

STATES OF JERSEY

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DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (COMMITTEES OF INQUIRY) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 5th June 2007
by the Privileges and Procedures Committee**

STATES GREFFE



Jersey

DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (COMMITTEES OF INQUIRY) (JERSEY) REGULATIONS 200-

REPORT

Introduction

The States can decide to set up a committee of inquiry to look into any definite matter of public importance. Recent committees of inquiry have investigated the bus tender process and housing trusts and, of course, the States have recently agreed to set up a committee of inquiry to investigate the development of certain fields at Sandybrook.

In order to undertake their work effectively it is important that committees of inquiry have adequate statutory powers to call for evidence and it is equally important that the members of the committee and those giving evidence are provided with appropriate legal immunity. These powers existed under the States of Jersey Law 1966 until its repeal in December 2005.

These Regulations, made under an enabling power in the new States of Jersey Law 2005 are, in many ways are similar to the Regulations giving certain powers and immunities to scrutiny panels, the PAC and PPC which were approved in 2006. If approved they will give all the necessary powers and immunities to enable committees of inquiry to undertake their work.

Regulation 1

This Regulation makes it clear that expressions used in the Regulations have the same meaning as defined in Standing Orders. This refers, for example, to the definition of a committee of inquiry and the type of issues it can inquire into.

Regulation 2

It is very much hoped that the statutory powers to require attendance before a committee of inquiry will be nothing more than a last resort when the normal voluntary invitations to appear have been unsuccessful. Regulation 2 makes it clear that a committee must initiate reasonable attempts to request a person to appear on a voluntary basis before a summons can be issued in accordance with these Regulations. As can be seen the committee must act reasonably in attempting to find a convenient time for the appearance and must give sufficient undertakings in relation to the way in which private or confidential evidence will be treated. It is only if a person refuses to comply with a request made in these circumstances that the power to issue a summons is given. The committee needs to be satisfied that the evidence is relevant, or might reasonably be relevant, to the matter that it is investigating.

Regulation 3

A summons will be issued by the Greffier of the States on behalf of the committee. Some general indication of the issues on which the person will be questioned, or an indication of the documents that the person is required to produce, must be given in the summons. In addition, to ensure that any person summoned is fully aware of the way in which a summons can be challenged, full information about this must accompany the summons. The person must also be informed of the potential offences for failure to comply. Paragraph (5) states that at least 10 working days must elapse between the date of service and the date of appearance.

Regulation 4

In the interests of natural justice it is clearly appropriate that any person who receives a summons has the

opportunity to challenge it. Regulation 4 explains how this can happen. Sub-paragraphs (1)(a) to (c) allow a challenge to be made on the grounds that the necessary statutory steps set out in Regulations 2 and 3 have not been complied with. Sub-paragraphs (1)(d) to (f) set out further grounds for challenge. Sub-paragraph (e) refers to a challenge on the grounds that the prejudice to a person that would arise if the summons was complied with was such that it would outweigh the usefulness of the evidence or documents. This provision could, for example, be used as a ground for challenge in the case of documents that contained sensitive personal information or in cases of extreme commercial confidentiality.

The challenge must be notified to the Greffier and the summons is put on hold until the challenge has been considered and adjudicated on by the PPC.

Regulation 5

PPC, which is a mixture of Ministers/Assistant Ministers and members who are not, is considered to be the appropriate body to undertake the review of a summons in the event of a challenge in an independent and impartial manner. Paragraph (2) of Regulation 5 nevertheless makes it clear that any member of PPC who is connected with the matter must take no part in the review.

PPC can undertake whatever investigations it sees fit before adjudicating on whether or not to uphold the challenge and may hear personal submissions from relevant parties. If they so wish any party can insist on addressing PPC in person. When adjudicating on the grounds set out in sub-paragraphs 4(e) and (f) there will obviously be a degree of judgement needed by PPC to decide where the appropriate balance lies.

Even if it does not entirely uphold a challenge PPC can make alterations to the summons and this could, for example, relate to the date (as the original date may have passed) or could exclude certain documents from production whilst upholding the summons in relation to others. It should be stressed that once the review by PPC has been undertaken there is no further appeal mechanism for a person who has been summoned and any failure to comply would make a person liable to an offence under Regulation 12.

Regulation 6

Because a committee of inquiry can be seen as a quasi-judicial process witnesses can, if the committee wishes, be examined on oath. The significance of an oath is as to whether or not a prosecution for perjury would be possible if someone gives false evidence, having previously taken an oath. In certain circumstances the administration of an oath will also serve to remind a witness of the importance of giving full and accurate information to the committee.

