

STATES OF JERSEY



DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) LAW 201-

**Lodged au Greffe on 19th March 2014
by the Privileges and Procedures Committee**

STATES GREFFE



Jersey

DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chairman of the Privileges and Procedures Committee has made the following statement –

In the view of the Chairman of the Privileges and Procedures Committee, the provisions of the Draft Public Elections (Expenditure and Donations) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy J.M. Maçon of St. Saviour**

Chairman of the Privileges and Procedures Committee

Dated: 19th March 2014

REPORT

This Law is being brought forward to replace on a permanent basis the Public Elections (Expenditure and Donations) (Jersey) Regulations 2011 on the regulation of election expenses that were in place for the 2011 elections which, in turn, had replaced similar Triennial Regulations that were in place for the 2008 elections. It was always intended that permanent legislation would be introduced if the regime instituted by the Triennial Regulations worked well and that is therefore the purpose of this draft Law.

PPC believes that the regulation of expenses that has been in place since the 2008 elections has worked well in the 2 'general' elections and the 3 by-elections that have taken place since that date and the Committee has received no adverse comments about the operation of the system.

In putting forward the previous Regulations, PPC always stressed that it is virtually impossible to prove any link between campaign expenditure and electoral success (and there is undoubtedly anecdotal evidence of candidates who spent significant amounts in the past without being elected), but it is nevertheless 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 lack of any regulation of election expenditure in Jersey before 2008 meant that there was occasionally rumour and speculation about the amount spent by some candidates and about the source of that funding.

This draft Law re-enacts with little modification the provisions of the existing Regulations, although there are a number of small changes, and these are pointed out in this report. The draft Law covers 5 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; the regulation of third party expenditure during election campaigns and the consequences of failing to comply with the Law.

Article 1

This Article sets out the interpretation of expressions used in the draft Law. 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.

Article 2

This Article simply gives effect to the Schedule, which defines 'donations' and 'anonymous donations'. The content of the Schedule is described below.

Article 3

This Article 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 this draft Law).

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 political party. The presumption is that the expenditure is shared equally unless the candidates can specifically prove that the division was undertaken differently.

Article 4

Article 4 is an extremely important provision as it sets out the actual monetary limits that candidates are entitled to spend in an election campaign. These have been increased in line with inflation (rounded as necessary for convenience) from the amounts set out in the 2011 Triennial Regulations. The 2011 amounts of £2,700 and £1,600 are increased to £2,800 and £1,700 respectively, but the 11p amount per elector remains the same, as the 11p amount was, in itself, a slightly above inflation increase from the original 2008 figure of 10p.

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 11p 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 new amounts proposed had been used at the time of the autumn 2011 elections, candidates for Senator would have been allowed to spend £9,609.11 (£2,800 + 61,901 registered electors x 11p) and a candidate for Deputy in St. Mary would have been allowed to spend £1,834.97 (£1,700 + 1,227 registered electors x 11p). If the limits had been in force in the 2 recent St. Helier by-elections, a candidate in St. Helier No. 1 District would have been able to spend £2,246.92, and a candidate in No. 2 £2,156.39. These amounts will, of course, vary slightly in October 2014, depending on the final number of electors on the electoral register.

The Article allows the amounts to be amended by Regulations to permit the States to ensure that the limits keep pace with inflation over time.

Article 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.

Articles 6, 7 and 8

These 3 Articles refer to the process for making a public declaration of election expenditure. Article 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 £120 so that there is full transparency on the source of any funding received by a candidate.

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

Article 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 Law 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.

Article 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 Articles 6 and 7.

Article 9

Part 3 of the Law 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.

Without any regulation of third party expenditure, there would be a significant loophole in the system of control. 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.

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 when the 2008 Regulations were first enacted 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, which follows the provisions of the 2008 and 2011 Regulations, strikes an appropriate balance. The current human rights advice memorandum is set out in the Appendix to this Report.

Article 9 gives an actual definition of third party which, in the absence of any compulsory registration of third parties, is 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 Article also sets out how 2 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, 2 or more persons may work together in an open fashion to campaign for or against particular candidates in the election. The Article 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 Law. 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 future tax policy or 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 Article follows the provisions explained above in relation to candidates.

