate on whether or not to set up a review of the machinery of government before the elections and this matter will also be left over for the new Assembly to decide.

There is very clearly a significant interaction between the work of the proposed Electoral Commission and any review of the machinery of government. If, for example, the Commission was considering the appropriate number of elected members in the States, it would be extremely difficult to do that if there was uncertainty about whether changes were going to be made to the structure of ministerial government and scrutiny. The present structure of 10 Ministers, up to 13 Assistant Ministers, a PPC, 5 Scrutiny Panels and a PAC, requires a minimum number of members to fill all the positions, even if there is a degree of flexibility in relation to the number of Assistant Ministers or the size of each Scrutiny Panel and the PAC. If the current structure remained unchanged, it would be therefore be impossible for the Commission to

recommend a significant reduction in the number of members. If, on the other hand, a review of the machinery of government proposed a radically different structure that could be operated with fewer members, or that required more members, it would be logical for the Electoral Commission to take this into account when making its recommendations.

In view of the current uncertainty about whether or not a review of the machinery of government will be established by the new Assembly, all that PPC can do at this stage is to draw attention to this potential problem so that it is considered in more detail by the next PPC and the next Assembly. It may be possible for an Electoral Commission and any review of the machinery of government to work in parallel, providing there is close co-operation and communication between the 2 groups. A more radical option would be to expand the remit of the Electoral Commission and charge the Commission to consider both matters itself, although this would add considerably to the complexity of the task and could take much longer. The Commission would, in these circumstances, effectively have a similar role to the Clothier Panel as established in 1999. Alternatively, the next Assembly may conclude that there is no realistic option other than for one of the 2 groups to complete its work and make its recommendations before establishing the other. If this option was chosen, the most logical sequence would seem to be to undertake the review of the machinery of government first so that the Electoral Commission would then know what structure of government was to be in place when undertaking its work. This would, however, significantly delay the work of the Commission and almost certainly make it impossible to have any recommendations implemented for the October 2014 elections.

## **6. Possible cost of an Electoral Commission**

As stated earlier, PPC has inserted the sum of £200,000 in the estimates of the States Assembly in the Draft Annual Business Plan 2012 to cover the possible cost of the Electoral Commission.

In proposing a structure of a local Chairman and 2 local members with 2 outside members, PPC has worked on the basis used for the Clothier and Carswell reviews, namely that local residents would be willing to offer their services on an honorary basis, whereas it would be necessary to remunerate the external experts. In answering a question on 15th May 2001 about the cost of the Clothier review, the then President of the Policy and Resources Committee stated –

“The non-local members of the Panel were remunerated for their services. This has been done on the basis that one cannot expect people from outside the Island to work on an honorary basis for Jersey, particularly when they bring with them a special skill or knowledge that is essential to the task in hand.

Local members of the Panel have carried out their work on an honorary basis, and this is very much in line with the practice adopted for other Panels and Enquiries. The States is fortunate in that there are local people who are prepared to give their time to help the community, and I believe that the Assembly would want this honorary tradition to continue.”

PPC considers that a similar arrangement could be put in place for the Electoral Commission.

A full breakdown of potential costs is included at the Appendix, although PPC would draw attention to the fact that the one member of the public who responded to the consultation expressed strong views against the commissioning of an opinion poll and this is something that the Commission, once established, will need to consider. The potential estimate of £207,000 will clearly vary in practice, depending on the number of days that the Commission sits for and other factors, but PPC is confident that the sum of £200,000 in the Draft Annual Business Plan is a reasonable and acceptable estimate for this task, with any minor variations such as the £7,000 already estimated able to be accommodated within the existing States Assembly budget.

## 7. Timescale

When the States agreed to the establishment of an Electoral Commission in March 2011, they agreed that the Commission “shall be requested to endeavour to complete its work no later than 31st December 2012.”

As explained earlier, it will clearly be necessary for the new PPC and the new States after the elections to take the final decision on the structure of the proposed Commission, and the timescale for doing that may depend on issues such as the interaction with any review of the machinery of government.

It would clearly be unfortunate if the Commission’s recommendations could not be implemented by the October 2014 elections if there is a real desire for reform in the Island following the Commission’s work. In order to achieve this, the required timescale for the Commission to report would be as follows (working backwards from the elections) –

October 2014	Elections
June 2014	Legislation registered in Royal Court
May 2014	Legislation sanctioned by Privy Council
November 2013	Legislation debated by the States
September 2013	Legislation lodged for debate
July/August 2013	Legislation drafted
June 2013	Referendum held
April 2013	States debate on referendum
February 2013	Commission publishes recommendations

It can be seen that only very minor slippage would therefore be possible from the proposed reporting date of December 2012, and if the Commission’s work is to take at least a year, it will be necessary for it to be able to start work early in 2012 at the very latest if the above timetable is to be achieved.

**APPENDIX****Potential cost of an Electoral Commission**

Executive Officer (Grade 10 officer for one year, total cost including pension, social security, etc.)	£57,000
Accommodation, IT/recording equipment set-up, room hire for public meetings, etc.	£20,000
Transcription of public hearings (estimated to allow some 18 to 20 days for some 6 hours per day at £90 per hour of audio)	£10,000
2 external members' fees (say 60 days at £500 a day)	£60,000
External members' travel and accommodation (say 60 nights at £120 (bed, breakfast and evening meal) plus 20 return flights)	£20,000
Public opinion survey (MORI, etc.)	£25,000
Advertising, printing, stationery, incidental costs (lunches, etc.)	£15,000
<b>TOTAL</b>	<b>£207,000</b>