

# **STATES OF JERSEY**

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## **DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 200**

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**Lodged au Greffe on 30th May 2008  
by the Privileges and Procedures Committee**

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**STATES GREFFE**





Jersey

# **DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 200**

## **REPORT**

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### **Introduction**

This legislation gives effect to the in principle decision of the States taken on 2nd May 2007 to enact legislation to regulate the amount candidates can spend on their election campaigns. That States decision, taken in respect of paragraph (a)(v) of P.145/2006 lodged by Senator Shenton, followed the issue by PPC of a consultation paper on 15th January 2007 (R.2/2007) on this subject.

In its first 2 years the current PPC spent considerable time investigating possible reforms to the composition of the Assembly but the Committee also considers that it is important to introduce restrictions on election expenditure to ensure that all candidates standing for election can do so on a 'level playing field' basis. Although it is virtually impossible to prove any link between campaign expenditure and electoral success (and there is undoubtedly anecdotal evidence of candidates who have spent significant amounts without being elected) it is a feature of many democratic systems that some limitation is placed on campaign expenditure to ensure that there can be no suggestion that candidates have 'bought' their way into the legislature. In addition the current lack of any regulation of election expenditure at the present time means that there is often rumour and speculation about the amount spent by some candidates and the source of the funding.

This legislation is initially being brought forward by way of Triennial Regulations. This is firstly important as it will enable the legislation to be in force for the elections being held this autumn and it will also mean that the legislation can be refined in the light of experience before being converted into permanent legislation that will require sanction by the Privy Council.

These Regulations cover four main areas, namely the imposition of a limit on expenditure, the requirement for a declaration of the amounts spent and the source of the funding, rules on the receipt of gifts and donations and the regulation of third party expenditure during election campaigns. As mentioned below it is this last area of regulation that has undoubtedly been the most difficult for the Committee to define.

### **Regulation 1**

This Regulation sets out the interpretation of expressions used in the Regulations. It is important to note that the legislation only covers candidates for election as Senator, Deputy or Connétable and there are no current plans to introduce legislation for elections as Centenier or Procureur du Bien Public as this is considered unnecessary at the present time.

### **Regulation 2**

This Regulation simply give effect to the Schedule which defines 'donations' and 'anonymous donations'. The content of the Schedule is described below.

### **Regulation 3**

This Regulation specifies the meaning of 'candidate's election expenses'. These are defined as any expenditure that is incurred by a candidate at any time before the poll, for the purpose of procuring the candidate's election or prejudicing the chances of other candidates. It is important to note that a candidate can be responsible for expenses incurred by others if this expenditure is undertaken with the candidate's express or implied consent. This will prevent candidates from circumventing the new rules by allowing others to incur expenditure on their behalf. (Any expenditure that is made by a third party without the candidate's knowledge is regulated by the rules on third party expenditure in Part 3 of these Regulations.)

A candidate's expenses can be direct, such as the payment to a printer for the printing of leaflets, or notional when, for example, a website designer provides a website at a discount. The difference between the normal market value of the provision of the website and the discounted price is treated as a donation and therefore a notional expense that must be counted as part of the overall total.

Paragraph 7 explains how shared expenditure will be treated. This may be particularly important if several candidates stand on a shared platform or on behalf of a party. The presumption is that the expenditure is shared equally unless the candidates can specifically prove that the division was undertaken differently.

#### **Regulation 4**

Regulation 4 is an extremely important provision as it sets out the actual monetary limits that candidates are entitled to spend in an election campaign. PPC considers that there are certain expenses that are common to every candidate irrespective of the size of the constituency and, for this reason, a basic amount is allowed per candidate, to which is added the sum of 10p for every registered elector. If a candidate decides to have a leaflet designed or a website established it is likely that the cost will be similar irrespective of the size of the constituency and this is the basis for the fixed amount.

If the amounts mentioned in this Regulation had been in force at the time of the autumn 2005 elections, candidates for Senator would have been allowed to spend £7,941.70, a candidate in St. Helier No. 3 District for Deputy would have been able to spend £2,258.60 and a candidate for Deputy of St. Mary £1,613.00.

#### **Regulation 5**

Candidates will not be permitted to keep any anonymous donations as to allow them to do so would potentially open a significant loophole in the legislation. If there was no restriction, a single anonymous donor could give a series of anonymous donations to a candidate and the rules on declaring the identity of donors could be circumvented. In the event that any anonymous donation is received by a candidate he or she will be required to forward it to the Treasurer of the States who will make arrangements for it to be distributed to charities in Jersey.

#### **Regulations 6, 7 and 8**

These three Regulations refer to the process for making a public declaration of election expenditure. Regulation 6 sets out the procedure that must be followed by any candidate, whether or not he or she has been successful in the election, to make a return of expenditure. This will be delivered to the Judicial Greffier because of his role in assisting the Royal Court with the organisation of elections. As can be seen the declaration must contain full details of election expenditure itemising the amounts spent and the goods or services involved. In addition candidates must declare full details of any donations received with a value of over £100 so that there is full transparency on the source of any funding received by a candidate.

