

JERSEY LAW COMMISSION



Jersey

TOPIC REPORT

PARISH ASSEMBLIES: A BETTER LEGISLATIVE FRAMEWORK

The Jersey Law Commission is an independent body appointed by the States Assembly to identify and examine aspects of Jersey law with a view to their development and reform.

This includes in particular: the elimination of anomalies; the repeal of obsolete and unnecessary enactments; the reductions of the number of separate enactments; and generally the simplification and modernisation of the law. Members of the Law Commission serve on a part-time basis and are unremunerated.

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EXECUTIVE SUMMARY

Introductory

The twelve parishes of Jersey date back many centuries. At the head of each parish in civil matters is the Connétable. At the head of each parish in ecclesiastical (church) matters is the Rector.

The parish has always been at the heart of Island life. Its engine room is the parish assembly consisting of the whole electorate of the parish. The assembly –

- sets the rates payable by owners and occupiers of land;
- elects various officers of the parish;
- votes on liquor licence applications;
- names roads;
- authorises contracts entered into by the parish.

Whilst the parish assembly is not strictly in law a general debating forum, it tends to be a focal point for debate at local level of public interest matters affecting the parish. This presents logistical challenges on occasions when many hundreds of members of the parish electorate want to attend a parish hall able to accommodate only limited numbers.

The challenges have been not only physical ones of accommodation, but also legal ones. Does the law enable virtual attendance? Does it enable voting by proxy or a postal vote? Can legally binding polls or referenda of any sort be conducted? There are also calls to address the special needs of St Helier as Jersey's capital. The Laws (*Lois*) governing parish assemblies are mainly in French dating back to the [Loi \(1804\) au sujet des assemblées paroissiales](#), and earlier, and need to be read in the light of the Royal Court's inherent power to supervise officers of the parish. These laws and customs are a cherished part of Jersey's legal heritage, but they do not always provide clear answers to many procedural questions to which modern conditions give rise. They can be amended, of course, but the amendments would also be in French, and would require Royal sanction. At the same time there is little appetite to sweep away the existing laws and customs and replace them wholesale with English type legislation.

What is to be done?

The 2023 Consultation Paper

The Commission has explored a possible legal framework to enable reforms to be enacted more easily, in the English language, but without needing a wholesale repeal and replacement of existing laws and customs. A Consultation Paper published in 2023 asked for comment on a tentative draft Law to enable the States to enact Regulations, without the need for Royal Assent, on all matters governing parish assemblies and parish administration. It was suggested that Regulations under such a Law could also allow for the Comité des Connétables to make Orders governing some of the more detailed matters of procedure. The power of the States to make Regulations would include the power to amend any of the existing Laws/*Lois*.

The Commission received helpful comments from several quarters, most notably from the Law Officers' Department and from the Comité des Connétables, which have been invaluable in helping the Commission to publish herewith its final Topic Report.

The Topic Report

The 2023 Consultation Paper stopped short of attempting to re-enact the [Loi \(1804\) au sujet des assemblées paroissiales](#) in English. In light of the comments it has received, the Commission now feels that this approach was not ambitious enough and would leave the work incomplete. Moreover, it is arguable that some of these more fundamental provisions properly belong in a Law sanctioned by Order of His Majesty in Council, rather than in Regulations. The Topic Report therefore seeks to recast the Loi of 1804 (along with the [Loi \(1905\) au sujet des assemblées paroissiales](#)) in modern form in the English language. This would include modernising certain provisions about rights of attendance and voting and clarifying other provisions governing ecclesiastical matters. It is hoped that this will help to 'de-mystify' these fundamental provisions governing parish assembly procedures.

The Topic Report also recommends that the draft Law include provision that nothing in the Law be taken to limit the inherent jurisdiction of the Royal Court in relation to the administration and officers of the parishes.

Otherwise, in relation to Regulation-making powers for the States Assembly, the Topic Report maintains the recommendations in its 2023 Consultation Paper. Thus, if the Commission's recommendations were to be implemented, the States would be empowered to make Regulations to implement reforms which – if the States saw fit – might enable virtual attendance and voting at parish assemblies remotely; casting votes after an assembly; nominating an attorney/proxy to vote; parish referenda, and so on. Any such Regulations might make consequential amendments of Laws where necessary. Similarly, the broad Regulation-making powers would extend to reforming other aspects of parish administration, were the States to agree e.g. to proposals such as those for a 'conseil municipal' for St. Helier.

The Topic Report maintains the recommendation that the Comité des Connétables be empowered to make Orders in relation to matters of procedure at parish assemblies not covered by Regulations; provided they have consulted with the Attorney General beforehand.

A brief for a draft Law

The Act of the States of 1996 establishing the Jersey Law Commission lists one of the operational functions of the Commission as: "*preparing and publishing a final report culminating in either a detailed brief for the Law Draftsman or in a draft law prepared in consultation with the Law Draftsman*".

The Topic Report does not contain a draft Law, as such, to implement its recommendations; but the Report can hopefully be taken as such a brief or will at least facilitate such a brief should the Legislation Advisory Panel see merit in the final recommendations made in the Report.

PRELIMINARY

1 The Parishes of Jersey

1.1 Jersey is divided into 12 parishes *viz*:



1.2 Each parish is divided into *vingtaines*, except St Ouen which is divided into *cueillettes*. The parishes and their subdivisions are of ancient origin. An article in the Jersey Law Review (as it then was) in 2003¹ drawing from Raoul Lemprière: *History of the Channel Islands* (1974 edition); and John H. Le Patourel: *The Medieval Administration of the Channel Islands* (1937 edition) outlined the historical position –

“Owing to the lack of any documentary evidence, it is difficult to assess how ancient these divisions are. The opinion has been expressed that the five central parishes of Jersey – St Saviour, St John, St Mary, St Peter and St Lawrence – date back to around 475. Physical evidence would indicate that a church or chapel existed on the site of St Lawrence church possibly as long ago as the beginning of the seventh century. However, this was long before the ninth century when the Vikings made their appearance and long before the year 911 when Rollo was recognised as Duke of Normandy by the Treaty of St. Clair-sur-Epte. The Channel Islands were added to the Duchy in about 933. According to Le Patourel, writing of the history of the Channel Islands before 1200, there is good evidence that the Jersey parishes were fully organised and that there was a considerable extent of ducal domain in the Island and that, as early as the eleventh century, it had a regular administration. The twelve parishes formed one rural deanery. The ecclesiastical parish developed early into an important unit of secular administration and the parish must have been a social entity of some antiquity.”

¹ *Le Connétable et sa Paroisse* (Advocate Steven Pallot).

- 1.3 Parish administration in Jersey pre-dated the emergence of the States of Jersey as a parliamentary assembly. An article in the Jersey and Guernsey Law Review in 2017² noted that –

“Originally, the Royal Court, consisting of the Bailiff and 12 Jurats, was a law-making body as well as a judicial body. It gradually began to consult with the Constables and the Rectors of the 12 parishes in order to evaluate public opinion before petitioning the King for any change in the law, and out of this process gradually emerged the States of Jersey, comprising the three estates, namely the Jurats, the Rectors and the Constables.”

- 1.4 The States Assembly can therefore be said in large part to have grown out of the parishes and their respective assemblies. The historical link between the parishes and the States Assembly was reflected in Jersey’s Code of Laws of 1771 the preamble to which (still) provides, in relation to the lodging of Propositions *au Greffe* before being debated, that among the purposes of so doing is to enable *“the Connétables to consult their Constituents if they judge necessary”*. That consultation would in the normal course be conducted by convening a parish assembly.

- 1.5 The parish itself is a legal entity separate from that of its parishioners.³

2 Parish assemblies – introductory

- 2.1 The parish assembly (*l’assemblée paroissiale*) is the body through which each parish makes its decisions. The assembly today consists of the entire electorate of the relevant parish together with ratepayers in the parish if they are not already on the electoral roll. Its membership used to be much more restricted, as we shall see.
- 2.2 When the assembly is considering ecclesiastical (church) matters, the Rector of the Parish presides; and when the assembly is considering other (secular) matters, the Connétable presides.
- 2.3 The origin of parish assemblies, as with the origin of the parishes themselves, cannot be precisely determined. They were not created by Laws enacted by the States (indeed they pre-dated the States as we have seen) but evolved by custom over the centuries which from 1771 onwards has to a considerable extent – although not completely – been codified by legislation enacted by the States Assembly.
- 2.4 The parish assembly, when presided over by the Rector, deals with –
- the election and dismissal of churchwardens (*surveillants*)
 - the approval of the accounts presented by the churchwardens
 - funding of repairs and maintenance of the Church, Churchyard and rectory
 - the choice of gravedigger (*fossoyeur*), and

² *The power of the UK to legislate for the Crown Dependencies without consent—fact or fiction?* (Sir Michael Birt).

³ [Parish of St. Helier v Manning 1982 JJ 183](#)

- the approval of transactions regarding funds known as *le Trésor* and *la Charité* (to which we shall come presently) and in relation to certain property or rights attaching to the rectorate (*rectorat*).

2.5 The parish assembly, when presided over by the Connétable –

- sets the rates payable by owners and occupiers of land⁴
- elects various officers of the parish⁵
- votes on applications for liquor licences⁶
- names roads,⁷ and
- authorises contracts to be entered into by the parish.

2.6 The functions of the parish assembly are particular functions which have been conferred on it over many years by law and custom. The assembly is not in strict legal terms a general debating forum; and neither the Connétable nor the Rector is legally bound to convene an assembly to consider a matter that does not fall within any of the given functions of the assembly.

2.7 In practice, however, assemblies are convened from time to time to consider matters of public interest not necessarily within the ordinary remit of the assembly. As we have already seen, the Code of Laws of 1771 contemplated the reference by the Connétables to their respective parish assemblies of potentially wider issues which were before the States Assembly having been lodged *au Greffe*.

3 Parish assemblies – the current legislation

The key Laws

3.1 The three main Laws in French governing parish assemblies today are –

- the [Loi \(1804\) au sujet des assemblées paroissiales](#) (“the **1804 Law**”)⁸ which sets out basic procedures for convening and conducting an assembly
- the [Loi \(1842\) sur les publications dans les Eglises](#) (“the **1842 Law**”)⁹ which deals with placing of certain public notices in the Parish box (*boîte grillée*)
- the [Loi \(1905\) au sujet des assemblées paroissiales](#) (“the **1905 Law**”)¹⁰ the sole Article of which sets out who convenes and presides at an

⁴ See Articles 21 and 22 of the [Rates \(Jersey\) Law 2005](#).

⁵ See – as regards officers serving on the Roads Committee – Article 5 of the [Loi \(1914\) sur la Voirie](#); see – as regards vingteniers and constable’s officers – Articles 3 to 5 of the [Loi \(1853\) au sujet des centeniers et officiers de police](#); Article 2 of the [Loi \(1871\) sur le mode d’élection des Vingteniers](#) ; Article 1 of the [Loi \(1938\) sur les Officiers du Connétable](#).

⁶ See Article 5 of the [Licensing \(Jersey\) Law 1974](#).

⁷ See Article 2 of the [Naming of Streets and Numbering of Premises \(Jersey\) Law 1960](#)

⁸ See the JLIB translation: [Loi \(1804\) au sujet des assemblées paroissiales](#).

⁹ See the JLIB translation: [Loi \(1842\) sur les publications dans les Eglises](#).

¹⁰ See the JLIB translation: [Loi \(1905\) au sujet des assemblées paroissiales](#).

assembly (the Rector or the Connétable), and the notice each must give of the holding of the assembly.

These Laws need to be read in conjunction with Article 23 of the [Rates \(Jersey\) Law 2005](#) (“the **Rates Law**”) which sets out eligibility for membership of the assembly.

