

**REPLY BY THE CHIEF MINISTER
TO A QUESTION ASKED PURSUANT TO RULE 6 OF THE
RULES OF PROCEDURE BY DEPUTY LAURIE B. QUERIPEL**

Question

I would refer you to an extant resolution (an Amendment proposed by deputies Webber and Prevel in either 2001 or 2002) which directs the preparation of legislation to enable the States to hold Referenda. With this in mind, could you please advise me as to where the States currently stand in regard to the ability to hold Referendum and when do you envisage all the necessary mechanisms being in place in order for the States to do so?

Answer

There is currently no provision in law for the holding of referendums in Guernsey.

On the 1 August 2002 the States considered a report on referendums and resolved that:

- the most sensible way forward would appear to be to introduce enabling legislation providing for the basic principle of referendums;
- when enabling legislation is in place and when an issue that the States believed should be put to referendum is identified, then secondary legislation which would describe the required detailed rules should be progressed;
- the voting entitlement and process should be the same as those for the General Election of People's Deputies;
- referendums should only be used in extremely rare circumstances and for expressly described topics *but that those topics should not be confined to questions of Guernsey's constitutional relationship with other jurisdictions;*
- *requests to hold a referendum shall not be limited to cases which the [Policy Council] recommend;*
- a referendum should be initiated only in cases where at least a two-thirds majority of the States of Deliberation vote in favour of a recommendation to hold a referendum on a particular topic; and
- *the enabling legislation should provide that a referendum may be binding or consultative and that the States of Deliberation, when resolving that a referendum shall be held, shall resolve whether it shall be binding or consultative.*

The passages italicised above reflect amendments carried by the States. Following this resolution, work has been undertaken on how to implement this resolution with the assistance of the Law Officers. However, due to resource constraints the successive Policy Councils have not been in a position to give this project priority.

In 2012, the Policy Council undertook further research on referendums and how one might work given the constitution and executive decision making process in the States of Deliberation. Following this work it was established that there are a number of constitutional, policy and technical considerations that had not been taken into account when the States of Deliberation debated the report in 2002. These considerations relate particularly, but not exclusively to the amendments referred to above. These considerations include, *inter alia*: what categories of topics should be included; how the restrictions on funding and advertising would be given effect given the lack of organised political parties; how a binding referendum could practically be enforced; how binding referendums would

impact the sovereignty of the States of Deliberation; and whether referendums should be single purpose and restricted to simple questions that require binary responses.

In particular, the Policy Council has not been able to resolve how to make referendums binding in any legal sense. Guernsey's constitution does not include a constitutional court by which the assembly could be bound, such organs being more appropriate for jurisdictions with written constitutions and greater judicial control over the legislature. However, referendums are generally accepted as being 'politically binding', at least on "the Government". This means that whilst States Members could not be compelled to vote in any particular way they may feel politically 'bound' by their electorate, to whom they are accountable, to vote in a way that is consistent with the result of a referendum.

As a result of this work, the Policy Council considered a report in June 2012 and resolved to discuss the matter with the States Review Committee before considering how to seek to address the outstanding matters that will require resolution. The Committee acknowledges that whilst the issue is not central to its work it is an area of interest. Having obtained the view of the Committee the Policy Council will be in a position, when resources allow, to consider how best to resolve these outstanding matters.

Date of Receipt of the Question: 18th January 2013

Date of Reply: 29th January 2013