Paragraphs (4) and (5) of Regulation 6 impose a requirement to correct any declaration if a candidate becomes aware of any variation after submitting the original return of expenditure.

Regulation 7 allows the Judicial Greffier to require candidates to produce invoices, receipts or other proof of expenditure if he feels this is required. Although it is anticipated that the mere existence of the Regulations and the offences they contain will be sufficient to ensure that candidates and third parties comply with the requirements there may, of course, be occasions where the Judicial Greffier wishes to verify a return more closely.

Regulation 8 is self-explanatory and imposes a requirement on donors or others who have paid expenses for candidates to provide the necessary information and documents to allow a candidate to comply with the obligations under Regulations 6 and 7.

#### **Regulation 9**

Part 3 of these Regulations deals with the regulation of third parties during an election campaign. As explained in more detail below, third parties are persons who campaign for or against candidates without the consent of the candidate concerned. Many of the provisions in this Part are similar to those applicable to candidates but they are set out in this separate Part for convenience.

PPC was particularly keen to introduce regulation for third party expenditure as, without any such regulation, there would have been a significant loophole in the system of regulation. Restrictions on expenditure by candidates could simply have been circumvented by massive expenditure by third parties on their behalf. In addition PPC is keen to regulate excessive 'negative' campaigning by third parties designed to damage the prospects of particular candidates.

The manner in which third party expenditure can be regulated has been extremely difficult for PPC to define and appropriate legal advice has been received. There is clearly a balance that needs to be struck between the right of free expression of opinion in a democratic society against the need to ensure that election campaigns are conducted in a fair way with as level a playing field as possible between candidates. The advice received by PPC has made it clear that it would simply be impossible in the light of human rights legislation to outlaw third party expenditure completely during an election campaign as this would run contrary to the principles of freedom of expression and free elections. It is nevertheless possible to impose reasonable restrictions on third parties to avoid excesses and PPC believes that this legislation strikes an appropriate balance.

Regulation 9 gives an actual definition of third party which, in the absence of any compulsory registration of third parties, has been a complex matter to define. A third party may be a third person acting alone and, in this context, a person includes any body of persons corporate or unincorporated. This Regulation also sets out how two or more persons work together and are therefore considered to be one single third party for the purposes of this legislation. In the most straightforward situation two or more persons may work together in an open fashion to campaign for or against particular candidates in the election. The Regulation nevertheless makes it clear that people who incur expenses separately but who are co-ordinating their efforts are also considered as one single third party. This definition is important to ensure that people who are co-ordinating their efforts cannot claim to be acting individually and thereby be entitled to have more than one third party limit on election expenditure.

There may undoubtedly be occasions when an examination of the facts will be necessary in relation to third party expenditure to ascertain whether or not there has been any breach of the Regulations. This could, for example, occur in relation to campaigning on a particular issue. If, for example, an organisation ran a series of advertisements in the lead-up to an election urging electors to think carefully about the environment and the future population levels of the Island, this would only be treated as third party expenditure if there was a clear and direct intention to promote any particular candidates or prejudice others. By contrast an advertisement that encouraged electors not to vote for any candidates who had supported a particular policy in the States would clearly be caught by the restriction as it would be simple to identify those persons targeted by the negative advertising.

The definition of expenses for third parties in this Regulation follows the provisions explained above in relation to candidates.

#### **Regulation 10**

This Regulation gives the limits applicable to third party expenditure. This will be limited to one half of the maximum allowed to a candidate in the election. For the 2005 Senatorial elections this would have meant that any third party would not have been permitted to spend more than £3,970.85 in the senatorial elections and a third party campaigning in St. Mary alone would not have been permitted to spend more than £806.50.

It is, of course, possible that a third party will run a campaign that covers more than one election held at the same time. This may be a campaign that affects, for example, all Deputies' seats in the Island or may be a campaign that affects a number of constituencies across the Island. To ensure that the third party expenditure is limited to a reasonable amount in these circumstances the total allowed to the third party must not exceed one half of the maximum that would be allowed to a candidate in an Islandwide election. PPC considers that this limitation proposed for third party expenditure is a reasonable balance between the need to ensure fairness whilst not preventing genuine freedom of expression of opinion in the Island.

#### **Regulations 11, 12 and 13**

These 3 Regulations mirror the provisions for candidates described above in relation to the prohibition on anonymous donations, on the making a declaration of expenses after the election and on the verification of expenditure. Third parties that spend less than £500 are not required to make a declaration.

#### **Regulation 14**

This Regulation makes it illegal for advertisements relating to an election to be published on the 2 days preceding an election and on polling day itself. With elections currently held on a Wednesday this would mean that, in practice, no election advertising could be published in the local newspaper after the Saturday edition. PPC is particularly concerned about the possibility of negative advertising being published immediately before an election when candidates and others have no possibility of any right of reply.

