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# STATES OF JERSEY



## ELECTORAL COMMISSION: POSSIBLE OPTIONS

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**Presented to the States on 13th May 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 Electoral Commission.

This report sets out some options for the structure of the Electoral Commission and draws attention to some possible concerns and risks associated with the proposal.

### **2. The States Decision**

In adopting the proposition, as amended, the States agreed –

- (a) 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, with the guiding principles of the Commission's investigation to 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;
- (b) the following terms of reference of the Electoral Commission:

#### **ELECTORAL COMMISSION TERMS OF REFERENCE**

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.
- (c) that the Privileges and Procedures Committee, after consultation, should bring forward proposals for debate ahead of the debate on the Annual Business Plan 2012 detailing the proposed composition of the Electoral Commission, its anticipated costs, and how it is to be funded;
  - (d) that the Privileges and Procedures Committee should take the necessary steps to identify, through a process overseen by the Appointments Commission, the proposed membership of the Commission for subsequent approval by the Assembly on a proposition lodged by the Privileges and Procedures Committee;
  - (e) that, on receiving the recommendations of the Electoral Commission, if the Commission has recommended a package of election reform (excluding such matters as could be classed as administrative improvements, for example matters pertaining to voter registration), the States should take into consideration the wishes of this Assembly which is that they should put the option to the electorate in a referendum having followed the procedures laid down in the Referendum (Jersey) Law 2002;
  - (f) that the Electoral Commission, subject to additional funding being provided in the Annual Business Plan 2012, shall be requested to endeavour to complete its work no later than 31st December 2012.

### **3. Options for Composition of the Electoral Commission**

In considering possible options for the composition of the Electoral Commission, PPC was conscious that cost alone should not be the overriding factor, although it would be irresponsible in the current financial climate to totally ignore cost implications. In designing the options PPC has worked on the assumption that, as happened with the "Clothier" and "Carswell" Reviews, it will be necessary to remunerate any members recruited from outside Jersey, whereas local residents serving on the Commission would offer their services on an honorary basis. It therefore follows that the potential cost of the Electoral Commission will be greater if more members from outside Jersey

are included. PPC has considered 3 possible options for the composition of the Commission and the potential advantages and disadvantages of each option are described below.

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

This was the original model put forward by the Deputy of St. Mary in his proposition, although this proposal was amended by the amendment of Senator Shenton. In putting forward this proposal the Deputy of St. Mary wrote in his report that “the 3/3 split between local and non-local Commissioners is designed to ensure creative tension, in that a majority of one will not normally be sufficient to decide points, and also ensures that the group is not too large. It is designed also to provide equality of weight between locals and non-locals as the task is carried out”.

This option would have the advantage that the 3 outside members could be chosen as experts in this field and they would therefore bring considerable expertise. The 3 outside members would also bring independence from outside the Island and would hopefully bring no predetermined positions to the task. The 3/3 split would ensure an appropriate balance between the views of members from outside Jersey and the Jersey based members.

The disadvantages of this option are that there could be a risk that some will oppose any reform options put forward as being “imposed by outsiders” and it may therefore be more difficult to gain support for the eventual reform package proposed. In addition this is the most expensive of the options set out in this report as each additional outside member adds some £55,000 to the total cost because of the additional fees, accommodation and travel costs.

If it was felt that there should be an equal split between members from outside Jersey and members from Jersey an alternative option would be to have a Chairman and one member from outside the Island with 2 members from Jersey. This would reduce the overall cost of the Commission but it could be argued that a membership of 4 is relatively small for a Commission of this nature.

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

This option would mirror the composition of the recent Review Panel on the Role of the Crown Officers (“Carswell” Review) which PPC understands worked well in the context of that review.

This option has the advantage that the Commission would have more local knowledge and greater local input and this could help to make the proposals more acceptable to States members and other Islanders. The Chairman from outside Jersey could be chosen as an expert in this field and would therefore bring the necessary external expertise. The overall cost of the Commission would be reduced when compared to Option 1 above.

