

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

REFERENDUM ON GUERNSEY'S VOTING SYSTEM – VOTER TURNOUT

The States are asked to decide whether, after consideration of the attached policy letter, they are of opinion:-

1. To agree to introduce the electoral system which is the most favoured in the referendum on the method of electing People's Deputies to the States of Deliberation provided that the number of persons voting in the referendum is at least 40% of those persons inscribed on the Electoral Roll who are eligible to vote on the day of the referendum; and to agree that, in the event that turnout at the referendum is less than 40%, the States' Assembly & Constitution Committee should within three months of the date of the referendum submit a policy letter to the States setting out any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.

OR, only if Proposition 1 shall have been defeated,

2. To agree, irrespective of turnout, to introduce the electoral system which is the most favoured in the referendum on the method of electing People's Deputies to the States of Deliberation.

OR, only if Propositions 1 & 2 shall have been defeated,

3. That in advance of the referendum the States shall make no commitment to implement the results of the referendum; and to direct the States' Assembly & Constitution Committee to submit a policy letter to the States setting out any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

29 September, 2017

Dear Sir

1 Executive Summary

- 1.1 In June, 2017, further to consideration of Billet d'État XIV, 2017 and the States' Assembly & Constitution Committee's ("the Committee") policy letter, 'Referendum on Guernsey's Voting System', the States agreed to hold a multi-option referendum in 2018 on the method of electing People's Deputies to the States of Deliberation. However, on a tied vote, the States rejected the Committee's proposal to commit themselves to accepting the results of the referendum if turnout is at least 40% of those on the Electoral Roll.
- 1.2 It is therefore unclear how the results of the referendum will be treated by the States. The Committee believes it is essential that the States establish absolute clarity in advance of the referendum whether the results will definitely be implemented or treated as consultative.

2 Previous debate on voter turnout

- 2.1 In its policy letter dated 19th May, 2017 (P.2017/49), the Committee recommended that the States should resolve to implement the winning option in the referendum – provided that voter turnout was at least 40% of those inscribed on the Electoral Roll and eligible to vote on the day.
- 2.2 The Committee also proposed that, should the turnout be less than 40%, it would submit a policy letter to the States within three months of the date of the referendum setting out any recommendations for reform to the electoral system which it considered necessary, having first taken into account how far short of 40% the turnout was, the number of votes cast for each outcome and

the share of the vote obtained by each of the five options A to E, and, in particular, the margin between the option which placed first and the other options.

- 2.3 One amendment was lodged (P.2017/49 Amdt 5) to alter the turnout threshold: *"In Propositions 5 and 6 for "40%", wherever it appears, to substitute "50%".* The vote to amend the relevant Propositions was lost.
- 2.4 Propositions 4, 5 and 6 were voted on simultaneously. On a tied vote, the States rejected the Committee's proposals and therefore the States did not determine how they would treat the results of the referendum.

3 The status of the referendum

- 3.1 In June, 2017, the States reconfirmed their commitment to holding a referendum on the method of electing People's Deputies.
- 3.2 The purpose of the referendum is to empower the people of Guernsey to determine their future electoral system. The Committee firmly believes the public needs an assurance, in advance of the vote, of the circumstances in which the will of the people shall be carried into effect.
- 3.3 Uncertainty as to how the results of the referendum will be treated could lead to disenfranchisement, poor voter turnout and undermine public faith in, and the whole reason for, the referendum. If the States do not provide certainty on how the referendum results will be treated, they risk the referendum being viewed as little more than an elaborate and expensive consultation exercise with no meaningful outcome.
- 3.4 The Committee firmly believes the States need to make a political commitment, in advance of polling day, as to whether the results of the referendum will be implemented - either by a threshold being met or by simple majority - or will be treated as consultative.

4 Setting a voter threshold

- 4.1 Significant change to the electoral system should not be undertaken lightly. Setting a threshold for voter turnout – beyond which the States would commit to implement the option which wins the referendum – is proportionate and reasonable. A threshold may encourage public engagement with the process and increase voter turnout as it requires more people to vote to ensure the results are implemented. It also protects the electorate from having an electoral system imposed on them which reflects the wishes of only a small number of passionate supporters of one option but which does not reflect the balance of opinion in the whole community.