#### **Regulation 15**

These Regulations contain a range of offences that are set out in the relevant sections. These cover all aspects of breaches of the provisions. Although the majority of offences contain provision for an unlimited fine the actual

amount of any fine would, of course, be a matter for the Court to decide on each occasion.

Paragraph (4) of Regulation 15 sets out the procedure that the Judicial Greffier must follow if he suspects that the Regulations may have been contravened. Because any contravention of the Regulations is a normal criminal offence the matter will be passed to the Attorney General for it to be investigated. The Attorney General may, of course, ask the police to investigate and, if appropriate, a criminal prosecution could be instituted.

### **Regulation 16**

This Regulation makes it clear that any declarations received by the Judicial Greffier will be available for public inspection. PPC is particularly keen that the new system of regulation leads to a transparent process where the public are able to obtain full details of the amounts spent by candidates and third parties and, in addition, details of whether any donations have been received to assist with election expenditure. This transparent process should hopefully prevent the type of rumour and speculation that has occasionally arisen in the past in relation to the amounts spent by candidates and the source of that funding.

### **Regulation 17**

This Regulation is simply the citation provision and provides that the Regulations come into force 7 days after they are made. If they are approved by the States in July this will enable the Regulations to be in force in good time before this autumn's elections. As mentioned earlier, the Committee intends to convert these Triennial Regulations into permanent primary legislation in due course. As these Regulations will only be in force for a short period, no provision has been made for matters such as the uprating of financial amounts. When the permanent legislation is enacted it will, of course, be necessary to include provision to ensure that financial amounts are increased at appropriate intervals. The permanent legislation will also be able to amend the States of Jersey Law 2005 to enable disqualification from office for any successful candidate who has been convicted of an offence under the legislation.

### **Schedule**

The Schedule deals with Donations and covers the provision of both goods and services.

Paragraph 1 makes it clear that any gift or loan of money given for the purpose of paying election expenses is treated as a donation. In addition there is a presumption in paragraph 1 that any money given after a nominator meeting is taken to pay for election expenses.

Although it is theoretically possible that a donation could be given to a candidate before the nomination meeting without any indication that it is for election expenditure, it is important to note the words in sub-paragraph (1) that the giver's intention can be by implication only. There would therefore, be a possible offence if it could be shown that a candidate had received monies before the nomination meeting that were clearly intended to assist with election expenditure even if this had not been expressly stated by the donor.

Paragraph 2 refers to gifts or loan of goods and the supply of services and makes it clear that any of these provided free of charge or at a discount is treated as a donation.

Paragraph 3 sets out the manner in which donations of goods and services are valued. In summary, these must be counted at their open market value or the commercial rate for the provision of goods or services. If goods are provided at a discount the difference between the amount paid and the open market value is a donation for the purpose of these Regulations.

Paragraph 5 refers to services provided free of charge to all candidates by PPC. PPC had initially hoped to be able to offer a free posting service of candidates' manifestos but discussions with Jersey Post showed that the current regulatory requirements on the postal operator mean that the cost of doing this would unfortunately be prohibitive and the Committee does not believe that this use of many £1,000s of taxpayers' money could be justified. When permanent legislation is brought forward for future elections PPC will investigate whether there is any scope to legislate to enable free posting facilities at a reduced cost. For 2008 PPC intends to sponsor an official election website where all candidates will be able to publish their manifestos in a standard format to enable electors to find information about candidates in one place. It should be pointed out that the amounts permitted for election expenses will preclude candidates from posting election material to all electors in their constituency and this should assist with the creation of a 'level playing field' and prevent wealthy candidates from spending significant amounts (particularly in the senatorial election) on the distribution of election material by post.

Paragraph 6 is an important exception. PPC has made it clear from the outset that it wished to do nothing to prejudice the very long tradition of voluntary assistance provided to candidates by friends and family. Paragraph 6 therefore makes it clear that any services provided by volunteers will not be counted as election expenditure. The

supply of any goods associated with the services must nevertheless be counted as a donation to avoid any loophole in the system of regulation. PPC believes that these restrictions provide the appropriate balance between the need to ensure there are no loopholes whilst not interfering in any way with the long tradition of voluntary assistance to candidates at election time.

Paragraph 7 makes it clear that news reporting of election campaigns is not restricted by this legislation. Although some have criticized the editorial content of newspapers it is, of course, a fundamental principle of democratic societies that there should be a free press. Any advertisements published by candidates or third parties will, of course, be caught by the restriction on election expenditure and sub-paragraph (2) of paragraph 7 makes this clear

### **Financial and manpower implications**

The Judicial Greffier is satisfied that the work involved in receiving and processing returns will not be significant and can be managed within existing resources. The possible investigation of breaches will, of course, be processed through the normal criminal justice process and this will be handled in the normal way. There are no other significant resource implication for the States following the decision of PPC not to pursue the option of a free mailing service for candidates. If such a service was introduced at public expense in the future there could be a significant resource implication for the States.