Membership & voting rights

- 3.2 Membership of the *assemblée paroissiale* used to be restricted to ratepayers being owners or occupiers of land of a rateable value of not less than 50 quarters; but the [Parish Rate \(Administration\) \(Amendment No. 3\) \(Jersey\) Law 1975](#) provided that anyone able to vote in a public election, whether a ratepayer or not, automatically became a member of the parish assembly.
- 3.3 Article 23 of the Rates Law now provides that a person is a member of the parish assembly if the person resides in the parish and is registered for the parish as an elector in public elections. A person also qualifies for membership of the parish assembly under Article 23 if they are liable to pay rate.¹¹ A company that pays rate can designate a person to act as its representative (Article 29 of the Rates Law).
- 3.4 Any Deputy of the States whose electoral district covers the relevant parish may attend a parish assembly, even if the Deputy is not an elector of the parish, but that Deputy does not have a vote (Article 3 of the 1804 Law). The 1804 Law does not refer to a right of a Deputy to address the assembly, but it is understood that such a right is assumed in practice.
- 3.5 Certain officeholders – namely, the Bailiff and Jurats, the Crown Officers, the Rectors, the Connétables and Centeniers – are automatically able to attend and speak, as well as vote,¹² at all parish assemblies (throughout the Island) whether or not they otherwise qualify for membership of any given assembly (Article 1 of the 1804 Law). The inclusion of the Jurats probably reflected the fact that they were then members of the States Assembly. The inclusion of Centeniers may similarly have reflected the fact that, in 1804, a Centenier who was the Chef de Police could attend the States Assembly in the absence or incapacity of the Connétable.
- 3.6 Article 2 of the 1804 Law provides that certain other officeholders – namely, the Procureurs du Bien Public, Churchwardens, Vingteniers, Constable’s Officers, Roads Inspectors and Collectors of Alms – have the right to attend and to vote in the parish assembly during their term of office in the relevant Parish, whether or not they otherwise qualify for membership of that assembly.
- 3.7 Given that the officeholders referred to in Article 2 of the 1804 Law will normally be resident in the Parish – and will therefore be electors and thus members of the assembly at all events – why is Article 2 there? The answer is not straightforward:
- i. Historically, as we have seen, in order to be a member of the assembly, one had to be liable to pay parish rate up to certain value. An officeholder, albeit resident in the parish, was not necessarily a ratepayer up to that value, or at all; but that officeholder needed still to function as a member of

¹¹ Either solely or as a person representing several persons, or a body corporate, liable to pay rate.

¹² They have a *voix délibérative* as opposed to a *voix consultative*.

the assembly. Article 2 was enacted presumably to enable them to do so, *ex officio*.

- ii. In modern times, however, one needs only to be an elector of the parish (or a parish ratepayer) to be a member of the assembly. The historical function of Article 2 would therefore seem to have fallen away.
- iii. But recent legislation now has a bearing on the residence requirements in relation to each of the offices referred to in Article 2:

Vingteniers and Constable's Officers

- Under Regulation 4A of the [Honorary Police \(Jersey\) Regulations 2005](#) these officers may now remain in office after they have ceased to reside – and therefore ceased to be an elector – in the parish (and do not otherwise qualify for membership of the assembly as a ratepayer).
- Article 2 of the 1804 Law therefore now serves the purpose of ensuring that Vingteniers and Constable's Officers continue to be members of the parish assembly, *ex officio*, even though they may no longer be electors of the parish (nor otherwise qualify as a ratepayer).

Procureurs du Bien Public

- The Royal Court held In the matter of a Procureur du Bien Public of St Peter [2008]JRC073 that “*the customary law ... continues to require that, in order to be eligible for election to the office of Procureur in a parish, a person must be resident in that parish at the time of his or her election and swearing in*”. It would seem that a Procureur du Bien Public does not cease to hold office immediately upon ceasing to reside in the parish; rather that he or she is disqualified only at a later date from being re-elected to that office.
- Moreover, Article 4(1) of the Procureurs du Bien Public (Terms of Office) (Jersey) Law 2013 provides that:

“Despite the expiry of a Procureur’s term of office, the Procureur shall remain in office until the return date¹³ for the election of a Procureur held on that expiry.”
- Article 2 of the 1804 Law presumably still serves the purpose of ensuring that a Procureur du Bien Public continues to be a member of the parish assembly for so long as he or she remains in office, even though he or she might not otherwise meet the criteria for membership.

Roads Inspectors (Inspecteurs du Travail des Chemins)

¹³ The ‘return date’ is a reference to the date fixed by the Royal Court, pursuant to Article 17(2)(c) of the [Elections \(Jersey\) Law 2002](#), for the person elected as Procureur to appear in the Royal Court to take his or her oath.

- Roads Inspectors must by virtue of Article 4 of the [Loi \(1914\) sur la Voirie](#) (the “**Voirie Law**”) be chosen from among residents of the parish.¹⁴ Thus, at the moment of being elected to office, the person must be resident in the parish.
- Note, however, that Article 6 of the Voirie Law goes on to provide that, in the case of a *changement de paroisse* (i.e. ceasing to reside in the parish) on the part of a Roads Inspector, another must be chosen and sworn to office to complete the remainder of the relevant term of office.¹⁵
- But then another twist: the [Parish of St. Helier \(Qualifications for Office\) \(Jersey\) Law 1976](#) (the “**1976 St Helier Law**”) made this provision:

“Notwithstanding any enactment or customary Law to the contrary, no person being a rate payer in the parish of St. Helier shall be disqualified for being elected to, or being the holder of, any honorary office in the parish of St. Helier, by reason only of the fact that the person does not reside therein.”

- Thus, in relation St Helier alone, the residence requirement under Article 6 of the Voirie Law is overridden in the case of a Roads Inspector who quits St Helier, as long as he or she remains a ratepayer there.
- Against this background, it is difficult to see what purpose is now served by the reference to a Roads Inspector in Article 2 of the 1804 Law. It will not avail a Roads Inspector who leaves the parish and in so doing ceases to hold office; nor will it be of any relevance to a Roads Inspector in St Helier who changes parish, but remains a ratepayer in St Helier – as he or she will still qualify anyway as a member of the St Helier assembly by being a St Helier ratepayer.

Churchwardens (surveillants)

- Section D1(3) the [Canons of the Church of England in Jersey](#) (“the **Canons**”) provides that, for the avoidance of doubt, a Churchwarden need not be resident in the Parish.
- Article 2 of the 1804 Law presumably serves the purpose of ensuring that the person concerned is able to function as a member of the parish assembly irrespective of where he or she resides.

Almoners (collecteurs d’aumônes)

- Section D2 of the Canons makes no stipulation as to the place of residence of the person to be elected as an Almoner.

¹⁴ “choisis d’entre les ... habitants de [la] Paroisse”

¹⁵ “un autre sera choisi et sermenté à sa place pour finir la gestion de celui qu’il remplace”

- Again, Article 2 of the 1804 Law appears to ensure that the person concerned is able to function as a member of the parish assembly irrespective of where he or she resides.

Who presides?

- 3.8 As we have seen, the Connétable presides over the assembly except that, when the assembly considers ecclesiastical matters, the Rector presides (the 1905 Law).
- 3.9 Note that the functions of the Connétable, including that of presiding at a parish assembly, may in certain circumstances be discharged by the senior of the two Procureurs du Bien Public of the parish. The relevant circumstances are set out in Article 4 of the [Connétables \(Miscellaneous Provisions\) \(Jersey\) Law 2012](#).¹⁶
- 3.10 The matters which rank as ecclesiastical, and over which the Rector thus presides rather than the Connétable, have been outlined in **2.4** above and are set out in part in Article 8 of the 1804 Law. Article 8, however, needs to be read in conjunction with the Canons as well as the [Code of Laws of 1771](#) to both of which we refer in due course.

When/how to convene an assembly

- 3.11 The president of a parish assembly (*i.e.* the Connétable or the Rector) must convene an assembly within a fortnight after being requested to do so by 10 or more members of the assembly, provided that the request is made in writing, is dated, and mentions the subject for which the assembly is sought to be convened (Article 9 of the 1804 Law). The request made by parishioners under Article 9 is still referred to as a *requête*, the French word having endured in everyday usage.
- 3.12 The Connétable and the Rector must notify one other before publishing the date of an assembly in order that they can arrange their respective public functions (the 1905 Law).

Notice of an assembly

- 3.13 Under Articles 3 – 5 of the [Loi \(1842\) sur les publications dans les Eglises](#) (“the **1842 Law**”) official notice needs to be placed in the Parish box (the *boîte grillée* – a term which survives in modern parlance in the more rural parishes) in the Parish cemetery, although failure to keep it displayed there does not of itself nullify the assembly.
- 3.14 The more significant requirement is that notice must be given in the Jersey Gazette at least 2 days before holding the Assembly. The statutory structure in this regard does not make for easy reading. The 1905 Law imposes the 2 days’ notice

¹⁶ “*In the event of the Connétable of a parish –*

(a) being unable to discharge the functions of office for any reason including, ..., illness or injury;

(b) being absent from Jersey except where the absence is for 7 days or less and the Connétable informs either or both of the Procureurs du Bien Public of the parish that the Connétable will discharge the functions of office during that period of absence; or

(c) no longer holding office for any reason pending that office being filled in accordance with any other enactment, ... the functions of the Connétable, while such inability, absence or gap in office continues, shall be discharged by the senior of the 2 Procureurs du Bien Public of the parish ... ”

requirement, whilst the [Official Publications \(Jersey\) Law 1960](#) (“the **Official Publications Law**”) stipulates that a notice of this type must be given in the Jersey Gazette. The [Official Publications \(Publication of Jersey Gazette\) \(Jersey\) Order 2018](#) (“the **Gazette Order**”) provides that the Jersey Gazette shall be published on the States of Jersey website at gov.je/gazette.¹⁷

- 3.15 The convening notice must state the business to be discussed; no other business may be discussed except matters relating to public safety and the care of the poor (Article 10 of the 1804 Law).
- 3.16 No assembly may be held on the same day as the convening notice is published or on the following day unless it relates to public safety (Article 11 of the 1804 Law).

Order of procedure at an assembly

- 3.17 The president (*i.e.* the Connétable or the Rector) must submit for discussion each motion proposed by a member and seconded by another member of the Assembly (Article 12 of the 1804 Law).
- 3.18 The president (*i.e.* the Connétable or the Rector) must produce to the assembly the convening notice, duly authenticated; and, in putting forward each separate item for debate, must follow the order laid down in the convening notice (Article 12A of the 1804 Law).

Note on whether the Connétable must reside in the parish

- 3.19 We have seen that certain honorary officers – see **3.7 above** – are no longer required to reside in the parish in which they serve. The customary law position in relation the Connétable, however, holds good. He or she must reside in the Parish.
- 3.20 The only inroad into this requirement was the **1976 St Helier Law** which, as we have seen in **3.7iii above** made this provision for St Helier alone:

“Notwithstanding any enactment or customary Law to the contrary, no person being a rate payer in the parish of St. Helier shall be disqualified for being elected to, or being the holder of, any honorary office in the parish of St. Helier, by reason only of the fact that the person does not reside therein.”

- 3.21 In 1976 the Connétable undoubtedly was “the holder of [an] honorary office” as membership of the States then was unremunerated. Today, however, all States

¹⁷ In practice, in modern times, the parishes give notice of assemblies in various other ways as well. In an answer to a question in the States Assembly in May 2024, it was stated on behalf of St Mary that –

“Parish Assemblies are advertised:

- 1) in the ‘boîte grillée’ and Jersey Gazette notice as required by Law*
- 2) circulated to the ‘municipality’ email mailing list*
- 3) on notice boards outside the Parish Hall and in the two bus stops*
- 4) on the Parish Website*
- 5) on the Parish Facebook page*
- 6) for the forthcoming ‘Rates’ Parish Assembly, we sent a flyer out with the most recent Parish magazine advising the date of the Parish Assembly*
- 7) before Easter we promoted a competition through Facebook to encourage people to sign up to the Parish website, so that they would receive notifications of Parish events.”*

Members, including the Connétables, receive remuneration under Article 44 of the [States of Jersey Law 2005](#) (the “2005 Law”).

- 3.22 It is unclear whether or not the office of Connétable of St Helier still has the benefit of the 1976 St Helier Law. On the one hand, the remuneration under the 2005 Law could be said not to relate to the Connétable’s purely parish role which, taken by itself and ignoring the Connétable’s automatic membership of the States Assembly, remains honorary. On the other hand, if the Connétable’s membership of the States Assembly is taken as an integral part of the “office” that the Connétable holds, then it seems difficult to assert that that office remains an honorary one.
- 3.23 It might be thought desirable to clarify the position one way or the other on the face of the 1976 St Helier Law.