- 4.2 The Committee believes it is important that the States approve a turnout threshold to make the results of the referendum decisive and legitimate. As recognised in the Committee's previous policy letter, there is no 'right' or 'wrong' threshold, and the Committee proposed the figure of 40% as a pragmatic compromise between the differing views of the Committee's members.
- 4.3 The Committee has again suggested a threshold of 40% for consideration by the States. The clear advantage of setting this threshold is that it will demonstrate that any change to the electoral system will be introduced because it has substantial support and would demonstrate the breadth of opinion among the population generally.
- 4.4 Setting the threshold lower than 40%, or dispensing with a threshold altogether, could draw the subsequent electoral system's legitimacy into question, as it has the potential to reflect the will of only a small minority of the electorate. If only a small percentage of those on the Electoral Roll vote in the referendum, there may be no clear direction from the electorate generally about how or even whether the voting system should be changed.
- 4.5 As explained in the Committee's previous policy letter, turnout thresholds are common in referendums, especially so for those which concern constitutional amendments or changes to the electoral system. For example, in Denmark a referendum to amend the constitution is considered valid only if the proposed amendment is supported by 40% of the eligible electorate; in Italy, Portugal, Sweden and some other European countries the results of a referendum are considered valid only if turnout reaches 50% of the eligible electorate; in the Netherlands even advisory referendums require turnouts of at least 30% to be considered valid; although it should be noted that for the past 20 years the UK has decided against turnout thresholds in referendums, albeit all such referendums in the UK have been advisory only.
- 4.6 The proposed threshold level is also reasonable in comparison to referendums on electoral systems in other jurisdictions. As set out in the previous policy letter, the turnout for the past three referendums about the electoral system in New Zealand were 55%, 85% and 73% respectively. In 2011, the United Kingdom's referendum on the electoral system had a turnout of 42%. The turnout figures for the two referendums which Jersey has held regarding membership of their States' Assembly were as follows: in the 2013 referendum about the voting system turnout was 26% and in the 2014 referendum about Parish Constables' seats in the States turnout was 39%. In Jersey turnout for island-wide senatorial elections is normally in the region of 45%. In Guernsey's 2016 General Election turnout was 72%. The Committee therefore believes that 40% is a reasonable and achievable threshold for the referendum on Guernsey's voting system.

4.7 It remains open for any Member, who is unsatisfied with the threshold option presented in this policy letter, to lodge an amendment inserting a further Proposition proposing an alternative turnout threshold for consideration by the States.

5 Implementing the results regardless of turnout

5.1 Whilst the Committee believes a turnout threshold is necessary, during the June debate some Members of the States suggested that the results of the referendum should be implemented, regardless of voter turnout.

5.2 Whilst the Committee does not share this view, having reflected on the debate it has included this option as Proposition 2, should the States resolve not to set a threshold by rejecting Proposition 1.

6 Consultative referendum

6.1 The Committee believes the method of electing People's Deputies to the States of Deliberation is a fundamental constitutional issue. The States have decided, by committing to holding a referendum on the method of electing People's Deputies, that it should be for the people to determine what reforms are made to the voting system and that the States should seek the explicit approval from the electorate for such a change.

6.2 If the States believe that no commitment should be given in advance to implement the outcome of the referendum, they should formally agree this. Proposition 3 provides the States with that option.

6.3 If a threshold is set, but voting turnout falls short, there needs to be certainty as to what this will mean in practice. The Committee recommends that such results would be treated as consultative.

6.4 In either case – whether the referendum is organised with no commitment from the States to implement the outcome from the beginning or the voter threshold is not met – the Committee should report to the States within three months of the date of the referendum with any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.

6.5 The Committee reiterates the need for the people of Guernsey to have absolute clarity in advance of the referendum as to how the results will be treated, and advises that the most unsatisfactory outcome would be for the States to provide no direction to the public.

7 Compliance with Rule 4

- 7.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 7.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not be put into effect.
- 7.3 In accordance with Rule 4(4), it is confirmed that the Committee is unanimous in recommending that the States approve Proposition 1 which would mean that Propositions 2 and 3 would fall automatically.
- 7.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee *"to advise the States and to develop and implement policies in relation to the constitution...of the States of Deliberation [and]...elections to the office of People's Deputy"*.

Yours faithfully

M. J. Fallaize
President

P. J. Roffey
Vice-President

M. H. Dorey
M. K. Le Clerc
H. L. de Sausmarez