Regulation 7

This Regulation refers to a challenge in relation to a question put to a person when actually appearing before a committee of inquiry. The grounds for challenge mirror some of the grounds in Regulation 4 and the challenge procedure follows that set out for an initial challenge when a summons is issued. If PPC concludes that the question must be answered then the person must comply or become liable to prosecution. Paragraph (5) makes it clear that PPC can attach conditions on the giving or use of the answer. This could, for example, involve the requirement that a confidential matter should be answered in private and not referred to in any published report.

Regulation 8

It is important that persons appearing before a committee of inquiry should be given adequate statutory protection from proceedings in respect of any evidence given or documents produced so they can speak freely without fear of legal action. Regulation 8 gives this immunity to such persons although paragraph (3) makes it clear that the immunity is not given if a person deliberately gives evidence or produces documents which he or she knows to be untrue.

Regulation 9

The States of Jersey Law 2005 gives appropriate immunity to members of the States in relation to the proceedings of any committees or panels established by Standing Orders including committees of inquiry. The purpose of Regulation 9 is to extend this immunity to the members of a committee of inquiry who are not elected members of the States (although recent committees of inquiry have made use of non-States members, Standing Orders do, in fact, allow States members to be appointed as members). It is clearly appropriate and necessary to ensure that non-States members are adequately protected when taking part in the work of a committee of inquiry.

Regulations 10 and 11

Because of the need to follow the procedures set out in Regulation 3 before a summons can be issued it will, in

practice, be the case that the committee of inquiry will already be in touch with the person concerned before serving a summons. These two Regulations therefore provide alternative means by which a summons can be served. A summons could be served by personal service, by leaving it with the person concerned, or could be served by post if that was considered more appropriate. In practice it is anticipated that the committee concerned will always check that a summons has been correctly received and, in case of any doubt, necessary steps could be taken to ensure it is received. In appropriate cases the Viscount's Department could be asked to serve a summons.

Regulation 12

This Regulation contains details of the offences that would be committed if a person failed to comply with a summons or failed to answer a question put to him or her. As can be seen the maximum penalty is a term of imprisonment of up to 2 years or a fine of up to level 4 on the standard scale which is currently £5,000. It should be stressed that these are the maximum penalties and any sentence up to the maximum could be imposed by the Court.

The PPC very much hopes that there will never be a need to institute proceedings under these Regulations. In the vast majority of cases evidence will hopefully be received on a voluntary basis without even the need to issue a summons and, on the rare occasions when a summons is issued, it is hoped that the person concerned will realise that it is necessary to comply, particularly once they have exhausted the review mechanism. It is, nevertheless, necessary to have the ultimate criminal sanction available to ensure that committees of inquiry are able to undertake their work effectively and obtain the necessary relevant information.

Financial and manpower implications

There are no additional financial or manpower implications arising from these Regulations. There will inevitably be some additional work for officers serving any committees of inquiry to implement the procedures, but this will be managed within existing resources.

Explanatory Note

Regulation 1 provides for the Regulations to be construed accordance with standing orders.

Regulation 2 confers the power for a committee of inquiry to issue a summons requiring a person to appear before it and to give evidence and produce documents. Before issuing a summons, the committee must take reasonable steps to secure the person's voluntary attendance. These steps are described in paragraph (1).

Regulation 3 sets out the procedure for issue of a summons. The summons is prepared by the Greffier of the States on behalf of the committee of inquiry. The date on which the person is to appear must be at least 10 working days after the day the summons is served.

Regulation 4 sets out the circumstances in which a person served with a summons may challenge it. Once a challenge has been made, by notifying the Greffier, the person is not required to obey the summons unless and until it is upheld by the Privileges and Procedures Committee.

Regulation 5 sets out the powers of the Privileges and Procedures Committee when reviewing a challenge of a summons and prevents any member of that Committee who has a personal involvement in or connection with the inquiry taking part in the review.

Regulation 6 empowers a committee of inquiry to take evidence on oath.

Regulation 7 entitles a person appearing before a committee of inquiry to challenge any question which is not relevant or necessary to the matter being inquired into, if the evidence sought is privileged or if it would be contrary to the public interest for the question to be answered. Once a challenge is made, the person is not required to answer the question unless and until it is upheld by the Privileges and Procedures Committee.

Regulation 8 confers legal professional privilege and privilege against self-incrimination on a person asked or summoned to appear before a committee of inquiry and provides that evidence given and documents produced would only be admissible in evidence in proceedings for the offence of perjury or for an offence under Regulation 12. There is no protection for evidence given or documents produced which the person knows to be untrue.