## Explanatory Note

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### *Part 1 – Introductory provisions*

*Regulation 1* defines expressions for the purposes of the Regulations.

*Regulation 2* gives effect to the Schedule, which defines what is a donation and when a donation is anonymous.

### *Part 2 – Candidate’s election expenses and donations*

*Regulation 3* describes what constitutes a “candidate’s election expenses”. The expression includes expenses incurred at any time before the poll for the election in which the person is a candidate. It includes not only expenses incurred by the agent personally, but also those incurred with the candidate’s express or implied consent. The expenses are those used to either promote the candidate’s own election or to prejudice the prospects of the candidate’s opponents in the election.

Because the object of these Regulations is to impose a limit on expenditure that applies to candidates equally, “expenditure”, for these purposes, includes the value attributable to goods and services that are supplied for use by the candidate either at a discount to their true worth or free of charge. The discount or the value of the free supply is included in the candidate’s election expenditure as a notional expense. Money actually expended by the candidate is a direct expense.

For example, if a candidate’s supporter prints pamphlets for the candidate for £200, when the normal price charged by the supporter is £400, the election expenses incurred by the candidate are a £200 direct expense and a £200 notional expense. In addition, the £200 discount is also treated as donation by the supporter (which is relevant to the requirement, described below, to disclose donations).

*Regulation 4* sets the limit on a candidate’s election expenses.

*Regulation 5* prevents a candidate keeping an anonymous donation. Anonymous donations must be sent to the Treasurer of the States, who will make arrangements for them to be distributed to local charities.

*Regulation 6* is the requirement for the candidate to make a declaration of his or her election expenses and donations. This must be done within the 15 working days following the poll, using a form that will be provided by the Judicial Greffier (the “Greffier”). A donor’s name need only be given if the aggregate of his or her donations exceeds £100. If the candidate subsequently realises that the information provided is incorrect or incomplete, the candidate must make a further declaration within 10 working days.

*Regulation 7* empowers the Greffier to require a candidate to produce proof of his or her election expenses.

Because a candidate’s election expenses include expenses incurred with the candidate’s express or implied consent, *Regulation 8* requires a person who incurs or pays expenses on the candidate’s behalf to provide the candidate with the information that he or she will need to complete the declaration of expenses.

### *Part 3 – Third party’s election expenses and donations*

*Regulation 9* describes who is a third party and what are a third party’s election expenses in relation to an election. A third party is a person or 2 or more persons who are neither candidates in the election for which they are incurring expenses nor acting with the express or implied consent of a candidate (in which event, the expenditure would be that of the candidate, by virtue of Regulation 3) and who campaign in favour of or against candidates in the election. The existence of a third party is identified by the fact that the persons act together, whether by incurring expenses for which they are jointly liable, or by incurring expenses separately, but co-ordinating their election expenditure for a shared purpose.

*Regulation 10* imposes a limit on a third party’s election expenses that is one half of the amount that would be allowed to a candidate in that election. There is a second, overall limit on the amount that a third party can spend, in one year, in campaigns in the ordinary elections (that is, the single election for Senators, the 12 elections for Connétables and the 29 elections for Deputies). The overall limit for the year is one half of the amount that may be spent by a candidate for election as a Senator.

*Regulation 11* prevents a 3rd party keeping an anonymous donation and equates to *Regulation 5*

*Regulation 12* is the requirement for a third party to make a declaration following an election. The time limits, forms to be used and obligation to make a subsequent declaration of any variations or additions are the same as



those in *Regulation 6* However, a third party is not required to make a declaration if its spending in relation to an election is less than £500. Also, the declaration by a third party must be signed by each person who is part of it.

*Regulation 13* empowers the Greffier to require a third party to produce proof of its expenditure.

#### *Part 4 – General and closing provisions*

*Regulation 14* makes it an offence to advertise material supporting or opposing any candidate in an election, on the day of the poll or on the 2 days preceding it.

*Regulation 15* makes general provision as to offences. It also requires the Greffier to pass any declaration or documentation to the Attorney General if it appears to the Greffier that an offence may have been committed.

*Regulation 16* requires the Greffier to make declarations made under *Regulation 6* or *12* available for inspection by the public at his or her offices.

*Regulation 17* provides for the citation of the Regulations and that they shall come into force 7 days after they are made. Because these are triennial Regulations, they shall expire after 3 years, unless revoked earlier.

*The Schedule* makes provision as to what is a donation. A donation might be cash, the provision of services or goods at a discount (for example, printing leaflets for a price that is only 75% of the normal price is a donation of 25% of that price) or the provision of services or goods free of charge.

The donor must signify that he or she intends the donation to be used for the recipient's election campaign. However, if a gift or loan of cash is made after the nomination meeting for the election, and the donor does not signify that it is to be used for a purpose other than the election campaign, there is a presumption that it is to be used for the election campaign.