Article 10

This Article 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. If the new amounts proposed had been used at the time of the autumn 2011 elections, any third party would not have been permitted to spend more than £4,804.55 in the senatorial elections and a third party campaigning in St. Mary alone would not have been permitted to spend more than £917.49.

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 Island-wide 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.

Articles 11, 12 and 13

These 3 Articles 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 £600 are not required to make a declaration (this amount has been updated for inflation from the £550 figure in the 2011 Regulations).

Article 14 and 15

The Law contains a range of offences that are set out in the relevant Articles. 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 (1) sets out that the limitation period on bringing proceedings that exists in Article 68 of the Public Elections (Jersey) Law 2002 is made applicable to proceedings under this Law, as there is a clear parallel between the 2 pieces of legislation. The period is 12 months from the date of the order of the Royal Court for the holding of the election.

Paragraph (2) of Article 14 sets out the procedure that the Judicial Greffier must follow if he suspects that the Law may have been contravened. Because any contravention of the Law 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.

Article 15 sets out the defences that will be available to a person who took reasonable steps to avoid committing an offence or who had a reasonable excuse.

Article 16

This Article makes it clear that any declarations received by the Judicial Greffier will be available for public inspection. PPC is particularly keen that the 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 occasionally arose before 2008 in relation to the amounts spent by candidates and the source of that funding.

Article 17

This Article largely re-enacts the provisions of the existing Regulations in relation to the publication of candidates' manifestos. For 2014, PPC intends to circulate the manifesto booklet to every household by post, but will also increase the amount of information published on the vote.je website so that this becomes a key source of information about the elections. Candidates will need to comply with the deadline fixed for publication by PPC, which will take account of the timescale to format the publication and will need to comply with the format specified.

Paragraph (6) provides protection for the publisher and PPC in relation to the content of the manifesto by making it clear that only the author can be held responsible for the content. This could, for example, be important if a candidate asked for material to be published that was potentially defamatory.

Article 18

This Article introduces a new provision which was not possible under the Triennial Regulations. It provides that, if a person who has been successful in an election is convicted under this Law, that person will, once all appeal routes have been exhausted, lose their seat, with a by-election being called. The person is not prevented from standing again, thereby allowing the public to take a view on the seriousness of the offence for which the candidate was disqualified. The provision will hopefully

provide a significant deterrent and ensure that no candidate is tempted to break the system of regulation deliberately.

Article 19 and 20

Article 19 repeals the existing Triennial Regulations or any that might replace them. Article 20 is the citation provision and has 2 possible commencement provisions. If the draft Law is adopted and sanctioned by the Privy Council in time to be registered in the Royal Court by 15th August 2014, it will come into force 7 days later, which will be in good time before the nomination meetings in September. If there is any delay in Royal Assent or registration, the commencement will be delayed and an Appointed Day Act would be needed. In practice, this would mean that the new Law would not be brought into force before the 2014 elections, and new Triennial Regulations would have to be approved to cover the regulation of expenses. PPC very much hopes that does not happen, and is confident that this Law can be in place as required, provided there is no delay in its approval.

Schedule

The Schedule deals with Donations and Expenses 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 nomination 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 purposes of this Law.

Paragraph 5 refers to services provided free of charge to all candidates by PPC which are not treated as a donation for candidates.

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, although any ancillary goods used by the volunteer when offering services (for example petrol or string used when putting up posters) are excluded. 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.

Paragraph 8 makes it clear that any goods used in a previous election that were declared at that time, or which were obtained before election expenses were regulated in 2008, are not treated as election expenses. This ensures that a candidate who, for example, re-uses rosettes or posters bought for a previous election can use them again without restriction.

Financial and manpower implications

The Judicial Greffier has managed the receiving and processing of returns after elections since 2008 within existing resources, and there is no reason to consider that will not be the case in the future. 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. The only significant cost arising from this draft Law comes from the cost of the manifesto booklet, which may amount to some £10,000 per booklet to cover the cost of design and distribution. PPC will meet this cost from its existing budget.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Notes on the Draft Public Elections (Expenditure and Donations)
(Jersey) Law 201-**

These Notes have been prepared in respect of the Draft Public Elections (Expenditure and Donations) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

In terms of engaging the provisions of the ECHR, the most relevant features of the draft Law are the provisions in Articles 4 and 9, which limit the amount of “*election expenses*” that can be incurred by candidates and also by third parties.