Regulation 9 confers immunity on a member of a committee of inquiry for words spoken or written in his or her capacity as such.

Regulation 10 states how personal service is to be effected.

Regulation 11 states how ordinary service is to be effected.

Regulation 12 makes it an offence, without reasonable excuse, to disobey a summons or, when summoned, to refuse, without reasonable excuse, to be examined before or answer any lawful and relevant question put by the committee of inquiry which issued the summons.

Regulation 13 is the citation and commencement provision.



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DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (COMMITTEES OF INQUIRY) (JERSEY) REGULATIONS 200-

Arrangement

Regulation

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Jersey

DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (COMMITTEES OF INQUIRY) (JERSEY) REGULATIONS 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 49 of the States of Jersey Law 2005^[1], have made the following Regulations –

1 Interpretation

Expressions defined in standing orders have the same meaning in these Regulations.

2 Power of committee of inquiry to issue summons

- (1) Before issuing a summons requiring a person to appear before it and to give evidence and produce documents to it, a committee of inquiry must –
 - (a) request the person to so appear;
 - (b) accommodate any reasonable request by the person as to the day and time of the appearance; and
 - (c) where it would be appropriate to do so, having regard to the nature of the evidence or any document, undertake to receive the evidence or document in confidence.
- (2) If a person refuses to comply with a request made under paragraph (1) a committee of inquiry may summons the person to appear before it and to give evidence and produce any document to it if the committee is satisfied that the evidence or document is, or might reasonably be, relevant to the matter that it is inquiring into.

3 Procedure for issue of summons by a committee of inquiry

- (1) A committee of inquiry shall inform the Greffier of its decision to issue a summons.
- (2) The Greffier shall prepare the summons and sign it.
- (3) The summons shall –
 - (a) state the day and time when and place where the person is required to appear;
 - (b) indicate, in general terms, the issues on which the committee of inquiry proposes to question the person;
 - (c) be accompanied by information regarding –
 - (i) how the summons may be challenged, and
 - (ii) the offences in Regulation 12.

- (4) The summons may require the person to produce –
 - (a) all documents;
 - (b) specified documents;
 - (c) documents described by reference to their subject matter or any other factor,
which are or might reasonably be relevant to the matter that the committee of inquiry is inquiring into.
- (5) The day on which the person is to appear must be at least 10 working days after the day the summons is served on the person.
- (6) The Greffier shall cause the summons to be served on the person by personal service or by ordinary service.

4 Challenging a summons issued by a committee of inquiry

- (1) A person may challenge a summons issued by a committee of inquiry on any of the following grounds –
 - (a) that Regulation 2(1) was not complied with before the summons was issued;
 - (b) that the condition in Regulation 2(2) in respect of the evidence or a document has not been satisfied;
 - (c) that any requirement of Regulation 3 was not complied with in respect of the summons;
 - (d) that the evidence or a document is privileged;
 - (e) that the prejudice to the person that would ensue from appearing before the committee of inquiry and giving the evidence and, where required, producing a document so far outweighs the usefulness of the evidence or document to the committee of inquiry that it would be unreasonable to require the person to appear or produce the document;
 - (f) that it would be contrary to the public interest for the evidence to be given or a document produced.
- (2) The person must notify the Greffier, in writing, that he or she wishes to challenge the summons and of the grounds for his or her challenge.
- (3) Once the person has so notified the Greffier –
 - (a) the Greffier shall inform the PPC and the committee of inquiry of the challenge; and
 - (b) the person shall not be required to obey the summons unless, on review, it is upheld by the PPC.

5 Review of challenge of summons issued by a committee of inquiry

- (1) The PPC shall review the challenge as soon as is practicable.
- (2) A member of the PPC who is connected with or involved in the matter being inquired into by the committee of inquiry whose summons is being challenged, or who is a member of that committee, shall not take any part in the review.
- (3) The PPC shall undertake such investigations into the matter as it sees fit and may, as part of the investigations, request submissions, either in writing or in person, from –
 - (a) the chairman and any member of the committee of inquiry;
 - (b) the person who has challenged the summons;
 - (c) any other person whose submission is, in the opinion of the PPC, relevant to its review of the challenge.
- (4) Notwithstanding paragraph (3), any person requested to make a submission may elect to make it ir

person.