4 Relationship with the Royal Court

- 4.1 The civil administration of Jersey’s parishes cannot be fully understood without an awareness of the judicial relationship between each parish and the Royal Court which involves an overarching supervisory jurisdiction on the part of the Court.
- 4.2 The recent case of [In re the Connétable and the Procureurs du Bien Public of the Parish of St John \[2021\] JRC091](#) (in which the Court required the incumbent Connétable to resign his office) has thrown light on the nature of that jurisdiction. The presiding Commissioner¹⁸ made this observation –

“The Royal Court is a court of inherent jurisdiction. For centuries, the Connétables, as with many other parish officials, have taken their oath of office before the Royal Court ... [and] that promise to the Court carries with it an obligation to the Court, which is part of the justification, with the court’s inherent jurisdiction, for the disciplinary power exercised by the Court over those in honorary service in the parishes.... Indeed, the court’s supervisory jurisdiction can be seen from the Visites Royales ... where the whole parochial administration is reviewed...”

- 4.3 The judgment reaffirmed the continuing existence of the Royal Court’s jurisdiction over the municipality of the parishes and, in doing so, the presiding Commissioner noted that –

“...to this day, all ... members of the parish municipality appear in court in person, generally on a Friday, to take their oaths of office. Such ceremonies are usually attended not only by members of the officer’s family and friends but also by representatives of the parish, confirming those links between the parishes and the court. They affect hundreds of people directly and many more indirectly. They form part of the traditional fabric of the Island.”

- 4.4 This observation reflects the sense of identity that Jersey people have long had with their parish. The parish always signified more than just local administration: it signified one’s identity and roots, and to many it still does so. To hold parochial office was to fulfil the age-old duty to serve one’s parish. The population traditionally were steeped in the customs and workings of their own parish institutions. This is still true in some degree today, at least in the rural parishes.

¹⁸ Sir William Bailhache Q.C.

- 4.5 It follows from the nature of the Royal Court's role that recourse is had to the Court to oversee the actions of parish officers in relation to parish assemblies. There have been many instances down the years (indeed centuries) of the Court having given directions to a parish as to an issue concerning the parish assembly. Any legislation, whether governing parish assemblies or the wider administration of parish affairs, needs to be understood in this light. The jurisdiction of the Court in this regard is far wider than, and ought not to be equated with, the power of judicial review.
- 4.6 The Court will normally be seized of its supervisory jurisdiction by the Attorney General bringing a representation. Should a representation to the Court be brought by a parishioner concerning proceedings at his or her parish assembly, the Attorney General will as a matter of course be convened.

*THE JERSEY LAW COMMISSION PROJECT:
THE 2023 CONSULTATION*

5 The Commission's 2023 Consultation Paper – its objective

- 5.1 In 2023 the Jersey Law Commission sought comments on its Consultation Paper [Parish Assemblies: a better legislative framework](#) ("the **2023 Paper**") about the laws governing parish assemblies and related civil administration in Jersey. The emphasis of the 2023 Paper was on the laws relating to the *civil* administration of the parishes, and not on the separate body of laws governing the Honorary Police and operational policing. In this regard it should be noted that the election by the parish assembly of vingteniers and constable's officers¹⁹ is a civil function of the assembly.
- 5.2 The 2023 Paper noted that the laws relating to civil administration of the parishes are predominantly in the French language. They date back several centuries, with certain provisions of the [Code of Laws of 1771](#) still being relevant.
- 5.3 Whilst parish assemblies are an integral part of Jersey's legal heritage – 'part of the traditional fabric of the Island' to borrow a phrase from the Royal Court [In re the Connétable and the Procureurs du Bien Public of the Parish of St John \[2021\] JRC091](#) – it is the often case today that they are attended by only a small minority of parishioners who, for all their dedication in this regard, may not always be representative of the wider electorate of the parish.
- 5.4 To many in the modern age, the Jersey laws governing parish assemblies are opaque and unfamiliar, albeit that translations of the old French text can be accessed on [the Jersey Legal Information Board website](#).
- 5.5 The 2023 Paper noted as well the logistical challenges on the few occasions when many hundreds of members of the parish electorate wish to attend an assembly in a parish hall able to accommodate only limited numbers. The 2023 Paper observed that –

¹⁹ See Article 4 of the [Police Force \(Jersey\) Law 1974](#) (read with Articles 3 to 5 of the [Loi \(1853\) au sujet des centeniers et officiers de police](#); Article 2 of the [Loi \(1871\) sur le mode d'élection des Vingteniers](#); and Article 1 of the [Loi \(1938\) sur les Officiers du Connétable](#)).

“The challenges have been not only physical ones of accommodation, but also legal ones. Does the law enable virtual attendance? Does it enable voting by proxy or a postal vote? Can legally binding polls or referenda of any sort be conducted? ... The Laws (Lois) governing parish assemblies ... [also] ... need to be read in the light of the Royal Court’s power to supervise officers of the parish. These laws and customs are much cherished as a part of Jersey’s legal heritage, but they do not always provide clear answers to many procedural questions to which modern conditions give rise. They can be amended of course, but the amendments would also be in French, and would require Royal sanction. At the same time there is little appetite to sweep away the existing laws and customs and replace them wholesale with English type legislation.”

- 5.6 Whilst proposals for legislative reform in these areas have been mooted, the task of drafting the necessary legislation has often been hampered by the need to graft modern statutory provisions onto centuries-old laws in French.
- 5.7 This is all the more true of calls to address what many perceive to be the special needs of St Helier as Jersey’s capital (reflected in a Proposition to the States Assembly²⁰ which sought funding for a project to establish a *conseil municipal* for St Helier). Some of the proposals in this regard go beyond mere modification of parish assembly procedures; and have a bearing on other legislation – to which we will come presently – governing wider administrative functions and the distribution of responsibilities for such functions between the central government and the parish.

6 The Commission’s 2023 Consultation Paper – its recommendations

- 6.1 A legal framework was explored in the 2023 Paper to enable reforms to be enacted more easily, in the English language, whilst avoiding a wholesale repeal and replacement of the existing laws and customs. The intention of the 2023 Paper, in its own words, was “[not to] uproot fundamental concepts of the parish and of parish assemblies ... [but] ... to explore a means by which a clearer statutory framework can be constructed, without destroying the Island’s legal heritage in this respect, but at the same time enabling any agreed reforms to be enacted more easily and quickly.”
- 6.2 The Commission sought comments on suggested draft provisions which would empower the States to enact Regulations on all matters governing parish assemblies; and, with a view to any special needs of St Helier in particular, matters governing parish administration in the wider sense. It was suggested moreover that such Regulations might in turn be able to empower the Comité des Connétables to make Orders on certain matters; and even allow for a parish assembly to make standing orders²¹ where necessary.
- 6.3 The 2023 Paper proposed that the States be empowered to amend existing Laws by such Regulations (without the need for Royal Assent).

²⁰ See [P.97/2022 Amd.\(7\)](#)

²¹ The 2023 Paper referred to by-laws, but this ought to have been a reference to (procedural) standing orders, which is the term used in this Topic Report.

6.4 The key enabling provisions suggested in the 2023 Paper were as follows:

(1) In relation to parish assemblies:

- that the States be empowered to make provision by Regulations in respect of parish assemblies (a parish assembly being defined as the *assemblée paroissiale* of each of the parishes, whether under the presidency of the Connétable or of the Rector); and
- that such provision may include (but not be limited to) provision as to –
 - i. membership and functions of parish assemblies;
 - ii. procedures and voting rights at parish assemblies; and
 - iii. functions of officers in relation to parish assemblies.

(2) In relation to parish administration (with a view in particular to the possible establishment of a *conseil municipal* for St Helier and/or the possible transfer of ministerial functions to the parish):

- that the States be empowered to make provision by Regulations in respect of parish administration; and
- that such provision may include (but not be limited to) provision as to –
 - i. the transfer of administrative functions from a Minister to the parishes; and
 - ii. the formation of bodies to discharge administrative functions.

(3) In relation to further sub-delegation of powers: that Regulations under the new Law might –

- i. empower the Comité des Connétables, with the concurrence of the Attorney General, to make Orders in relation to matters of procedure at parish assemblies for which provision has not been made in the Regulations; and
- ii. enable the making of standing orders²² by a parish assembly, with the concurrence of the Attorney General and the Comité des Connétables, for any purpose set out in the Regulations.

(4) To this broad power to make Regulations generally in relation to parish assemblies and parish administration there would (as already mentioned) be added a Regulation-making power to amend existing Laws/Lois insofar as such amendment(s) related to parish assemblies and/or parish administration.

6.5 To recap, the 2023 Paper proposed a purely enabling Law: a legislative stepping-stone or platform from which the States might eventually by Regulations –

- (i) make provision governing matters such as virtual attendance at parish assemblies, voting by proxy or a postal vote, *etc.*; including provision to

²² See footnote 21

empower the Comité des Connétables to make Orders and parish assemblies to make standing orders;

- (ii) make provision relating to wider parish administration, with a view in particular to providing for the special position of St Helier; and
- (iii) repeal and/or amend existing Laws, consequentially.

7 The Commission's 2023 Consultation Paper – the comments received

7.1 The following is not an exhaustive list of comments received by the Commission, many of which were favourable to the central recommendation of a widely drawn enabling Law, grateful though the Commission is to all who offered a response (see *Acknowledgments at 14. below*).

Law Officers' Department

7.2 The Law Officers' Department ("LOD") queried whether the suggested draft Law need be confined in its scope merely to enabling provisions. As the 2023 Paper observed, the present legislative framework needs to be updated so as to be more easily readable, irrespective of the reforms that might ensue as regards matters of procedure such as virtual attendance at parish assemblies. The draft Law suggested in the 2023 Paper would, of itself, do nothing to make the fundamental provisions more accessible and readable: the draft would merely enable the States at some point in the future to enact Regulations to that end.

7.3 Could not the draft Law be more than a stepping-stone and go at least some way towards re-stating, in the English language, the basic provisions governing parish assemblies' membership and procedure?

7.4 The LOD also suggested it might be desirable at all events for the more fundamental provisions to be contained in primary legislation – *i.e.* in a Law receiving Royal Assent – rather than in subordinate legislation in the shape of Regulations. The right to attend and vote at a parish assembly was after all an important freedom, preferably to be enshrined in a Law, albeit that there could still be wide enabling powers to make supplementary provision by Regulations.

7.5 The 2023 Paper (as we have seen) also advocated further delegated powers in the form of –

- Orders able to be made by the Comité des Connétables²³, with the concurrence of the Attorney General, to govern more minor matters of procedure at parish assemblies; and
- standing orders²⁴ made by a parish assembly, with the concurrence of the Attorney General and the Comité des Connétables, to suit the individual needs of a given parish.

7.6 The LOD suggested that this be modified so that –

²³ *i.e.* an Order tabled in the States in the same way as an Order made by a Minister (the Comité des Connétables already has Order making powers *e.g.* under Article 4 of the [Dogs \(Jersey\) Law 1961](#))

²⁴ See footnote 21

- Rather than the Comité needing to seek the *concurrence* of the Attorney General, it would make Orders *in consultation with* the Attorney General;
 - Rather than the parish assembly needing to seek the *concurrence* of the Attorney General and the Comité des Connétables, it would make standing orders *in consultation with* the Attorney General; albeit still with the concurrence of the Comité des Connétables.
- 7.7 The LOD, noting that it was not intended to abolish or codify the Royal Court's supervisory jurisdiction over honorary officers, queried whether it would be within the scope of the proposed Regulations to alter the Court's jurisdiction in any way? Might clarification of the point be needed in the draft enabling Law?
- 7.8 The LOD noted the proposal that the States be empowered to make provision by Regulations in respect of the wider parish administration; and that such provision might include, but not be limited to: *i* provision as to the transfer of administrative functions from a Minister to the parishes; and *ii* the formation of bodies to discharge administrative functions. The LOD queried whether this might go on expressly to include transfer between *any* bodies, including transfers (i) in either direction (ii) to/from parish-related bodies or officers that are not themselves "the parish" (iii) to/from other public bodies.

The Comité des Connétables

- 7.9 The Comité des Connétables noted that parish assemblies had not been created by statute but had evolved by custom over the centuries which had been codified to an extent by legislation enacted by the States Assembly. The Comité was of the view that any new legislation should not seek to establish the parish assembly as a statutory body. In other words, any new legislation would need to be framed so as to leave no doubt that the parish assembly remained a creature of the customary law with ongoing recognition of the inherent jurisdiction of the Royal Court.
- 7.10 The Comité noted that options to facilitate wider participation at parish assemblies had indeed been considered by it, for example by permitting a ballot to be held after an assembly, and the Comité wished to pursue this proposal (irrespective of the outcome of the Commission's current project).
- 7.11 At all events the Comité favoured both the suggested Regulation-making powers of the States in relation to parish assemblies and the suggested Order-making powers of the Comité in relation to minor matters not covered by the relevant Regulations.
- 7.12 The Comité expressed doubt on the other hand about the suggested power of a parish assembly, albeit with the concurrence of the Comité, to make standing orders.²⁵ The process of agreeing on the wording of such standing orders would be protracted and likely result in a lack of consistency across the parishes. Instead, the Comité itself could be empowered to make Orders in this regard.
- 7.13 The Comité considered that, if the States Assembly were to be vested with wide-ranging powers to legislate for parish assemblies and administration by

²⁵ See footnote 21

Regulations, this ought to enable provision to be made for the parishes generally or for one or more specific parishes depending on their different needs (this would take into account, for example, the Parish of St Helier discussions about a *conseil municipal*).