It is conceivable that the limits on election expenses in the draft Law may engage Article 3 of the First Protocol to the ECHR (“**A3P1**”), which provides –

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

Limits on election expenses by candidates and third parties have long been a feature of electoral law in other jurisdictions, including the UK. The argument that restricting election expenses interferes with A3P1 is weak. Further, A3P1 is not an absolute right and may be subject to limitations. The ECHR has found that limitations on A3P1 rights are permitted provided that they do not impair the very essence of the rights or deprive them of their effectiveness and are imposed in pursuit of, and proportionate to, some legitimate aim. Applying these principles any interference with A3P1 rights that does arise is capable of justification.

The other ECHR right that may be engaged by the draft Law is the right to freedom of expression under Article 10, which states, as relevant –

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

As was recognised by the European Court of Human Rights (“*ECtHR*”) in the case of *Bowman v UK*¹, limiting third party election expenditure can interfere with the right in Article 10(1) of the ECHR. However, such interference can be justified by reference to Article 10(2) of the ECHR provided that it is prescribed by law and is proportionate in pursuit of a legitimate aim. In the *Bowman* case, the Grand Chamber of the ECtHR recognised that the imposition of election expenditure limits pursued legitimate aims, including the promotion of fairness between competing candidates.

The ECtHR concluded that the restriction on third party election expenditure in place in *Bowman* (a £5 limit) breached Article 10(1) ECHR, because it was so low as to act, for all practical purposes, as a total barrier to third parties publishing information to influence voters and was disproportionate. However, the election expenses limits in the draft Law do not amount to a ban of the nature objected to by the ECtHR in *Bowman* and are capable of justification as a proportionate interference with the Article 10(1) ECHR right.

¹ *Bowman -v- UK*, judgment of the Grand Chamber 18th February 1998, application number 141/1996/760/961

Explanatory Note

This Law replaces, with some modifications, the triennial Regulations regulating expenditure and donations in public elections – currently, the Public Elections (Expenditure and Donations) (Jersey) Regulations 2011.

Although this Explanatory Note explains the draft Law in full, specific attention is drawn to any provision that did not appear in, or differs from the equivalent provision in, the 2011 Regulations.

Part 1 – Introductory provisions

Article 1 defines expressions for the purposes of this Law.

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

A power is created for the States, by Regulations, to amend the Schedule.

Part 2 – Candidate’s election expenses and donations

Article 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 candidate 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 this Law is to impose a limit on expenditure that applies to all candidates on equal terms, “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 a donation by the supporter (which is relevant to the requirement, described below, to disclose donations).

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

A power is created for the States, by Regulations, to amend the limits on election expenses.

Article 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.

Article 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 £120. If the candidate subsequently realises that the information provided is incorrect or incomplete, the candidate must make a further declaration within 10 working days.

A power is created for the States, by Regulations, to amend –

- (a) the monetary threshold above which the requirement to declare the name of a donor arises;
- (b) the period within which a candidate must make a return following an election and the period within which the candidate must notify the Judicial Greffier of a variation in a declaration.

Article 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, *Article 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

Article 9 describes who, in relation to an election, is a third party, and what are a third party’s election expenses. A third party is a person who is not a candidate in the election for which he or she is 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 *Article 3*) and who campaigns in favour of or against candidates in the election. A third party may comprise 2 or more persons acting together, none of whom is a candidate or acting with the express or implied consent of a candidate. The existence of a third party consisting of 2 or more persons 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.

Article 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.

Article 11 prevents a third party keeping an anonymous donation and equates to *Article 5*.

Article 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 *Article 6*. However, a third party is not required to make a declaration if its spending in relation to an election is less than £600. Also, the declaration by a third party must be signed. If the third party is a group of people, the declaration must be signed by each of them.

A power is created for the States, by Regulations, to amend –

- (a) the monetary threshold above which the requirement for a third party to declare the name of a donor arises;

- (b) the threshold for election expenses below which a third party is not required to make a declaration;
- (c) the period within which a third party must make a declaration following an election and the period within which the third party must notify the Greffier of a variation in a declaration.

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

Part 4 – General and closing provisions

Article 14 makes general provision as to offences. In addition, it places a limit on the period within which a criminal prosecution may be instituted for an offence under the Law. The limit is the same as that which applies to criminal prosecutions under the Public Elections (Jersey) Regulations 2002 (12 months).