A donation is anonymous if the recipient is unable to ascertain the identity of the giver.

Certain donations are excepted from the operation of the Regulations. These are –

- any arrangements for distribution or publication of election material that are provided by the Privileges and Procedures Committee to all candidates in the election either free of charge or at a reduced rate
- the services of a volunteer helper
- matter published in a newspaper or periodical or broadcast on the television or radio including such matter as it is published on a website (other than an advertisement).





Jersey

# DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 200

## Arrangement

### Regulation

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#### PART 1

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##### INTRODUCTORY PROVISIONS

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- 2      Meaning of “donation” and “anonymous donation”

#### PART 2

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##### CANDIDATE’S ELECTION EXPENSES AND DONATIONS

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- 4      Restriction on candidate’s election expenses
- 5      Prohibition of candidate keeping anonymous donation
- 6      Requirement for candidate to make declaration following election
- 7      Verification of expenses
- 8      Requirement to provide information and documents to candidate

#### PART 3

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##### THIRD PARTY’S ELECTION EXPENSES AND DONATIONS

- 9      Meaning of “third party” and “third party’s election expenses”
- 10     Restriction on third party’s election expenses
- 11     Prohibition of third party keeping anonymous donation
- 12     Requirement for third party to make declaration following election
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#### PART 4

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##### GENERAL AND CLOSING PROVISIONS

- 14     Prohibition of advertising before and on day of poll
- 15     Offences: general
- 16     Greffier to make declarations available for inspection
- 17     Citation, commencement and duration

#### SCHEDULE

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##### DONATIONS

- 1      Money

<u>2</u>	<u>Goods and services</u>
<u>3</u>	<u>Value attributable to donation of loans, goods or services</u>
<u>4</u>	<u>Anonymous donations</u>
<u>5</u>	<u>Exception for services provided by the Privileges and Procedures Committee</u>
<u>6</u>	<u>Exception for services of an individual provided without charge</u>
<u>7</u>	<u>Exception for newspapers and broadcasts</u>





Jersey

# DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 200

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of the Order in Council of 28th March 1771<sup>[1]</sup>, have made the following Regulations –

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## PART 1

### INTRODUCTORY PROVISIONS

#### 1 Interpretation

In these Regulations, unless the context otherwise requires –

“2002 Law” means the Public Elections (Jersey) Law 2002<sup>[2]</sup>;

“anonymous donation” shall be construed in accordance with paragraph 4 of the Schedule;

“candidate” means a person admitted as a candidate for election as a Senator, Deputy or Connétable, in accordance with Article 18 of the 2002 Law;

“candidate’s election expenses” shall be construed in accordance with Regulation 3;

“donation” shall be construed in accordance with the Schedule;

“Greffier” means the Judicial Greffier;

“nomination meeting” means a meeting held pursuant to Article 19 of the 2002 Law;

“third party” shall be construed in accordance with Regulation 9(1) to (3);

“third party’s election expenses” means the expenses described in Regulation 9;

“working day” means any day other than Christmas Day, Good Friday, a Sunday or a day observed as a bank holiday pursuant to the Public Holidays and Bank Holidays (Jersey) Law 1951<sup>[3]</sup>.

#### 2 Meaning of “donation” and “anonymous donation”

The Schedule has effect to describe gifts, loans and the supply of goods or services that are donations, the value attributed to a donation and the circumstances in which a donation is anonymous.

## PART 2

## CANDIDATE'S ELECTION EXPENSES AND DONATIONS

### **3 Meaning of “candidate’s election expenses”**

- (1) Expenses are a candidate’s election expenses if they are incurred, at any time before the poll –
  - (a) by the candidate or with the candidate’s express or implied consent; and
  - (b) for the supply or use of goods or the provision of services which are used –
    - (i) to promote or procure the candidate’s election at the election, or
    - (ii) to prejudice the electoral prospects of another candidate in the same election.
- (2) Where a candidate is endorsed by a political party, the candidate shall be deemed, for the purposes of paragraph (1)(a), to have consented to the party incurring expenses on his or her behalf.
- (3) A candidate’s election expenses may be direct expenses or notional expenses.
- (4) A direct expense is the amount of any liability incurred for the supply or use of goods or the provision of services which are used as described in paragraph (1)(b).
- (5) A notional expense is incurred when goods or services supplied either free of charge or at a discount are used as described in paragraph (1)(b).
- (6) A notional expense is also a donation and, accordingly –
  - (a) the value of a notional expense is determined in accordance with paragraph 3 of the Schedule and
  - (b) there shall be disregarded any notional expense that, by virtue of paragraph 5, 6 or 7 of the Schedule, is not a donation.
- (7) If election expenses are incurred by, or with the express or implied consent of, 2 or more candidates, it shall be presumed, unless the contrary is proved by them, that the expenses relate to goods and services which are of equal benefit to them and, accordingly, that those expenses are to be apportioned equally between them.