- (5) After it has concluded its investigations the PPC shall –
 - (a) uphold the summons as served;
 - (b) uphold the summons with such alterations as it considers appropriate; or
 - (c) direct that the person is not required to comply with the summons.
- (6) The PPC may reach its decision on the ground in Regulation 4(1)(f) or, as the case requires, Regulation 7(1)(d), notwithstanding that the challenge is not made on that ground.
- (7) Where the PPC upholds a summons it may also impose conditions on the giving of the evidence and the production of a document and their use.
- (8) The PPC shall inform the person who challenged the summons, and the committee of inquiry, of its decision and the reasons for it.

6 Power to administer oath

- (1) A committee of inquiry may require a person appearing before it to give evidence on oath.
- (2) The chairman of a committee of inquiry is authorized to administer the oath for this purpose.

7 Challenge and review of question put by a committee of inquiry

- (1) A person appearing before a committee of inquiry in answer to a summons may challenge a question put by the committee on the ground that –
 - (a) the question is not relevant or necessary to the matter that the committee is inquiring into;
 - (b) the evidence sought is privileged;
 - (c) the prejudice to the person that would ensue if he or she answered the question so far outweighs the usefulness of the answer to the committee of inquiry that it would be unreasonable to require the person to answer; or
 - (d) it would be contrary to the public interest for the question to be answered.
- (2) Once the person has made the challenge, he or she is not required to answer the question unless the PPC directs that it must be answered.
- (3) Paragraphs (1) to (4) and (6) of Regulation 5 shall apply to a review of a challenge to a question as they apply to a review of a challenge to a summons.
- (4) After it has concluded its investigations the PPC shall direct –
 - (a) that the question must be answered; or
 - (b) that the question need not be answered.
- (5) Where the PPC directs that a question must be answered, it may impose conditions on the giving and use of the answer.
- (6) The PPC shall inform the person who challenged the question and the committee of its decision and the reasons for it.

8 Privileges and immunity of person appearing before or producing documents to a committee of inquiry

- (1) A person asked or required to give evidence or produce documents before a committee of inquiry shall be entitled, in respect of such evidence and documents, to legal professional privilege and privilege against self-incrimination.
- (2) An answer given by a person to a question put to that person, or an oral or written statement made by

that person, or a document produced by a person in the course of his or her appearance before a committee of inquiry shall not, except in the case of proceedings for the offence of perjury or for an offence under these Regulations, be admissible in evidence against that person in any civil or criminal proceedings.

- (3) Paragraph (2) shall not apply to evidence given or documents produced by that person which he or she knows to be untrue.

9 Immunity of member of a committee of inquiry who is not a member of the States

No civil or criminal proceedings may be instituted against a member of a committee of inquiry who is not also a member of the States for any words –

- (a) spoken or written before or within the committee of inquiry; or
- (b) reproduced or recorded in a report presented to the committee of inquiry or a report presented by the committee of inquiry to the States.

10 Personal service

- (1) For the purposes of these Regulations, personal service of a summons is effected by leaving it with the person to be served.
- (2) In the case of personal service on a body corporate, such service may be effected by leaving the summons with the president or chairman, or the secretary, treasurer or other similar officer of the body corporate or by leaving it at or delivering it to the registered office of the body corporate.

11 Ordinary service

- (1) For the purposes of these Regulations, ordinary service of a summons is effected –
 - (a) in the case of service on an individual –
 - (i) by leaving it at the last known address or last known place of business of the person to be served, or
 - (ii) by sending it by ordinary post to the last known address or last known place of business of the person to be served;
 - (b) in the case of service on a body corporate –
 - (i) by leaving it at or sending it by ordinary post to the registered or principal office of the body corporate, or
 - (ii) by leaving it at or sending it by ordinary post to the last known place of business of the body corporate.
- (2) Without prejudice to Article 7 of the Interpretation (Jersey) Law 1954^[2] a document sent by post to an address in Jersey shall, unless the contrary is proved, be deemed to have been served on the 2nd day after the day on which it was posted, days on which there is no collection or delivery excepted.

12 Offences

- (1) A person shall be guilty of an offence if he or she, without reasonable excuse –
 - (a) disobeys any requirement of a summons issued under these Regulations; or
 - (b) when summoned under these Regulations refuses to comply with a requirement to be examined before, or to answer any lawful and relevant question put by, the committee of inquiry which issued the summons.
- (2) A person guilty of an offence under this Regulation shall be liable to imprisonment for a term of

2 years and to a fine of level 4 on the standard scale.

13 Citation and commencement

These Regulations may be cited as the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

[1]

chapter 16.800

[2]

chapter 15.360