The disadvantages of this option are nevertheless that it may be difficult to identify local members who do not come with predetermined positions and the outside perspective may therefore be outnumbered by the input from the local members.

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

Under this option the entire membership of the Commission would be recruited from local residents and there would be no outside membership. It would nevertheless be possible for the Commission to obtain advice from outside the Island, possibly through the commissioning of consultancy reports from external experts such as academics or from bodies such as the UK Electoral Reform Society.

The main advantage of this option would be that the members would be well acquainted with the local situation and there would be no risk that the Commission could be accused of trying to impose solutions from outside. In addition this is clearly the cheapest option if it is correct to assume that local members would undertake the task on an honorary basis. In addition it may be easier for the Commission to undertake its work in a timely manner if there was no need to accommodate the travel arrangements and availability of members from outside the Island as would be the case with Options 1 and 2 above.

This option nevertheless has the disadvantage that the local members may all come with predetermined positions and it may be difficult to identify local residents who would have the necessary interest and expertise in this subject without bringing strong preconceived ideas about the way forward.

#### **4. Potential problems and issues**

In considering the most appropriate manner in which to implement the States decision PPC has identified a number of potential problems and issues that could affect the effective operation of the Commission and the implementation of its recommendations in due course. The Committee would value views on these matters as well as on the options for the actual composition set out above.

Although it was stressed during the States debate that the Commission will be a totally independent body and that, as a result, issues relating to the composition of the States can be considered outside the political arena, it is important to remember that no reform package can be implemented without the involvement of a future States Assembly. Once the Electoral Commission has finished its work and proposed a package of reform there will need to be a States debate, even if that is only to agree to put the reform package to the electorate in a referendum. The States will need to agree the precise details of the question to be submitted to the electorate in a referendum and, after the referendum, no reform can be implemented without further States agreement. It was clear that, in adopting the proposition, States members felt that the future States Assembly may feel duty bound to take the recommendations of the Commission to a referendum and then implement the reform if supported in that referendum, but PPC remains concerned that the present States Assembly and former Assemblies have not had a good record in relation to implementing reforms or implementing the recommendations of external reports. It is well known that many of the recommendations of the 2001 “Clothier” report were never taken forward and, to date, there appears to be little political agreement to implement in full the recommendations of the recent “Carswell” report. If the Electoral Commission were to recommend fundamental and far-reaching changes to the composition of the Assembly PPC is concerned that any future States Assembly may simply decided to ignore the recommendations, or amend them beyond recognition so that the entire work and cost of the Commission would be wasted.

A further concern for PPC is that the Electoral Commission is being established with the remit to look at the issues relating to the composition of the States with a complete “blank sheet of paper”. Electoral Commissions or similar bodies in other jurisdictions are often established to implement a particular political decision relating to the composition or membership of the legislature. For example the recent Parliamentary Voting System and Constituencies Act 2011 of the United Kingdom determined that the number of parliamentary constituencies in the United Kingdom should be 600 and prescribed the rules which the Boundary Commission should use to establish the constituency boundaries. The UK Boundary Commission is therefore working to precise guidelines in undertaking this task. In a similar way the “Clothier” report in Jersey recommended a new structure for the States Assembly with 42 to 44 members known as MSJ’s and then simply recommended that an Electoral Commission should be established to assign the seats to the parish constituencies. It is clear that the proposed Electoral Commission in Jersey will be operating without any predetermined parameters and although this will, in some ways, be a significant advantage in that the Commission will not be constrained in its work, there is nevertheless the risk that Commission will have difficulty in determining matters such as the appropriate number of members in the Assembly or whether or not matters such as the Island wide mandate are considered important. Although the hope was expressed during the debate that solutions would emerge from the consultation process to be undertaken by the Commission previous such consultation exercises undertaken by former Privileges and Procedures Committees have shown that there are extremely divergent views in the Island on the composition of the States and it is possibly naïve to imagine that any one single solution will emerge that would be acceptable to the public or to States members in a future Assembly. The Committee would be interested to hear views on whether it is feasible to expect a Commission to operate with no predetermined parameters at all.