THE JERSEY LAW COMMISSION PROJECT: MOVING FORWARD

8 The Commission's revised recommendations – a more ambitious draft Law

- 8.1 The Jersey Law Commission believes that there is force in many of the helpful points made by the LOD and the Comité des Connétables.
- 8.2 As we have seen the LOD suggested that the draft Law could be more than a stepping-stone and go at least some way towards re-stating, in the English language, the basic provisions governing parish assemblies' membership and procedure.
- 8.3 The 2023 Paper fought shy of attempting to re-enact in English the fundamental provisions in the 1804, 1842 and 1905 Laws, principally because this would be a formidable undertaking (not least in view of the interaction, where ecclesiastical law is concerned, with the Canons of the Church of England in Jersey); and the Paper therefore proposed to leave this to the Regulation-making power of the States.
- 8.4 The Commission now feels that this approach was not ambitious enough and would leave the work incomplete. Moreover, as the LOD have suggested, it might fairly be argued that some of the more fundamental provisions properly belong in primary legislation at all events.
- 8.5 Whilst the 1804, 1842 and 1905 Laws are in French, translations are provided on [the Jersey Legal Information Board website](#); and it is possible in the view of the Commission to re-cast the provisions of the 1804 and 1905 Law in modern form, in primary legislation, sooner rather than later; and the Commission **recommends accordingly**.
- 8.6 This view of the Commission does not extend, however, to the 1842 Law for reasons which will be explained – see **9.5v. below**.
- 8.7 In arriving at this recommendation, to replace the old legislation, the Commission was mindful that statutes such as the 1804 Law are viewed by many as iconic and ought not to be swept away lightly. Indeed, the Comité des Connétables did not reach a concluded view on whether the replacement of the long-established French language statutes was necessarily a desirable step to take.
- 8.8 The Commission nonetheless feels that it is right in the 21st Century to move forward towards a better legislative framework.

*A DRAFTING BRIEF:
THE FUNDAMENTAL PROVISIONS*

9 Re-casting the fundamental statutory provisions in English

- 9.1 The precise drafting of such primary legislation is of course a matter for the Legislative Drafting Office (“LDO”) rather than for the Jersey Law Commission. At the same time, the Act of the States of 1996 establishing the Commission does list one of the operational functions of the Commission as: “*preparing and publishing a final report culminating in either a detailed brief for the Law Draftsman or in a draft law prepared in consultation with the Law Draftsman*”.
- 9.2 It is hoped that the following may be taken as such a brief or will at least facilitate such a brief should the Legislation Advisory Panel see merit in the final recommendations made by the Commission.
- 9.3 The substantive drafting brief is in short: to re-enact the relevant Laws to reflect their current effect and usage.
- 9.4 Having noted that translations of the 1804 and 1905 Laws are available on [the Jersey Legal Information Board website](#), the statutory drafting will involve more than merely taking these translations and re-enacting them in English as present-day legislation. The translations in each case are no more than renderings in English of the aged and occasionally idiosyncratic text of the relevant *Loi*.
- 9.5 Bearing all of the above in mind, and noting yet again that the precise drafting is a matter for the LDO, the newly enacted provisions might be cast on the following lines under these respective headings, in order to reflect their current effect and usage:

i. Criteria for membership of / rights of audience at the parish assembly:

As previously noted, the [Rates \(Jersey\) Law 2005 \(Article 23\)](#)²⁶ currently sets out the criteria for membership of the parish assembly.

As also previously noted, provision is made under Articles 1, 2 and 3 of the 1804 Law²⁷ for certain officeholders to have rights of audience at parish assemblies,

²⁶ **Article 23 Parish Assembly**

- (1) A person is a member of the Parish Assembly of a parish for a rateable year –
- (a) if the person resides in the parish and is registered for the parish as an elector in public elections;
 - (b) if the person is solely liable to pay a rate;
 - (c) where 2 or more persons are liable to pay any rates in respect of land –
 - (i) if the person’s name appears first in any return of information required under Article 3(1) or (4), or
 - (ii) if the person is, by virtue of Article 30(2) or (3), entitled to represent all the persons who are liable to pay any rates levied in respect of that land; or
 - (d) if the person’s name is for the time being, and has been for at least 48 hours, on the list kept by the Connétable in accordance with Article 29(3) as a representative of a body corporate.
- (2) A member of the Parish Assembly has one vote on any decision by the Assembly.
- (3) Paragraph (2) applies despite the fact that the member may be qualified by virtue of paragraph (1) more than once to be a member of the Parish Assembly

²⁷ **Article 1:**

whether throughout the Island as a whole or in the Parish in which they hold office.

Article 1 of the 1804 Law

Article 1 conferred on the Bailiff, Jurats, Attorney General and Solicitor General, the Viscount and the Greffier, the Rectors and the Connétables and Centeniers a right to attend and vote (*voix délibérative*) at all parish assemblies. Taking these offices in turn:

The Bailiff (and Deputy Bailiff); Attorney General and Solicitor General

It is understood that these Crown Officers, whilst they might theoretically attend and be heard at an assembly (anywhere in the Island) in their official capacity, they would not exercise the right to vote at a parish assembly other than in their own parish in their ordinary individual capacity.

At all events, the Commission sees no constitutional basis for the Bailiff and Deputy Bailiff to have an absolute right to attend and speak at a parish assembly in their official capacity.

On the other hand, the Commission can see a rationale for the Law Officers (the Attorney General and Solicitor General) having a right to attend and to speak, but not to vote.

The Jurats

It has already been noted at **3.5** above that the inclusion of the Jurats in Article 1 might have reflected the fact that, in 1804, they were members of the States. This ceased to be the case when the Assembly of the States (Jersey) Law 1948 came into force.

The Commission takes the view that the reference today is no longer of any practical effect and ought not to be re-enacted.

The Viscount

The Viscount might today attend and be heard at an assembly (anywhere in the Island) as part of the Viscount's executive officer role, if required to do so by the Bailiff, Royal Court or States Assembly; but he or she would not exercise the right to vote other than in his or her own parish as an ordinary individual.

Whatever the reason in 1804 for conferring on the Viscount a right to vote as a principal in any parish assembly, it is thought that Article 1 of the 1804 Law today, insofar as it relates to the office of Viscount, is no longer of any practical effect and need not be re-enacted.

The Greffier

Les Magistrats, et les Officiers de la Cour Royale, savoir: le Procureur-Général, le Vicomte, l'Avocat-Général et le Greffier; les Recteurs (ou le Vicaire duement appointé par l'Ordinaire et en absence hors de l'Ile du Recteur ou pendant sa maladie); et les Connétables et Centeniers ont séance et voix délibérative, comme Principaux, dans les Assemblées Paroissiales.

Article 2:

Les Procureurs du Bien Public, les Surveillans, les Vingteniers, les Officiers du Connétable, les Inspecteurs du travail des Chemins et les Collecteurs d'Aumônes ont droit d'assister et de voter à l'Assemblée Paroissiale pendant leur gestion dans telle paroisse.

The office of Greffier was split into the offices of Greffier of the States and Judicial Greffier in the 20th Century by the Loi (1931) constituant le Département du Greffe des Etats and the Loi (1931) constituant le Département du Greffe Judiciaire, respectively.

It is possible today that the Greffier of the States or the Judicial Greffier might be called upon in their official capacity to address a parish assembly, but certainly not to vote as a principal. It is thought that Article 1 of the 1804 Law today, insofar as it relates to either Greffier, appears no longer to be of any practical effect and need not to be re-enacted.

The Rectors

In 1804 the Rectors, along with the Jurats, were members of the States Assembly by virtue of their office. This ceased to be the case when the Assembly of the States (Jersey) Law 1948 came into force.

Again, the Commission is of the view that the reference to the Rectors, as with the reference to the Jurats, in Article 1 is no longer of any practical effect and ought not to be re-enacted.

The Connétables

The Connétables remain members of the States. Their position in relation to Article 1 of the 1804 Law would appear to be that they may attend and be heard at an any parish assembly (other than their own, of course, over which they preside).

But it is understood that, whilst a Connétable might still – in theory at any rate – attend and speak at a parish assembly in another parish, he or she would not ever seek to cast a vote at that assembly.

Centeniers

It has already been noted at **3.5** above that the inclusion of Centeniers in Article 1 may have reflected the fact that, in 1804, the Centenier who was the Chef de Police could attend the States Assembly in the absence or incapacity of the Connétable. This is no longer the case (since the 1970s).

It is suggested that the reference to Centeniers would appear in Article 2 (to which we now come) if it were to reflect the current position.

Article 2 of the 1804 Law

The historical function of Article 2 appears to have changed, as was discussed in detail at **3.7** above. The analysis of the present-day function of Article 2 is convoluted and difficult to follow. From that analysis, however, it may be gleaned that Article 2, by effectively making an officeholder an *ex officio* member of the assembly, does serve the purpose today of ensuring that the officeholder may function as a member of the assembly even though he or she might not otherwise meet the ordinary criteria for membership.

In order to secure this purpose in modern style legislation, provision might simply be made that an officeholder is a member of the assembly by virtue of that office for so long as the person holds that office whether or not the person meets the ordinary criteria for membership.

Article 3 of the 1804 Law

As also previously noted, under Article 3 of the 1804 Law,²⁸ any Deputy of the States whose electoral district covers the relevant parish may attend a parish assembly, even if the Deputy is not an elector of the parish, but that Deputy does not have a vote.

It has been further noted at **3.4** above that, whilst Article 3 does not refer to a right of a Deputy to address the assembly, such a right is assumed in practice.

How to re-enact these provisions

With all of the above in mind, as regards present-day usage, the provisions of Articles 1, 2 and 3 of the 1804 Law, read with a re-enacted Article 23 of the Rates Law, might be re-cast on the following suggested lines:

Membership of parish assembly and voting rights

- (1) *A person is a member of the parish assembly for a rateable year²⁹ –*
- (a) *if the person resides in the parish and is registered for the parish as an elector in public elections;*
 - (b) *if the person is solely liable to pay a rate;*
 - (c) *where two or more persons are liable to pay any rates in respect of land –*
 - (i) *if the person's name appears first in any return of information required under Article 3(1) or (4) of the Rates Law, or*
 - (ii) *if the person is, by virtue of Article 30(2) or (3) of the Rates Law, entitled to represent all the persons who are liable to pay any rates levied in respect of that land; or*
 - (d) *if the person's name is for the time being, and has been for at least 48 hours, on the list kept by the Connétable in accordance with Article 29(3) of the Rates Law as a representative of a body corporate.*
- (2) *A member of the parish assembly has one vote on any decision by the assembly.*
- (3) *Paragraph (2) applies despite the fact that the member may be qualified by virtue of paragraph (1) more than once to be a member of the parish assembly.*

Crown Officers, members of the States and officeholders

- (1) *The Attorney General and the Solicitor General have the right to attend and to speak at, but not to vote in, any parish assembly in Jersey.*

²⁸ **Article 3:**

Les Députés des Etats ont droit d'assister, mais pas de voter, dans l'Assemblée de chaque paroisse qu'ils représentent ou dans laquelle est située une circonscription électorale qu'ils représentent, selon le cas.

²⁹ "rateable year" to be defined as having the same meaning as in the Rates (Jersey) Law 2005

- (2) *A Connétable has the right to attend and to speak at, but not to vote in, a parish assembly not being the assembly of the parish of which he or she is the Connétable.*
- (3) *A Deputy of the States, if not a member of the parish assembly of the parish which he or she represents or in which a constituency that that Deputy represents is situated, has the right to attend and to speak at, but not to vote in, that assembly.*
- (4) *An officeholder is a member of the assembly of the parish in which the person holds office, whilst he or she remains in that office in that parish, whether or not the person otherwise qualifies for membership of the assembly.*
- (5) *In paragraph (3) “officeholder” means a person holding any honorary office in the relevant parish.*

ii. Who presides at a parish assembly:

As noted at 2.4 and 2.5 above, under the 1905 Law,³⁰ the Connétable presides over a parish assembly except that, when the assembly considers ecclesiastical matters, the Rector presides. This provision might be re-enacted on the following suggested lines:

“civil assembly” is a reference to the parish assembly when dealing with any matter which does not fall within the jurisdiction of an ecclesiastical assembly; “ecclesiastical assembly” is a reference to the parish assembly when dealing with any matter referred to in Article x.