### **4 Restriction on candidate’s election expenses**

- (1) A candidate’s election expenses shall not exceed, in the aggregate –
  - (a) where the candidate is a candidate for election as Senator, £2,500, or, where the candidate is a candidate for election as Deputy or Connétable, £1,500; and
  - (b) 10 pence for each person entitled to vote in the election by virtue of Article 2(1), (2) or (3) of the 2002 Law.
- (2) A candidate whose election expenses exceed, without reasonable excuse, the limit imposed by paragraph (1) is guilty of an offence and liable to a fine.

### **5 Prohibition of candidate keeping anonymous donation**

- (1) A candidate shall not keep an anonymous donation.
- (2) A candidate who receives an anonymous donation shall, within 10 working days of receiving it, send it to the Treasurer of the States.
- (3) The Treasurer of the States shall make such arrangements as he or she thinks fit for the distribution, to one or more charities established in Jersey, of donations sent to him or her under paragraph (2).
- (4) A candidate who fails, without reasonable excuse, to comply with paragraph (2) is guilty of an offence and liable to a fine.

## **6 Requirement for candidate to make declaration following election**

- (1) Subject to paragraph (2), a candidate shall, no later than 15 working days after the day the poll is held, deliver to the Greffier a written declaration of –
  - (a) the candidate's election expenses, itemising the amounts expended (whether direct or notional) and the goods and services on which they are expended; and
  - (b) the donations that the candidate has received, specifying –
    - (i) in relation to each donation of, or having a value of, more than £100, the name of the donor, the amount or value of the donation, and whether the donation is of –
      - (A) money,
      - (B) a loan of money,
      - (C) goods or the use of goods, or
      - (D) services,
    - (ii) the sum of the anonymous donations received, and sent to the Treasurer of the States, by the candidate.
- (2) The donations made by a donor to the candidate shall, for the purposes of paragraph (1)(b)(i), be aggregated.
- (3) The declaration required by paragraph (1) shall be–
  - (a) made using a form supplied by the Greffier;
  - (b) include a statement by the candidate that, to the best of his or her knowledge, information and belief, the information contained in it is true, complete and correct; and
  - (c) signed by the candidate.
- (4) If, having made a declaration, a candidate becomes aware of any variation in or addition to the information required to be declared, the candidate shall, as soon as possible and, in any event, no later than 10 working days after becoming so aware, deliver to the Greffier a further written declaration of the variation or addition.
- (5) A declaration delivered under paragraph (4) shall include a statement conforming to paragraph (3)(b) and be signed by the candidate.
- (6) A candidate who fails, without reasonable excuse, to deliver a declaration, or further declaration, in accordance with this Regulation is guilty of an offence and liable to a fine.
- (7) A candidate who delivers a declaration, or a further declaration, under this Regulation, knowing or believing it to be false in a material particular, shall be guilty of an offence and liable to a fine.

## **7 Verification of expenses**

- (1) The Greffier may request, in writing, a candidate to produce invoices, receipts and other proof of the candidate's election expenses.
- (2) A candidate shall comply with a request made under paragraph (1) within 15 working days of it being made.
- (3) A candidate who fails, without reasonable excuse, to comply with paragraph (2) shall be guilty of an offence and liable to a fine.

## **8 Requirement to provide information and documents to candidate**

- (1) A person who incurs or pays a candidate's election expenses shall, as soon as is practicable, provide the candidate with such information and documents as the candidate requires to comply with



Regulations 6 and 7.

- (2) A person who fails, without reasonable excuse, to comply with paragraph (1) is guilty of an offence and liable to a fine.

## **PART 3**

### **THIRD PARTY'S ELECTION EXPENSES AND DONATIONS**

#### **9 Meaning of “third party” and “third party’s election expenses”**

- (1) A third party, in relation to an election, is –
  - (a) a person, who is not a candidate in the election and who is not acting with the express or implied consent of a candidate in the election, who incurs expenses for the supply or use of goods, or the provision of services; or
  - (b) 2 or more persons acting together, none of whom is a candidate in the election and who are not acting with the express or implied consent of a candidate in the election, who incur expenses for the supply or use of goods, or the provision of services,  
which goods and services are used –
    - (i) to promote or procure the election of any candidate in the election, or
    - (ii) to prejudice the electoral prospects of any candidate in the election.
- (2) For the purposes of paragraph (1)(b), 2 or more persons act together–
  - (a) if they are jointly liable for the expenses;
  - (b) if the expenses are incurred with their express or implied consent; or
  - (c) if they incur and are liable for the expenses separately, but are either working together or liaising to co-ordinate their respective expenditure, and the expenditure is for shared purposes.
- (3) In these Regulations, any reference to a third party is a reference to the person described in paragraph (1)(a) or each of the persons described in paragraph (1)(b).
- (4) The expenses to be taken into consideration are those incurred at any time before the poll.
- (5) A third party’s election expenses may be direct expenses or notional expenses.
- (6) A direct expense is the amount of any liability incurred for the supply or use of goods or the provision of services which are used for the purposes of an election campaign.
- (7) A notional expense is incurred when goods or services supplied either free of charge or at a discount are used as described in paragraph (1)(i) or (ii).
- (8) A notional expense is also a donation and, accordingly –
  - (a) the value of a notional expense is determined in accordance with paragraph 3 of the Schedule and
  - (b) there shall be disregarded any notional expense that, by virtue of paragraph 5, 6 or 7 of the Schedule, is not a donation.