A further concern that has been considered by PPC is that the Chief Minister has now announced (in a statement made on his behalf by the Deputy Chief Minister on 3rd May 2011) that the Council of Ministers is planning to lodge a report and proposition asking the States to agree that a review of the current machinery of government structure should be undertaken. In the Statement it stated that “The Council of Ministers believe that the current structure needs to be reviewed with the intention of creating greater clarity and accountability. We intend to lodge a report and proposition setting out draft terms of reference and a structure for this review with the intention of securing a debate in June or July. This will be a significant review and any changes would need to be thoroughly explored and enshrined in Law changes. It is therefore likely to take up to 3 years to review and implement. PPC finds it difficult to see how the Electoral Commission could undertake its work in isolation from any review being established to look at the structure of the machinery of government. Although the agreed terms of reference of the Electoral Commission refer to 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, it is clear that the Electoral Commission itself will have no direct remit to look at the appropriate structure of ministerial government itself. It is nevertheless important to recognise that the Electoral Commission will only be able to make sensible recommendations on the appropriate composition of the Assembly once the future structure of government in the Island has been determined. This could be particularly important in the context of any recommendations on the appropriate number of members in the States Assembly as the number of members needed is clearly related to the proposed structure of

government. PPC believes it would therefore be inappropriate to finalise the structure of the Electoral Commission until a decision has been taken in relation to any possible overall review of the machinery of government in Jersey.

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

PPC considers that the Electoral Commission as agreed by the Assembly on 15th March 2011 will cost between £200,000 and £300,000 depending on the option chosen. The only significantly cheaper option would be Option 3 with no outside membership but even this option would cost some £120,000. A full breakdown of potential costs is included at the Appendix.

#### **6. Conclusion**

PPC is issuing this report to seek views from States members and others on the options set out above and the Committee would also welcome alternative proposals for the structure of the Commission. PPC would also be grateful for views on the potential concerns and problems set out above before the proposals for the Commission are finalised.

PPC intends to include provision for funding the Commission as part of the States Assembly estimates in the draft Annual Business Plan 2012 to be debated in September this year. PPC will make final proposals on the appropriate structure of the Commission in advance of the Annual Business Plan debate to enable members to vote on the funding request in an informed way. Once the funding has been put in place it will be possible for steps to be taken to recruit members of the Commission in accordance with the recommended structure so that the Commission can begin its work soon after the elections and once the new States Assembly has been constituted.

Comments should be sent to the PPC Committee Clerk, Anna Heuston, c/o States Greffe, Morier House, St. Helier, JE1 1DD ([a.heuston@gov.je](mailto:a.heuston@gov.je)) no later than Tuesday 31st May 2011.

## 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         |
| Chairman's fee (say 80 days at £600 a day) <sup>1</sup>  | £48,000         |
| Chairman's travel and accommodation (say 80 nights at £120 (bed, breakfast and evening meal) plus 20 return flights)       | £15,000         |
| Public opinion survey (MORI etc.)  | £25,000         |
| Advertising, printing, stationery, incidental costs (lunches etc.)   | £15,000         |
| <b>TOTAL</b>   | <b>£190,000</b> |

If other outside members were appointed and had to be paid (say at a rate of £500 a day) the cost would increase by some £55,000 per extra member as accommodation and travel costs would remain at £15,000. The total cost would therefore increase as follows –

Chairman and 1 outside member - £245,000  
 Chairman and 2 outside members - £300,000.

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<sup>1</sup> For the recent review of the role of the Crown Officers, Lord Carswell (Chairman) was paid a rate of £940 to mirror the payment that a retired Law Lord would receive for sitting in the Supreme Court. If this rate was applied above the £48,000 would increase to £75,200 and the overall total would increase from £190,000 to £217,200