“president”, in relation to a parish assembly, means—

(a) the Connétable, in the case of a civil assembly;

(b) the Rector, in the case of an ecclesiastical assembly.

iii. Defining ecclesiastical matters:

As noted at 3.10 above, matters which rank as ecclesiastical, and over which the Rector thus presides rather than the Connétable, are set out in Article 8 of the 1804 Law (“Article 8”),³¹ but need to be read in conjunction with the Canons).

³⁰ **Article Unique:**

Le Recteur ou le Vicaire dûment appointé par l’Ordinaire et résidant dans la paroisse, convoquera et présidera les Assemblées Paroissiales pour les affaires ecclésiastiques, et le Connétable convoquera et présidera les Assemblées Paroissiales pour les autres affaires, chaque Président d’Assemblée avertissant, avant la publication, l’autre Président d’Assemblée et prenant sa commodité pour le jour de la tenue eu égard à ses fonctions publiques.

Les annonces et toutes pièces dont la seule publication officielle, à présent, est l’affichage dans une boîte grillée qui est placée proche la principale barrière du Cimetière Paroissial seront, en outre, à l’avenir, insérées dans au moins 2 journaux publiés en cette Ile, dont l’un en langue française et l’autre en langue anglaise, à la discrétion de chaque Président d’Assemblée Paroissiale et ce 2 jours au moins avant la tenue de l’Assemblée.

³¹ **Article 8:**

Les affaires ecclésiastiques sont comme ensuit: le choix d’Officiers d’Eglise, et l’examen et approbation de leurs comptes; la distribution extraordinaire; la réparation de l’Eglise, du Cimetière, et de la Maison Presbitériale, la

Article 8 presently provides (in translation) that ecclesiastical business consists of: “*the choice of Church Officers, and the examination and approval of their accounts; the distribution extraordinaire (quarterly distribution to the poor); the repair of the Church, the Cemetery, and the Presbytery, the disposition of Church pews, and of property attaching to the Rectorate; the sale of Rentes of church property (‘Trésor’), for the poor (‘Charité’) and other property belonging to the Trésor or la Charité, and the choice of Reader (Lecteur), of Grave-digger (Fossoyeur), and of the School Minister, for presentation to the Dean.*”

Whilst certain elements of Article 8 are no longer applicable e.g. the choice of School Minister (*le Ministre d’Ecole*), other matters e.g. the disposal of property attaching to the Rectorate (*le Rectorat*)³² are still matters for the ecclesiastical assembly to decide. On the other hand, it is not entirely clear whether, in modern times, the choice of *Gravedigger (Fossoyeur)* still rests with the assembly. Practices may vary from parish to parish; but the assumption is made for present purposes that this choice still does rest with the ecclesiastical assembly.

The references in Article 8 to *le Trésor* and *la Charité* are to the funds of those names described in the Code of Laws of 1771 under the heading REGLEMENT POUR L’ADMINISTRATION DES BIENS DES TRESORS DE L’EGLISE, ET DES PAUVRES.³³ Note that it is not proposed to re-enact in English the provisions of the Code of 1771 under this heading. These provisions are

disposition des bancs dans l’Eglise, et des biens attachés au Rectorat; la vente des Rentes du Trésor, de la Charité et autres biens appartenant du Trésor ou de la Charité, et le choix du Lecteur, du Fossoyeur, et du Ministre d’Ecole, pour être présenté au Doyen.

³² See [Loi \(1839\) sur l’acquis de propriété foncière par les rectorats](#)

³³ LE Connétable, dans chaque Paroisse, aura la garde des titres et évidences qui concernent les biens de l’Eglise et des Pauvres; et fera la poursuite et défense des droits, quant à la propriété desdits biens, conjointement avec les Procureurs de Paroisse.

Les Surveillans auront l’administration des revenus desdits biens de l’Eglise et des Pauvres, et avec lesdits Procureurs feront la poursuite de tous dons et legs mobiliers faits à l’Eglise, ou aux Pauvres.

Les revenus des Trésors des Eglises, seront appliqués par les Surveillans, aux réparations, entretien et besoins des Eglises et Maisons Presbytériales; mais ils ne pourront, sans consulter et obtenir l’approbation du Ministre, Principaux, Connétable, Centeniers et Procureurs, ordonner que les réparations les plus ordinaires, et qu’il sera nécessaire de faire sans délai, pour la préservation des Eglises.

Les revenus des Charités seront appliqués par les Surveillans dans chaque Paroisse respectivement, à la pension ordinaire des Pauvres, laquelle sera réglée par l’assemblée dans lesdites Paroisses; et si lesdits revenus ne sont point suffisans, le surplus sera fourni par le moyen d’un Rât sur les Habitans, que le Connétable fera lever, pour y suppléer selon le besoin.

Il sera gardé un compte par les Surveillans, de ce qui est recueilli aux Portes des Eglises, dans les Troncs, ou donné ou légué aux Pauvres, dont il y aura une distribution extraordinaire faite tous les quarts d’an, la semaine après les Communions, par le Ministre, Principaux, Connétable, Centeniers, Procureurs et lesdits Surveillans, dans chaque Paroisse, selon la pluralité des opinions de ceux d’entre lesdites personnes qui seront présens, afin de pourvoir aux Pauvres, d’alimens ou de vêtement, selon que leurs besoins le requerront; et le surplus, lorsqu’il y en aura, sera appliqué pour le meilleur avantage desdits Pauvres; à la discrétion des personnes ainsi autorisés: et afin d’encourager les dons extraordinaires, Messieurs les Ministres ont offert, avec l’approbation de Monsieur le Doyen, de joindre dans cette distribution l’argent de l’Offertoire (Sa Majesté en Conseil y donnant sa sanction) quoique par la Rubrique, ils aient le pouvoir d’en disposer eux-mêmes avec les Surveillans.

Les Surveillans ne pourront distribuer aucun extraordinaire, sans en demander l’avis des susdits Ministres, Principaux et Officiers, et avoir obtenu le consentement de la majeure partie d’eux, excepté dans les cas que les personnes auroient besoin d’un secours immédiat, lequel ne sera point porté au-delà de ce qui sera nécessaire pour le soutien de tels Pauvres, pour le temps requis à en informer les personnes sus-autorisés, et prendre leurs avis sur le sujet.

Lesdits Surveillans rendront compte, avant que leur décharge leur soit accordée; sçavoir: dans la semaine après les Communions de Pâques, de leurs mises et recettes, devant le Committé autorisé pour les distributions extraordinaires.

somewhat arcane and, even if rendered in English, will scarcely be better understood, without a detailed knowledge of the historical background, than they are in the French language.

To be clearer about the scope of business before an ecclesiastical assembly, and the interaction with the Canons and other relevant legislation including the Code of 1771, Article 8 might be enacted in modern format on the following lines:

Ecclesiastical assembly

- (1) *A parish assembly is an ecclesiastical assembly when it deals with any of the matters referred to in paragraph (2).*
- (2) *The matters are –*
 - (a) *the election and dismissal of churchwardens (surveillants) in accordance with Section D1, and of almoners (collecteurs d'aumônes) in accordance with Section D2, of the Canons³⁴;*
 - (b) *the approval of the accounts presented by the churchwardens in accordance with Section D1 of the Canons;*
 - (c) *the approval in accordance with Section D1 of the Canons of application of funds to the repairs, maintenance and needs of the Church, Churchyard and rectory;*
 - (d) *the choice of gravedigger (fossoyeur);*
 - (e) *the approval of transactions–*
 - (i) *concerning le Trésor or la Charité; or*
 - (ii) *in property or rights attaching to the rectorate in accordance with the [Loi \(1839\) sur l'acquis de propriété foncière par les rectorats](#);*
 - (f) *any other matter falling within the jurisdiction of an ecclesiastical assembly under a provision of the Canons or of an enactment.*
- (6) *In paragraph (2)(e) –*
 - (a) *the references to le Trésor and la Charité are to the respective funds of that name described in the Code of Laws under the heading REGLEMENT POUR L'ADMINISTRATION DES BIENS DES TRESORS DE L'EGLISE, ET DES PAUVRES;*
 - (b) *the reference to property or rights attaching to the rectorate is a reference to any parish property held exclusively for ecclesiastical purposes, whether for ecclesiastical usage or for secular usage.*

iv. Convening an assembly:

As noted at **3.11 et seq. above**:

- under Article 9 of the 1804 Law,³⁵ the president of a parish assembly must convene an assembly within a fortnight after

³⁴ “Canons” to be defined as: “the Canons of the Church of England in Jersey annexed to the Order in Council of the 19th day of July 2022 registered by the Royal Court on the 2nd day of September 2022.”

³⁵ **Article 9:**

Chaque Président d'Assemblée Paroissiale sera tenu de convoquer une Assemblée dans l'espace d'une quinzaine de jours qu'il en aura été requis par 10 Principaux de sa paroisse ou plus, pourvu que la demande lui en soit faite par écrit, portant date, et mentionnant le sujet pour lequel telle convocation est requise.

being requested to do so by 10 or more members of the assembly, provided that the request is made in writing, is dated, and mentions the subject for which the convening of the assembly is sought;

- under Article 10 of the 1804 Law,³⁶ the convening notice must state the business to be discussed; no other business may be discussed except matters relating to public safety and the care of the poor;
- under Article 11 of the 1804 Law,³⁷ no assembly may be held on the same day as the convening notice is published or on the following day unless it relates to public safety;
- under the 1905 Law,³⁸ the Connétable and the Rector must notify each other before publishing the date of the Assembly in order that they can arrange their public functions.

These provisions might be re-enacted in modern format on the following lines (potentially to include the Regulation-making powers shown in square brackets):

Convening a parish assembly

- (1) *The president must convene a parish assembly within 14 days of a request in writing made to the president by 10 or more members of the assembly*
- (2) *A request under paragraph (1) must –*
 - (a) *show the date on which the request is made;*
 - (b) *set out the subject for which the assembly is sought to be convened.*
- (3) *The president, when convening a parish assembly, must mention in the convening notice the subject for which the assembly has been convened; and no other subject may be dealt with unless it relates to a matter of public safety [or another matter designated by the States by Regulations].*
- (4) *No parish assembly shall be held on the same day as the convening notice is published or on the following day except in relation to a matter of public safety [or another matter designated by the States by Regulations].*

³⁶ **Article 10:**

Toutes les fois qu'un Président d'Assemblée Paroissiale fera convoquer une Assemblée des Principaux et Officiers de sa paroisse, il sera tenu de mentionner dans le billet de convocation le sujet pour lequel il appelle ladite Assemblée; et aucun autre sujet ne pourra y être traité, excepté pour des objets de sureté publique, et le soin des pauvres.

³⁷ **Article 11:**

Aucune Assemblée Paroissiale ne sera tenu le jour même de la publication ou de l'avertissement, ni le jour ensuivant, excepté pour des affaires de sureté publique.

³⁸ *See footnote 30*

(5) *The Rector, before publishing the date of an ecclesiastical assembly, must notify the Connétable; and the Connétable, before publishing the date of a civil assembly, must notify the Rector.*

v. Official notice of an assembly

As noted at **3.13** *et seq.* above –

- Articles 3 – 5 of the 1842 Law³⁹ require official notice to be placed in the Parish box (*boîte grillée*) in the Parish cemetery, although failure to keep it displayed there does not of itself nullify the assembly.
- The more significant requirements as to notice are contained in –
 - the 1905 Law⁴⁰ which imposes the requirement of 2 days' notice;
 - the Official Publications Law which requires such notice to be given in the Jersey Gazette; and
 - the Gazette Order which provides that the Jersey Gazette shall be published on the States of Jersey website at gov.je/gazette.

It is not felt necessary to recommend that Articles 3 – 5 of the 1842 Law be replaced with modern legislation in English. The present effect of these long-standing provisions is well understood; and, as noted, failure to keep the notice displayed there does not invalidate an assembly. Moreover, the States Assembly would be empowered anyway to amend or replace these 1842 Law provisions, should States members wish to do so in the light of full discussion about any such changes.