#### **10 Restriction on third party’s election expenses**

- (1) A third party’s election expenses for an election shall not exceed, in the aggregate, one half of the maximum that would be allowed to a candidate in the election by virtue of Regulation 4.
- (2) Where a third party campaigns in more than one ordinary election held in a year by virtue of Article 6 of the States of Jersey Law 2005<sup>[4]</sup> or Article 2 of the Connétables (Jersey) Law 2008<sup>[5]</sup>, the sum of the third party’s election expenses, for all of those ordinary elections, shall not exceed one half of the

maximum that would be allowed to a candidate for election as a Senator in the ordinary election.

- (3) A third party whose election expenses exceed, without reasonable excuse, the limit imposed by paragraph (1) or (2) is guilty of an offence and liable to a fine.

## **11 Prohibition of third party keeping anonymous donation**

- (1) A third party shall not keep an anonymous donation.
- (2) A third party who receives an anonymous donation shall, within 10 working days of receiving it, send it to the Treasurer of the States.
- (3) The Treasurer of the States shall make such arrangements as he or she thinks fit for the distribution, to one or more charities established in Jersey, of donations sent to him or her under paragraph (2).
- (4) A third party who fails, without reasonable excuse, to comply with paragraph (2) is guilty of an offence and liable to a fine.

## **12 Requirement for third party to make declaration following election**

- (1) Subject to paragraph (2), a third party shall, no later than 15 working days after the day the poll is held, deliver to the Greffier a written declaration of –
  - (a) the third party's election expenses, itemising the amounts expended (whether direct or notional) and the goods and services on which they are expended; and
  - (b) the donations that the third party has received, specifying –
    - (i) in relation to each donation of, or having a value of, more than £100, the name of the donor, the amount or value of the donation, and whether the donation is of –
      - (A) money,
      - (B) a loan of money,
      - (C) goods or the use of goods, or
      - (D) services,
    - (ii) the sum of the anonymous donations received, and sent to the Treasurer of the States, by the third party.
- (2) Paragraph (1) shall not apply to a third party whose election expenses for the election are less than £500.
- (3) The donations made by a donor to the third party shall, for the purposes of paragraph (1)(b)(i), be aggregated.
- (4) The declaration required by paragraph (1) shall be –
  - (a) made using a form supplied by the Greffier;
  - (b) include a statement by the third party that, to the best of the third party's knowledge, information and belief, the information contained in it is true, complete and correct; and
  - (c) signed by the third party.
- (5) If, having made a declaration, a third party becomes aware of any variation in or addition to the information required to be declared, the third party shall, as soon as possible and, in any event, no later than 10 working days after becoming so aware, deliver to the Greffier a further written declaration of the variation or addition.
- (6) A declaration delivered under paragraph (5) shall include a statement conforming to paragraph (4)(b) and be signed by the third party.
- (7) If a third party is more than one person, any declaration required by this Regulation shall be made jointly by those persons and signed by each of them.

- (8) A third party who fails, without reasonable excuse, to deliver a declaration, or further declaration, in accordance with this Regulation is guilty of an offence and liable to a fine.
- (9) A third party who delivers a declaration, or a further declaration, under this Regulation, knowing or believing it to be false in a material particular, shall be guilty of an offence and liable to a fine.

### **13 Verification of expenses**

- (1) The Greffier may request, in writing, a third party to produce invoices, receipts and other proof of the third party's election expenses.
- (2) A third party shall comply with a request made under paragraph (1) within 15 working days of it being made.
- (3) A third party who fails, without reasonable excuse, to comply with paragraph (2) shall be guilty of an offence and liable to a fine.

## **PART 4**

### **GENERAL AND CLOSING PROVISIONS**

### **14 Prohibition of advertising before and on day of poll**

- (1) No person shall, on the day of the poll or the 2 days preceding that day, publish any advertisement containing material that would –
  - (a) promote or procure the election of a candidate in the election; or
  - (b) prejudice the electoral prospects of a candidate in the election.
- (2) If any material is included in a publication in contravention of paragraph (1), the following persons shall be guilty of an offence and liable to a fine –
  - (a) where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
  - (b) where the publication is by way of a broadcast or transmission by cable –
    - (i) any body corporate or limited liability partnership engaged in providing the programme service in which the material is included, and
    - (ii) any person having functions in relation to the programme service corresponding to those of an editor of a newspaper;
  - (c) in the case of any other publication, any person publishing it.
- (3) Where a person is charged with an offence under this Article, it shall be a defence to prove that, at the time of the alleged offence, the person was not aware and neither suspected nor had reason to suspect, that the publication included the advertisement.

