

**STATEMENT TO BE MADE BY THE
CHAIRMAN OF THE PRIVILEGES AND PROCEDURES COMMITTEE
ON TUESDAY 30TH JANUARY 2018**

Referendum Commission

I would like to provide members with a further update on the work of the Referendum Commission. I have received a letter from the Chairman of the Commission and am circulating it alongside this statement in order that members can see first-hand what the Commission has most recently reported to PPC.

Members will recall that I made a statement in December on the early work of the Commission and, in particular, the Commission's initial views as to the timing of the referendum on the Bailiff's role as President of the States. I advised members at that time that they might need to prepare themselves for the fact that a referendum alongside the elections in May 2018 may not be practical.

It is apparent that this is indeed the case and that, from a practical perspective, the referendum cannot be held in May 2018; it will not now be possible to meet the requirements of the Referendum Law and of Standing Orders to allow it to happen.

Members will note, however, that the Commission has also given consideration to the principle of whether the referendum should be held at the same time as an election. The Commission's reasoning is explained in the Chairman's letter. The Commission's view is that, as a matter of principle, the referendum before us should not be held at the same time as the election – even if it were practically feasible. From the Commission's perspective, the referendum on the Bailiff's Presidency of this Assembly is of such importance and complexity that it merits being held on a standalone basis.

The Commission itself has not suggested a date when the referendum could be held. This is a matter which the Privileges and Procedures Committee will therefore consider. I have stressed to the Commission, however, that this Assembly should be given the opportunity to debate the Referendum Act; and the Commission is working to that timetable. PPC therefore intends to lodge the Referendum Act by 13th March 2018 in order to allow for a debate at the last meeting on 10th April 2018.

It will be through the Referendum Act that the Assembly will agree both the date of the referendum and the wording of the question to be used. The Commission is working on the wording at present. As members can see from the letter, the Commission is holding focus groups to seek external views and advice. This will help the Commission to test understanding of the issues involved in the referendum question and to finalise its advice to PPC on what the wording should be. On the basis of the Commission's letter, I would expect PPC to receive the Commission's advice in early March.

As I mentioned in my last statement to the Assembly, there is other work to be done alongside that of the Commission and the lodging of the Referendum Act. Work has also started on the development of the necessary legislative changes that would be required if the Bailiff ceased to be President of the Assembly.

PPC will continue to correspond with the Referendum Commission and I undertake to update members still further as and when further information is forthcoming.

Connétable Len Norman
Chairman, Privileges and Procedures Committee
Morier House
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24th January 2018

Dear Chairman

Referendum Commission

I write further to our meeting on 9th January 2018 to update you on the work of the Referendum Commission. The Commission met subsequently on 19th January 2018 and noted your intention to make a statement to the States Assembly on 30th January 2018. As with our previous update to you, I confirm that we would be content for this letter to be circulated to members at the time of your statement, if that were helpful.

In my last letter to you, I set out the Commission's view that it was unlikely we could do a thorough job in meeting its responsibilities under the Referendum (Jersey) Law 2017 if the prospective referendum on the Bailiff's role as President of the States were to be held at the same time as the elections of May 2018. We have noted that, in the statement you subsequently made to the Assembly on 11th December 2017, you advised that members might therefore need to prepare themselves for the fact that a referendum in May 2018 would not be practical.

From that practical perspective, the challenges of holding the referendum at the same time as the elections have not dissipated and, indeed, it would now seem to be impractical for it to be held then, given the provisions of the Law. Nevertheless, the Commission has also given much consideration to whether, as a matter of principle, the referendum before us should be held at the same time as an election.

In considering that principle, the Commission has taken into account the Code of Good Practice on Referendums, as prepared by the European Commission for Democracy through Law (more commonly known as the Venice Commission). We have also sought guidance as to the approach taken by the Electoral Commission in the U.K. on matters such as this.

It is apparent that there is no hard-and-fast rule as to whether or not referendums should be held at the same time as elections. Different jurisdictions take different approaches and different approaches are sometimes taken within the same jurisdiction depending on the subject matter of the referendum. What is clear from our inquiries is that there needs to be clarity for those taking part in a referendum as to what they are voting on. It is also apparent that there are risks from holding a referendum at the same time as an election, in that the issues of both can merge and become confused – thereby reducing the possibility of that clarity for participants which is so important. Ultimately, if an issue is of such importance and complexity that it merits a referendum being held separately from an election, then that is what should happen. It is our view that the referendum on the Bailiff's Presidency of the States Assembly is of such importance and complexity.

Whilst raising this point of principle might be moot, given the impracticalities now of holding the referendum in May 2018, the Commission believes it is important for members to know that it adheres to that principle. Even if it were practically possible to hold the referendum at the time of the elections of May 2018, our recommendation would be not to do so; because the nature of the referendum before us means it merits being held separately.

We have not come to a view on when the referendum should therefore be held. We would be grateful for further guidance from, and discussion with, you and your Committee on that point. Indeed, the Commission would be grateful to correspond further with your Committee about the practicalities of holding the referendum, including the provision and circulation of information to the public. We are nevertheless moving ahead with our work, taking into account the advice you gave me when we met: that the current Assembly should be given the opportunity to debate the Referendum Act that would set the wording of the referendum question and the date on which the referendum will be held.

To that end, we have noted that the last meeting of the current Assembly will take place on 10th April 2018. Taking into account the four-week lodging period of a Referendum Act, the Act will need to be lodged by 13th March 2018. We are working to that timeline.

The first function given to us by the Referendum Law is to advise on the wording of the proposed referendum question. In that regard, and in line with intentions I set out in my previous letter, we have commissioned the holding of focus groups to consider matters surrounding the wording. We are conscious that some people may question why we should do this and not simply consider these matters by ourselves. We believe it important, however, to seek external advice and views on this subject. In the time available, we have decided that focus groups are the best way to do that. Such groups were commissioned in respect of the referendum arising from the work of Jersey's Electoral Commission; and such methods will allow the Commission to gain valuable insight of the understanding that the public has about the issues involved in the referendum before us. Focus groups will therefore be used to test that understanding; to test potential referendum questions; and to research factors that would encourage greater numbers (and a representative section) of voters to take part in the referendum.

In undertaking this work, we are mindful that the Assembly has not yet explicitly agreed the wording of the question (that will only happen with the adoption of the Referendum Act). However, we have taken as our starting point for this work the wording used in paragraph (3) of the Chief Minister's proposition, as amended, which was adopted by the Assembly.

We expect the focus groups to be held in early February and for the Commission to receive the resultant report by the end of February. We will subsequently provide the Committee with our view on the potential wording of the referendum question in order that the timescales I have set out can be met.

We remain grateful for your interest in, and support for, the Commission's work. We will continue to keep you and your Committee informed of our progress and we stand ready to address any questions which may arise.

Yours sincerely,

A solid black rectangular box used to redact the signature of Mike Entwistle.

Mike Entwistle
Chairman, Referendum Commission