As for the 1905 Law, the Official Publications Law and the Gazette Order, the interaction between these statutory provisions is not easy to follow. It will be helpful for these provisions to be re-enacted in modern format

³⁹ **Article 3:**

Les annonces, et toutes pièces qui par la loi ou l'usage devaient être publiées le Dimanche dans l'Eglise durant ou après le Service Divin, ou dans les Cimetières à l'issue du Service Divin, seront affichées, le Dimanche où la publication devait être faite, dans une boîte grillée, proche la principale barrière du Cimetière; cette boîte sera fermée à clef, et le Recteur et le Connétable de la paroisse en auront chacun une clef. L'affiche produira les mêmes effets, et sera en tout aussi valable que la publication d'après l'ancien usage, pourvu que la pièce ainsi affichée soit placée dans ladite boîte avant 11 heures du matin et y reste au moins jusqu'à 2 heures après-midi.

Article 4:

Chaque Connétable sera tenu de faire placer et sceller convenablement dans le mur du Cimetière de sa paroisse, proche la barrière principale, une boîte grillée, pour y faire les affiches, ainsi qu'il est porté à l'Article précédent; et sera tenu de la faire réparer, lorsqu'il sera nécessaire, aux frais de sa paroisse.

Article 5:

Une copie des annonces pour les Assemblées Paroissiales, signée du Recteur, Vicaire officiant, ou du Connétable, restera affichée dans ladite boîte jusqu'à la tenue de l'Assemblée; il sera du devoir du Lecteur de la paroisse de placer cette copie dans la boîte et de veiller à l'exécution de cet Article, mais la tenue de l'Assemblée n'en sera pas moins légale lors même que cette copie ne resterait pas ainsi affichée.

⁴⁰ See footnote 30

on the following lines (potentially to include the Regulation-making powers shown in square brackets):

Public notice of holding of a parish assembly

- (1) *The president, when convening a parish assembly, must give public notice of the date, place and time for the holding of the assembly.*
- (2) *Public notice must be given at least 2 days before the parish assembly is to be held, by publishing the notice –*
 - (a) *in the Jersey Gazette;*
 - (b) *on the website of the relevant parish; and*
 - [(c) in any other manner prescribed by Regulations].*
- (3) *Paragraph (2) does not prevent the president from giving notice by any other means of the holding of a parish assembly in addition to the public notice given under this Article.*
- (4) *The States may by Regulations amend⁴¹ Article 3, 4 and 5 of the Loi (1842) sur les publications dans les Eglises.*

vi. Order of procedure at an assembly

As noted at **3.17** *et seq.* above –

- under Article 12 of the 1804 Law⁴² the president must submit for discussion each motion proposed by a member and seconded by another member of the assembly; and
- under Article 12A of the 1804 Law⁴³ the president must produce to the assembly the convening notice, duly authenticated; and, in putting up each separate item for debate, must follow the order laid down in the convening notice.

These provisions might be re-enacted in modern format on the following lines (potentially to include the Regulation-making powers shown in square brackets):

Procedure at a parish assembly

⁴¹ Note the definition of “amend” in the Schedule to the Interpretation (Jersey) Law 1954: “amend” shall include “add to”, “substitute”, “vary”, “repeal” and “revoke”.

⁴² **Article 12:**

A toute Assemblée Paroissiale, dûment convoquée et tenue, le Président sera tenu de mettre en délibération chaque motion faite par un membre, et secondée par un autre membre de l’Assemblée, et de recueillir les opinions sur le sujet.

⁴³ **Article 12A:**

Chaque Président sera tenu de produire à l’Assemblée le billet de convocation, dûment recordé, et sera aussi tenu de suivre, pour les délibérations des différens objets, l’ordre établi dans ledit billet de convocation.

- (1) *The president, at every parish assembly, must produce the convening notice, duly authenticated, and must follow the order for debate in the convening notice.*
- (2) *Each motion proposed by a member and seconded by another member of the assembly must be put forward for debate and the views of the members of the assembly elicited on the subject concerned.*
- [(3) *The States may make Regulations governing all aspects of procedure at a parish assembly.*
- (4) *Such Regulations may amend this Article; but may not alter rights of membership of, or rights of audience at, or the right to vote in, an assembly.]*

vii. *The inherent jurisdiction of the Royal Court*

As noted above, both the LOD and the Comité des Connétables mentioned this aspect viz. –

- The LOD queried whether it would be within the scope of the proposed Regulations to alter the Court’s jurisdiction in any way? Might clarification of the point be needed in the draft enabling Law?
- The Comité des Connétables wished to avoid any doubt about the ongoing recognition of the inherent jurisdiction of the Royal Court at customary law to supervise officers of the parishes.

The Commission’s view on the first bullet point is that the proposed Regulation-making powers, as now proposed to be framed (to be more specifically targeted), would not be construed as including a power to derogate from the Royal Court’s supervisory jurisdiction.

The Commission doubts on the second bullet point that the suggested new Law would be construed as derogating from the Royal Court’s supervisory jurisdiction. As the Court itself emphasised In the matter of the Connétable and the Procureurs du Bien Public of the Parish of St John [2021]JRC091, clear statutory language would be needed to do so.

On the other hand, the Commission notes that Article 4D of the Connétables (Jersey) Law 2008 did make the following provision:

Supervisory jurisdiction of the Royal Court

Nothing in Article 4B, 4C or 4CA shall be taken to derogate in any way from the supervisory jurisdiction of the Royal Court in relation to the office of Connétable.

and that Article 32 of the Law Society of Jersey Law 2005 made this provision:

Inherent jurisdiction of Royal Court

Nothing in this Law limits the inherent jurisdiction of the Royal Court to exercise disciplinary control over practitioners.

The Commission therefore **recommends** the cautious approach of including provision perhaps on the following lines:

Inherent jurisdiction of the Royal Court

Nothing in this Law derogates from the inherent jurisdiction of the Royal Court in relation to the administration and officers of the parishes.

viii. *Repeal of the 1804 and 1905 Laws*

If the various provisions in the French language in the 1804 Law and the 1905 Law are replaced by the provisions suggested *above*, then both of those Laws would fall away and would need to be repealed by the suggested new Law.

There is however a caveat in relation to the 1804 Law, namely, that –

- Article 13 relates to the policing powers of vingteniers and, although not relevant for present purposes, is likely redundant at all events;
- Article 14, also not relevant for present purposes, relates to customary law rights of the Seigneurs of St. Ouen, Rozel, Samarès and Trinity, is also likely to be redundant.

Whether or not these two Articles – and hence the whole of the 1804 Law – will fall to be repealed by the new Law will be a matter for formal instruction to the drafter should the new Law be proceeded with.

ix. *Consequential amendments – Rates Law*

If Article 23 of the Rates Law were to be reproduced in the suggested new Law, then of course that Article would need to be repealed. Furthermore, the definition of “parish assembly” in Article 1(1) would require to be amended consequentially.

x. *Whether the Connétable of St Helier must reside in the parish?*

As noted at **3.19** to **3.22** *above* – the customary law position in relation the Connétables generally is that they must reside in the parish in which they serve.

In relation to St Helier, however, the 1976 St Helier Law provides that no person who is a ratepayer in the parish is disqualified from “any honorary office” in St. Helier simply because they do not reside there. Uncertainty appears to have crept in as to whether the Connétable does or does not hold honorary office now that all States Members, including the Connétables, are remunerated.

It would seem desirable to clarify the position, one way or another, in the 1976 St Helier Law.

*A DRAFTING BRIEF:
ENABLING PROVISIONS FOR REGULATIONS*

10 A more specific Regulation-making power

The shift of emphasis from the 2023 Paper

- 10.1 By way of a résumé: the 2023 Paper proposed very wide Regulation-making powers. The proposal envisaged a purely enabling Law being enacted: a ‘stepping stone’ Law or platform from which the States Assembly could enact Regulations concerning all aspects of parish assemblies and parish administration (in much the same way as the States Assembly has long been able to make Regulations concerning Licensing and Road Traffic).
- 10.2 As we have seen, the Commission now proposes more than a merely enabling Law. Its recommendation is to repeal and re-enact in the suggested draft Law (*i.e.* in primary legislation) the more fundamental provisions governing parish assemblies. The preceding section of this Report (**section 9**) has put forward a brief in this respect.
- 10.3 To the extent, therefore, that the 2023 Paper suggested an overarching power to amend and/or repeal those basic statutory provisions by Regulations, **that proposal now falls away**.
- 10.4 This does not mean, however, that the suggested draft Law should contain no Regulation-making power at all. Indeed, the proposed Regulation-making power in the States Assembly would remain a crucial feature of the proposed new Law, although it would be more specific in nature.

Specific Regulation-making powers in the suggested draft Law re-casting the fundamental provisions in the 1804 and 1905 Laws

- 10.5 In relation to convening a parish assembly, it is proposed (as we have seen in the preceding **section 9**) to re-cast the relevant provisions of the 1804 Law which stipulate –
- i.* that when convening a parish assembly, the Connétable/Rector must mention in the convening notice the subject for which the assembly has been convened; and no other subject may be dealt with unless it relates to a matter of public safety; and
 - ii.* that no parish assembly shall be held on the same day as the convening notice is published or on the following day except in relation to a matter of public safety.
- 10.6 In both instances of dealing with another subject and of holding an assembly as the same day as the convening notice, **it is recommended** that the States be empowered by Regulations to designate another matter.

- 10.7 In relation to giving public notice of a parish assembly, it is proposed (as we have seen in the preceding **section 9**) to re-cast the relevant provisions of the 1905 Law which stipulate that public notice must be given at least 2 days before the parish assembly is to be held, by publishing the notice (a) in the Jersey Gazette; and (b) on the website of the relevant parish.
- 10.8 **It is recommended** that the States be empowered by Regulations to prescribe other means of giving public notice.

Regulations to modernise Parish Assembly procedures

- 10.9 As the 2023 Paper noted, among the options discussed for modernisation of parish assemblies to encourage greater participation have been –
- the appointment of a proxy, representative or attorney
 - parish referenda
 - availability of a ballot box after assembly meetings
 - postal voting
 - remote access to attend and participate.

10.10 The 2023 Paper further noted –

- i. on the one hand, that misgivings had been expressed that such options as proxy and postal voting, or referenda, not only took insufficient account of the need for parishioners to hear arguments for and against proposals in open debate before voting, but might make it difficult to verify that all persons voting were in fact electors of the parish and eligible to participate in debate before the assembly; but
- ii. on the other hand, some took the view that such concerns could be managed effectively by modern means of communication made available as one of a selection of means of participating in the assembly.

10.11 The Commission does not have a settled view on the merits of these competing arguments. As the 2023 Paper emphasised, the States Assembly in due course will be able to determine the precise extent of the reforms (if any) to be enacted. The Commission confines itself to **recommending** that the draft Law should at all events make provision wide enough to empower the States to make (free-standing) Regulations to cater for all or any of the options in **10.9** above or any other options for modernisation as the States Assembly might see fit (thus avoiding the need for primary legislation should any such options find favour with the States Assembly).

10.12 Such provisions could not purport to override the fundamental provisions in the suggested new Law (e.g. the qualifications for membership of the assembly and substantive voting rights) in which case the new Law itself would have to be amended by a further Law).

Regulations to confer Order-making powers

10.13 It will be recalled that the 2023 Paper also proposed that such Regulations might be able to empower the Comité des Connétables to make Orders, with the concurrence of the Attorney General, to govern more minor matters of procedure at parish assemblies not covered by the new Law. It will also be recalled – see **7.6** above – that the LOD suggested that this be modified so that instead of the Comité needing to seek the *concurrence of the Attorney General*, it would make Orders *in consultation with the Attorney General*.

10.14 The Comité des Connétables was prepared to assume the suggested Order-making power with the modification suggested by the LOD that it do so in consultation with the Attorney General rather than with the concurrence of the AG.

10.15 The Commission maintains the **recommendation in revised form**, namely, that the Comité des Connétables be empowered to make Orders, in consultation with the Attorney General, in relation to matters of procedure at parish assemblies for which provision has not been made in the Regulations.

Powers to make standing orders

10.16 It will be recalled that the 2023 Paper also raised the possibility of enabling standing orders⁴⁴ to be made by a parish assembly, with the concurrence of the Attorney General and the Comité des Connétables, for procedural purposes. This proposal, as we have seen, did not find favour with the Comité des Connétables – see **7.12** above. The Comité thought that perhaps it could itself be empowered to make Orders in this regard.