### **15 Offences: general**

- (1) A person who aids, abets, counsels or procures the commission of an offence under these Regulations shall also be guilty of the offence and liable in the same manner as a principal offender to be tried for the offence and to the penalty provided for the offence.
- (2) Where an offence under these Regulations committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or

(b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.
- (4) The Greffier shall pass any declaration made or documents produced under these Regulations to the Attorney General where it appears to the Greffier that an offence against any provision of these Regulations may have been committed.

## **16 Greffier to make declarations available for inspection**

The Greffier shall make declarations received by him or her under these Regulations available for inspection, free of charge, at the offices of the Judicial Greffe, during normal working hours.

## **17 Citation, commencement and duration**

- (1) These Regulations may be cited as the Public Elections (Expenditure and Donations) (Jersey) Regulations 200.
- (2) These Regulations shall come into force 7 days after they are made and shall remain in force for 3 years, unless revoked earlier.

## **SCHEDULE**

(Regulation 2)

### **DONATIONS**

#### **1 Money**

- (1) A gift of money is a donation if –
  - (a) it is made at any time before the poll (including before the nomination meeting), and the giver signifies, either expressly or by implication, that the money is intended for use to pay the recipient's election expenses; or
  - (b) it is made after the nomination meeting and before the poll, and is either made anonymously or the giver does not signify the intended use of the money.
- (2) A loan of money is a donation if –
  - (a) the loan is made either at no cost to the recipient or on terms by which the cost to the recipient is below the commercial rate for the loan; and
  - (b) the loan is made –
    - (i) at any time before the poll, and the lender signifies, either expressly or by implication, that the loan is intended for use to pay the recipient's election expenses, or
    - (ii) after the nomination meeting and before the poll, and is either made anonymously or the lender does not signify the intended use of the loan.
- (3) A gift or loan of money is made at the time when the money is given to the recipient or, if earlier, the time when the giver or lender informs the recipient of his or her intention to make the gift or loan.

#### **2 Goods and services**

- (1) A gift or loan of goods, the supply of goods for use or the supply of services is a donation if –
  - (a) the gift or loan is made free of charge or at a discount to the open market value of or rate for the goods or services; and
  - (b) the gift or loan is made –
    - (i) at any time before the poll, and the giver or lender signifies, either expressly or by implication, that the goods or services are intended for use –
      - (A) where the recipient is a candidate, for the purposes described in Regulation 3(1)(b), or
      - (B) where the recipient is a third party, for the purposes described in Regulation 9(1)(i) or (ii),
    - (ii) after the nomination meeting and before the poll, and is either made anonymously or the giver or lender does not signify the intended use of the goods or services.
- (2) A gift, loan of goods or supply of goods or services, is made at the time when the goods or services are supplied.

#### **3 Value attributable to donation of loans, goods or services**

- (1) The value of a donation that is a loan of money is the amount equal to the difference between the cost, to the recipient, of the loan if it had been made on commercial terms and the actual cost to the recipient.
- (2) The value of a donation of goods is the amount equal to the difference between the open market value

of the goods and actual cost to the recipient.

- (3) The value of a donation of the use of goods is the amount equal to the difference between the open market rate for the provision of the goods and the actual cost to the recipient.
- (4) The value of a donation of the supply of services is the amount equal to the difference between the open market rate for their supply and the actual cost to the recipient.

#### **4 Anonymous donations**

A donation is anonymous if the recipient is unable to ascertain the identity of the person making it.

#### **5 Exception for services provided by the Privileges and Procedures Committee**

Where –

- (a) the Privileges and Procedures Committee provides services for the dissemination of information about or on behalf of candidates in a public election; and
  - (b) those services are provided on the same terms to each of those candidates,
- the provision of those services is not a donation.

#### **6 Exception for services of an individual provided without charge**

- (1) The provision by an individual of his or her own services which he or she provides voluntarily, in his or her own time and without charge, is not a donation.
- (2) The exception in sub-paragraph (1) does not extend to any goods used by or supplied by the individual in the course of the provision of the individual's own services.

#### **7 Exception for newspapers and broadcasts**

- (1) Subject to sub-paragraph (2), the publication of any matter relating to the public election–
  - (a) in a newspaper or periodical (including a web-based edition of the newspaper or periodical);
  - (b) in a programme broadcast by a television or radio service provider (including such a programme as it may be accessed on, or downloaded from, a website); or
  - (c) on a website as part of the news service of a television or radio service provider or news agency,is not a donation.
- (2) The exception in sub-paragraph (1) does not apply to an advertisement.

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- [1] *chapter 15.120*
- [2] *chapter 16.600*
- [3] *chapter 15.560*
- [4] *chapter 16.800*
- [5] *L.15/2008*