10.17 The Commission, on reflection and after consultation with the LDO, believes that, if the Comité des Connétables wished to suggest to the parishes a model set of standing orders, it could do so anyway, simply by Act of the Comité without the need to be empowered to do so by Order.

10.18 The Commission therefore **does not maintain its original proposal** in this regard.

11 Regulation-making power re wider parish administration (St Helier principally)

11.1 It will be recalled that the 2023 Paper (with a view to the special needs of St Helier, and any possible move to a *conseil municipal* and/or to transfer ministerial functions to the parish) put forward the possibility of the States being empowered to make provision by Regulations in respect of the “civil administration of the parishes” and that such provision might include (but not be limited to) provision as to –

- i. the transfer of administrative functions from a Minister to the parishes;
and
- ii. the formation of bodies to discharge administrative functions.

11.2 Looking at St Helier alone for the moment, therefore, any reforms – in relation to such matters as virtual attendance at parish assemblies, holding of ballots after an assembly *etc.* – would be able to be enacted by Regulations as described in **section 10** above for all the parishes, which of course includes St Helier.

⁴⁴ See footnote 21

- 11.3 Whilst the separate power to make Regulations described in **11.1** above in relation civil administration generally is contemplated primarily with St Helier in mind, the intention is not to exclude all or any of the other parishes from the scope of this enabling power, should it ever be thought appropriate to invoke it in relation to another parish.
- 11.4 The Commission has reflected on the proposal under this heading insofar as it envisaged Regulation-making powers for the formation of bodies to discharge administrative functions (as opposed to transferring functions between existing officeholders/bodies). The Commission now feels that it would be appropriate for new public bodies to be established by primary legislation *i.e.* by a Law rather than by Regulations.
- 11.5 The Commission therefore **maintains its recommendation in part** in relation the proposed Regulation-making power referred to in **11.1** above *i.e.* to the extent that it recommends an enabling provision for Regulations in respect of the civil administration of the parishes including provision for the transfer of administrative functions from central government (Ministerial functions) to the parishes, and *vice versa* as suggested by the LOD, including to or from any related bodies.⁴⁵
- 11.6 For an outline of the nature of the administrative functions involved where St Helier is concerned, **P.97/2022** envisaged that the *Conseil Municipal* might “act as a formal consultation body for Government policy and strategy where these may impact on St. Helier” and might “administer a greater range of delegated functions on behalf of the Government. For example, to support improvements in environmental practices (littering and noise pollution), approve non-controversial and St. Helier specific planning applications, and take on greater leadership for the administration of roads in St. Helier”. The parish would be able to make certain by-laws that are presently made by the Minister. The example was given of liquor licensing; also of town planning, transport planning, roads management and other areas.
- 11.7 If the Regulation-making powers under this heading were invoked in the manner contemplated by the current proposals for a *conseil municipal* in St Helier, this would (as the 2023 Paper noted) be likely, with the attendant transfer of administrative functions, to necessitate amendments to one or more of the following Laws, *viz.* –
- planning: building including housing and transport (potentially bringing into play elements of the [Planning and Building \(Jersey\) Law 2002](#) , the [Control of Housing and Work \(Jersey\) Law 2012](#), the [Motor Traffic \(Jersey\) Law 1935](#) and the [Road Traffic \(Jersey\) Law 1956](#))
 - roads, sea-beach and parks management powers (potentially bringing into play elements of the [Loi \(1914\) sur la Voirie](#) , the [Motor Traffic \(Jersey\) Law 1935](#), the [Road Traffic \(Jersey\) Law 1956](#), the [Highways \(Jersey\) Law 1956](#), the [Policing of Roads, Parks and Sea Beaches \(Application of Fines\) \(Jersey\) Law 1957](#), the [Policing of Roads \(Jersey\) Regulations 1959](#), the [Policing of Beaches \(Jersey\) Regulations 1959](#), the [Roads Administration \(Jersey\) Law 1960](#) and the [Policing of Parks \(Jersey\) Regulations 2005](#))

⁴⁵ See **7.8** above –

- environment (potentially bringing into play elements of the [Planning and Building \(Jersey\) Law 2002](#))
- liquor licensing (potentially bringing into play elements of the [Licensing \(Jersey\) Law 1974](#))
- 'town vibrancy' (potentially bringing into play elements of the [Licensing \(Jersey\) Law 1974](#), the [Shops \(Regulation of Opening and Deliveries\) \(Jersey\) Law 2010](#) and the [Road Works and Events \(Jersey\) Law 2016](#)).

11.8 **It is recommended** that powers be included in the suggested draft Law for Regulations to be able to amend the relevant Laws.

CLOSING

12 Drafting Brief & Recommendations

12.1 **Appendix 1** to this Report collates the drafting brief for the proposed re-enactment in English of the main Laws of Jersey relating to parish assemblies, with the limited Regulation-making powers in in this regard.

12.2 **Appendix 2** to this Report collates the drafting brief in light of the recommendations contained in this Report as to powers for the States Assembly to enact Regulations more generally and for the Comité des Connétables to make Orders; and includes the further aspect of Regulation-making powers to implement administrative changes arising out of the current proposals for St Helier (but which could be applied to any of the other parishes as well).

13 Conclusion

13.1 The parish was once described as the seat of civil affairs and community life in Jersey;⁴⁶ and, if the parish is to live up to that description and thrive in the 21st Century, it would seem axiomatic that participation by electors in the parish assembly be encouraged and facilitated, and that the law governing its procedures be clear and accessible.

13.2 The Jersey Law Commission is hopeful that, if the initiative in this Report is acted upon by the States of Jersey, it will be a practical and helpful step to these ends.

14 Acknowledgements

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The Very Reverend Mike Keirle, Dean of Jersey
Advocate Mark Harris, Viscount of Jersey

⁴⁶ Michel Monteil, *L'Émigration Française vers Jersey 1850-1950*, Université de Provence, 2005 (translation 2015 by Glyn S. Burgess and Rory A. D. Hill), page 21

Advocate Rebecca Morley-Kirk, Judicial Greffier
Lisa Hart, Greffier of the States

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APPENDIX 1

COLLATION OF DRAFTING BRIEF FOR: RE-ENACTMENT IN ENGLISH OF THE MAIN LAWS RELATING TO PARISH ASSEMBLIES

Basic provisions

The basic provisions relating to Parish Assemblies, their membership and procedures, are to be found in –

- Article 23 of the [Rates \(Jersey\) Law 2005](#) (“the **Rates Law**”) which sets out eligibility for membership of the assembly
- the [Loi \(1804\) au sujet des assemblées paroissiales](#) (“the **1804 Law**”)⁴⁷ which sets out basic procedures for convening and conducting an assembly
- the [Loi \(1842\) sur les publications dans les Eglises](#) (“the **1842 Law**”)⁴⁸ which deals with placing of certain public notices in the Parish box (*boîte grillée*)
- the [Loi \(1905\) au sujet des assemblées paroissiales](#) (“the **1905 Law**”)⁴⁹ the sole Article of which sets out who convenes and presides at an assembly (the Rector or the Connétable), and the notice each must give of the holding of the assembly.

The substantive drafting brief is in short: to re-enact the provisions of the above Laws (except for the 1842 Law) in one enactment in the English language to reflect their current effect and usage.

Membership of the assembly/voting rights

The current effect and usage under the Rates Law, Article 23 – which sets out eligibility for membership of the assembly – does not require further explanation. The brief is simply to remove its provisions from the Rates Law so that they appear with other related provisions in a separate Law with (possibly) the following short title: Parish Assemblies (Administration) (Jersey) Law 202- (“the draft Law”).

The draft Law will provide (as does Article 23 of the Rates Law at present) that a person is a member of the parish assembly for a rateable year⁵⁰ –

- (a) if the person resides in the parish and is registered for the parish as an elector in public elections;
- (b) if the person is solely liable to pay a rate;
- (c) where two or more persons are liable to pay any rates in respect of land –

⁴⁷ See the JLIB translation: [Loi \(1804\) au sujet des assemblées paroissiales](#).

⁴⁸ See the JLIB translation: [Loi \(1842\) sur les publications dans les Eglises](#).

⁴⁹ See the JLIB translation: [Loi \(1905\) au sujet des assemblées paroissiales](#).

⁵⁰ “rateable year” to be defined as having the same meaning as in the Rates (Jersey) Law 2005

- (i) if the person's name appears first in any return of information required under Article 3(1) or (4) of the Rates Law, or
 - (ii) if the person is, by virtue of Article 30(2) or (3) of the Rates Law, entitled to represent all the persons who are liable to pay any rates levied in respect of that land; or
- (d) if the person's name is for the time being, and has been for at least 48 hours, on the list kept by the Connétable in accordance with Article 29(3) of the Rates Law as a representative of a body corporate.

The draft Law will provide that a member of the parish assembly has one vote on any decision by the assembly (and this applies despite the fact that the member may be qualified more than once to be a member of the parish assembly).

The current effect and usage of the 1804 Law as regards membership of the assembly and voting rights have been explained at length in the body of the Topic Report. In order to reflect such effect and modern-day usage, the draft Law will provide that –

- The Attorney General and the Solicitor General have the right to attend and to speak at, but not to vote in, any parish assembly in Jersey.
- A Connétable has the right to attend and to speak at, but not to vote in, a parish assembly not being the assembly of the parish of which he or she is the Connétable.
- A Deputy of the States, if not a member of the parish assembly of the parish which he or she represents or in which a constituency that that Deputy represents is situated, has the right to attend and to speak at, but not to vote in, that assembly.
- A person holding any honorary office in the relevant parish (an officeholder) is a member of the assembly of the parish in which the person holds office, whilst he or she remains in that office in that parish, whether or not the person otherwise qualifies for membership of the assembly.

Who presides at a parish assembly

The draft Law will replicate the effect of the 1905 Law. It will need to distinguish between a civil assembly *i.e.* the parish assembly when dealing with any matter which does not fall within the jurisdiction of an ecclesiastical assembly; and an ecclesiastical assembly *i.e.* the parish assembly when dealing with any matter (referred to in the later Articles) falling within the ecclesiastical jurisdiction of the parish assembly.

The word 'president' in relation to a civil assembly will mean the Connétable; and the word 'president' in relation to an ecclesiastical assembly will mean the Rector.

Defining the ecclesiastical functions of the parish assembly

Article 8 of the 1804 Law currently lists the ecclesiastical functions of the parish assembly. The Topic Report has provided a full description of the present-day functions and of the interaction both with the Code of Laws of 1771 and with the Canons of the Church of England in Jersey.

The draft Law will need to reflect the current usage by providing that a parish assembly is an ecclesiastical assembly when it deals with any of the following matters –

- (a) the election and dismissal of churchwardens (surveillants) in accordance with Section D1, and of almoners (collecteurs d'aumônes) in accordance with Section D2, of the Canons;
- (b) the approval of the accounts presented by the churchwardens in accordance with Section D1 of the Canons;
- (c) the approval in accordance with Section D1 of the Canons of application of funds to the repairs, maintenance and needs of the Church, Churchyard and rectory;
- (d) the choice of gravedigger (fossoyeur);
- (e) the approval of transactions–
 - (i) concerning *le Trésor* or *la Charité*; or
 - (ii) in property or rights attaching to the rectorate in accordance with the [Loi \(1839\) sur l'acquis de propriété foncière par les rectorats](#);
- (f) any other matter falling within the jurisdiction of an ecclesiastical assembly under a provision of the Canons or of another enactment.

The references in Article 8 of the 1804 Law to *le Trésor* and *la Charité* are references to the respective funds of that name described in the Code of Laws under the heading *REGLEMENT POUR L'ADMINISTRATION DES BIENS DES TRESORS DE L'EGLISE, ET DES PAUVRES*. It would be desirable to make this clear in the translated provisions in the draft Law; and that the reference to property or rights attaching to the rectorate is a reference to any parish property held exclusively for ecclesiastical purposes, whether for ecclesiastical usage or for secular usage.

Convening an assembly

The draft Law will need reflect the current effect and usage under Articles 9 – 11 of the 1804 Law together with so much of the 1905 Law as requires each president to notify the other before publishing the date of the Assembly.

Thus, the draft Law will provide that –

- the president of a parish assembly must convene an assembly within a fortnight after being requested to do so by 10 or more members of the assembly, provided that the request is made in writing, is dated, and mentions the subject for which the convening of the assembly is sought;
- the convening notice must state the business to be discussed; and that no other business may be discussed except matters relating to public safety;
- no assembly may be held on the same day as the convening notice is published or on the following day unless it relates to public safety;
- the Connétable and the Rector must notify each other before publishing the date of the assembly.

Official notice of an assembly

The draft Law will need to replicate the current effect and usage by virtue of –

- the 1905 Law which imposes a requirement of 2 days' notice;
- the [Official Publications \(Jersey\) Law 1960](#) which stipulates that a notice of this type must be given in the Jersey Gazette; and

- the [Official Publications \(Publication of Jersey Gazette\) \(Jersey\) Order 2018](#) provides that the Jersey Gazette shall be published on the States of Jersey website at gov.je/gazette.

Thus, the draft Law will provide that –

- the president, when convening a parish assembly, must give public notice of the date, place and time for the holding of the assembly;
- such public notice must be given at least 2 days before the parish assembly is to be held, by publishing the notice –
 - i. in the Jersey Gazette; and
 - ii. on the website of the relevant parish.

The draft Law will go on to provide that the above does not prevent the president from giving notice by any other means of the holding of a parish assembly in addition to the public notice given above.

Order of procedure at an assembly

The draft Law will need to replicate the current effect and usage of Articles 12 and 12A of the 1804 Law.

Thus, the draft Law will provide that –

- the president, at every parish assembly, must produce the convening notice, duly authenticated, and must follow the order for debate in the convening notice;
- each motion proposed by a member and seconded by another member of the assembly must be put forward for debate and the views of the members of the assembly elicited on the subject concerned.

Saving for the inherent jurisdiction of the Royal Court

The Topic Report describes the nature of the Royal Court's inherent supervisory jurisdiction and contains the recommendation that the new Law make a saving provision in respect of that jurisdiction to the effect that: *Nothing in this Law derogates from the inherent jurisdiction of the Royal Court in relation to the administration and officers of the parishes.*

Repeal of the 1804 and 1905 Laws

The new Law would repeal the 1804 Law and the 1905 Law consequentially upon re-casting of their respective provisions in English.

The only reservation is that confirmation will be needed that Articles 13 and 14 of the 1804 Law can be repealed. Neither relates to the Jersey Law Commission project, but both are thought to be redundant.

Consequential amendments of the Rates Law

The incorporation of Article 23 of the Rates Law into the new Law would necessitate the repeal of Article 23 consequentially.

Furthermore, the definition of “parish assembly” in Article 1(1) of the Rates Law would require to be amended consequentially.

Specific Regulation-making powers

In relation to convening a parish assembly:

It is proposed (as per above) to re-cast those provisions of the 1804 Law which stipulate –

- that when convening a parish assembly, the Connétable/Rector must mention in the convening notice the subject for which the assembly has been convened; and no other subject may be dealt with unless it relates to a matter of public safety; and
- that no parish assembly shall be held on the same day as the convening notice is published or on the following day except in relation to a matter of public safety.

In both instances of dealing with another subject and of holding an assembly as the same day as the convening notice, the new Law would empower the States to designate another matter by Regulations.

In relation to giving public notice of a parish assembly:

It is proposed (as per above) to re-cast the relevant provisions of the 1905 Law which stipulate that public notice must be given at least 2 days before the parish assembly is to be held, by publishing the notice (a) in the Jersey Gazette; and (b) on the website of the relevant parish. The new Law would empower the States to prescribe by Regulations other means of giving public notice.

The new Law would also go on to empower the States by Regulations to amend⁵¹ Articles 3, 4 and 5 of the Loi (1842) sur les publications dans les Eglises.

In relation to procedures at a parish assembly:

It is proposed (as per above) to require, at every parish assembly –

- that the president produce the convening notice, duly authenticated, and follow the order for debate in the convening notice; and
- that each motion proposed by a member and seconded by another member of the assembly be put forward for debate and the views of the members of the assembly elicited on the subject concerned.

As explained fully in Appendix 2, the new Law would confer a wide power on the States to make Regulations governing all aspects of procedure at a parish assembly. Such Regulations would be able to amend the new Law itself in this respect also; but **not** so as to alter rights of membership of, or rights of audience at, or the right to vote in, an assembly.

⁵¹ Note the definition of “amend” in the Schedule to the Interpretation (Jersey) Law 1954: “amend” shall include “add to”, “substitute”, “vary”, “repeal” and “revoke”.

APPENDIX 2

COLLATION OF DRAFTING BRIEF / RECOMMENDATIONS RE: GENERALISED REGULATION-MAKING POWERS FOR THE STATES AND ORDER-MAKING POWERS FOR THE COMITE DES CONNETABLES

Introductory

The brief for the new Law in Appendix 1 included provision for limited Regulation-making powers in the context of re-casting the fundamental Laws in modern style legislation in the English language.

The brief in this Appendix 2 relates to the separate proposal for a wider Regulation-making power to enable the States, without needing to enact primary legislation, to make provision under the following headings:

Modernisation of parish assembly procedures

As the Topic Report has outlined, a number of possible reforms have been suggested in respect of voting procedures at parish assemblies. These suggestions have included being able –

- to attend and vote by means of remote access
- to cast a vote in a ballot box after an assembly
- to nominate an attorney (by whatever name called) to vote for a member
- to have a parish referendum.

This is not intended as an exhaustive list of ideas for modernising procedures; but the substantive drafting brief is for *vires* for the States Assembly, if so minded, to make provision by Regulations –

- for alternative means of attendance at parish assemblies (including virtual attendance) and/or
- for alternative means of taking votes at parish assemblies,

with power for such Regulations to make consequential amendments of primary legislation where necessary to this end, rather than by Law.

This Regulation-making power (including the power to make consequential amendments to primary legislation) would **not** extend to altering rights of membership of, or rights of audience at, or the right to vote in, an assembly.

Regulations able to confer Order-making powers

The Topic Report has proposed that such Regulations made by the States might be able to empower the Comité des Connétables to make Orders, in consultation with the Attorney General, to govern more minor matters of procedure at parish assemblies not covered by the new Law, or by Regulations made thereunder.

The substantive drafting brief is for not for the new Law to confer an Order-making power directly on the Comité, but to enable Regulations made under the Law to do so, if the States Assembly sees fit in the light of whatever alternative procedures are eventually provided for by such Regulations.

Thus were the Regulations to make provision e.g. for virtual attendance at parish assemblies, some of the more minor modalities of introducing such a scheme in the parishes might more appropriately be contained in an Order made by the Comité des Connétables. The same might be true in relation to a procedure contained in Regulations for the holding of parish referenda.

Hence the recommendation in the body of the Topic Report that the Comité des Connétables be empowered to make Orders, in consultation with the Attorney General, in relation to matters of procedure at parish assemblies for which provision has not been made in the Regulations.

*Parish administration:
St Helier/Conseil Municipal/Transfer of powers*

The Topic Report has further recommended, with a particular view to –

- the perceived special needs of St Helier, and
- any possible move to a *conseil municipal* and/or to transfer ministerial functions to the parish,

that the States be empowered to make provision by Regulations in respect of the civil administration of the parishes. Whilst the driver for such an enabling power is the call for special provisions for St Helier as reflected in [P.97/2022 Amd.\(7\)](#), the *vires* for such Regulations need not be confined to St Helier.

This extract from p.97/2022 illustrates the nature of what is proposed for St Helier, and hence what will be meant by the term ‘civil administration’ in the context of the enabling powers in the new Law:

“... the princip[al] focus of the Conseil Municipal would be:

- *to act as a formal consultation body for Government policy and strategy where these may impact on St. Helier, and*
- *to administer a greater range of delegated functions on behalf of the Government. For example, to support improvements in environmental practices (littering and noise pollution), approve non-controversial and St. Helier specific planning applications, and take on greater leadership for the administration of roads in St. Helier.*

Central to achieving this is the ability set and enforce some by-laws. Perhaps the best example is in respect of alcohol licensing which is a complex, lengthy, and costly process, involving not only attendance at a Parish Licensing Assembly, but also applications made through the Planning and Treasury departments, with the final decision being taken by the Licensing Bench. With Government plans in recent years to reform the Licensing Law having made little progress there is an ideal opportunity for the application process and decision making to be transferred to the Parish, freeing the time of both Government departments and the judiciary,

whilst also making it a simpler process and improved experience for applicants. There are other examples where the existing functions require reform, or the customer experience is equally complicated and where individuals and businesses complain about stifling red tape and frustration. The Trial Shadow Conseil Municipal identified the following areas that are worthy of further review: ▪ Town planning ▪ Transport planning ▪ Roads management ▪ The environment ▪ Making and enforcing by-laws ▪ Licensing of premises ▪ Town centre management and vibrancy (including events).”

The substantive drafting brief is for Regulation-making vires that would enable such provision to be enacted without the need for the States to enact primary legislation.

Hence the brief for a widely drawn power for the States Assembly to make provision by Regulations in respect of the civil administration of the parishes and that such provision might include (but not be limited to) provision as to the transfer of administrative functions between a Minister and any of the parishes and between any related bodies. The creation of any new administrative bodies would remain a matter for primary legislation.

The Topic Report noted that what was currently envisaged for St Helier could eventually necessitate amendments to one or more of the following Laws, viz. –

- planning: building including housing and transport (potentially bringing into play elements of the [Planning and Building \(Jersey\) Law 2002](#) , the [Control of Housing and Work \(Jersey\) Law 2012](#), the [Motor Traffic \(Jersey\) Law 1935](#) and the [Road Traffic \(Jersey\) Law 1956](#))
- roads, sea-beach and parks management powers (potentially bringing into play elements of the [Loi \(1914\) sur la Voirie](#) , the [Motor Traffic \(Jersey\) Law 1935](#), the [Road Traffic \(Jersey\) Law 1956](#), the [Highways \(Jersey\) Law 1956](#), the [Policing of Roads, Parks and Sea Beaches \(Application of Fines\) \(Jersey\) Law 1957](#), the [Policing of Roads \(Jersey\) Regulations 1959](#), the [Roads Administration \(Jersey\) Law 1960](#) and the [Policing of Parks \(Jersey\) Regulations 2005](#))
- environment (potentially bringing into play elements of the [Planning and Building \(Jersey\) Law 2002](#))
- liquor licensing (potentially bringing into play elements of the [Licensing \(Jersey\) Law 1974](#))
- ‘town vibrancy’ (potentially bringing into play elements of the [Licensing \(Jersey\) Law 1974](#), the [Shops \(Regulation of Opening and Deliveries\) \(Jersey\) Law 2010](#) and the [Road Works and Events \(Jersey\) Law 2016](#)).

In addition to the overall enabling power in respect of the civil administration of the parishes, therefore, it may be thought desirable for the sake of clarity to include specific enabling powers in each of the following Laws is as follows –

[Loi \(1914\) sur la Voirie](#)

Adjust Article 47 to include enabling provision for amendment of this Law by Regulations for the purposes of the new enabling Law.

[Motor Traffic \(Jersey\) Law 1935](#)

After Article 46 insert a new Article enabling amendment of this Law by Regulations for the purposes of the new enabling Law.

[Highways \(Jersey\) Law 1956](#)

Adjust Article 8A to include enabling provision for amendment of this Law by Regulations for the purposes of the new enabling Law.

[Road Traffic \(Jersey\) Law 1956](#)

In Article 92 add a further paragraph enabling amendment of this Law by Regulations for the purposes of the new enabling Law.

[Roads Administration \(Jersey\) Law 1960](#)

After Article 7 insert a new Article enabling amendment of this Law by Regulations for the purposes of the new enabling Law.

[Licensing \(Jersey\) Law 1974](#)

Adjust Article 93 to include enabling provision for amendment of this Law by Regulations for the purposes of the new enabling Law.

[Planning and Building \(Jersey\) Law 2002](#)

After Article 130 insert a new Article enabling amendment of this Law by Regulations for the purposes of the new enabling Law.

[Shops \(Regulation of Opening and Deliveries\) \(Jersey\) Law 2010](#)

After Article 10 insert a new Article enabling amendment of this Law by Regulations for the purposes of the new enabling Law.

[Control of Housing and Work \(Jersey\) Law 2012](#)

After Article 51 insert a new Article enabling amendment of this Law by Regulations for the purposes of the new enabling Law.

[Road Works and Events \(Jersey\) Law 2016](#)

After Article 69 insert a new Article enabling amendment of this Law by Regulations for the purposes of the new enabling Law.