This Article 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.

Article 15 makes new provision to create a defence to certain offences under this Law. It is a defence for a candidate or third party against the offence of having election expenses that exceed the permitted amount to show that he or she took all reasonable steps to avoid the commission of the offence. A candidate or third party who commits an offence by failing to provide information by a specified time has a defence if he or she can show that he or she has a reasonable excuse for the failure.

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

Article 17 requires the Privileges and Procedures Committee to make arrangements for election material supplied by all candidates to be published in or distributed in Jersey.

New provision is made to enable the Privileges and Procedures Committee to place a deadline on the provision of election material by candidates, to require the material to be provided in a specified format and to place a restriction on the amount of material that shall be published or distributed for each candidate. As before, these restrictions and requirements would apply to all candidates in an election, on equal terms.

New provision is made to absolve the Privileges and Procedures Committee and the proprietor, editor or publisher of the newspaper from any liability for the content of the election material that is published or distributed pursuant to this Article.

Article 18 is a new provision. If a successful candidate in an election is convicted of an offence under this Law in respect of his or her election expenses, the candidate is disqualified for taking up office or, if the candidate is already in office by the time of his or her conviction, shall cease to hold office. The convicted candidate can, however, stand as a candidate in the by-election caused by the vacancy in office.

Article 19 repeals the triennial Regulations that regulate election expenditure.

Article 20 provides for the citation of this Law. If the Law is registered on or before 15th August 2014, it shall come into force 7 days after registration. If it is registered after that date, it shall be brought into force by Appointed Day Act.

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 this Law. These are –

1. 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;
2. the services of a volunteer helper;
3. 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).

In the case of the services of a volunteer helper, there is also an exception for goods belonging to the volunteer helper and used by the helper in the course of providing his or her own services. Expenditure incurred by the helper that is incidental to the use of the goods is also excepted.

New provision is made to clarify the third of these exceptions, in its application to material published on a website. It is made clearer that the rule only applies where the publication of the matter on the website is secondary publication. That is to say, the publisher has also published the matter in a newspaper or periodical circulating in Jersey or as part of a broadcast television or radio programme.

New provision is made to clarify that the cost of publishing a newspaper or making a broadcast is not a third party's election expense.

New provision is made to the effect that goods used by a candidate or third party in a previous election that have either been taken into account as a donation or expenses in relation to that election or which were acquired by the candidate or third party before election expenses were first regulated are not to be taken into account as a donation or election expense if they are re-used by the candidate or third party in another election.



Jersey

DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) LAW 201-

A LAW to regulate the expenditure of, and donations towards the election expenses of, a candidate in a public election

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTRODUCTORY PROVISIONS

1 Interpretation

In this Law, unless the context otherwise requires –

“2002 Law” means the Public Elections (Jersey) Law 2002¹;

“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 Article 3;

“Committee” means the Privileges and Procedures Committee established by Standing Orders of the States of Jersey;

“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 Article 9(1) to (3);

“third party’s election expenses” means the expenses described in Article 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 1951².

2 Donations and expenses

- (1) The Schedule has effect to describe –
 - (a) 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; and
 - (b) expenses that are to be disregarded as election expenses.
- (2) The States may, by Regulations, amend the Schedule.

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) Subject to paragraph 8 of the Schedule, 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).

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- (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, 7 or 8 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, £2,800, or, where the candidate is a candidate for election as Deputy or Connétable, £1,700; and
 - (b) 11 pence for each person entitled to vote in the election by virtue of , as the case requires, Article 2(1), (2) or (3) of the 2002 Law.
- (2) A candidate whose election expenses exceed the limit imposed by paragraph (1) is guilty of an offence and liable to a fine.
- (3) The States may by Regulations amend in paragraph (1) the limit on a candidate's election expenses.

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 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 –

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- (i) in relation to each donation of, or having a value of, more than £120, 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 to deliver a declaration, or further declaration, in accordance with this Article is guilty of an offence and liable to a fine.
 - (7) A candidate who delivers a declaration, or a further declaration, under this Article, knowing or believing it to be false in a material particular, is guilty of an offence and liable to a fine.
 - (8) The States may by Regulations amend –
 - (a) the monetary amount expressed in paragraph (1)(b)(i);
 - (b) the period of time expressed in paragraph (1);
 - (c) the period of time expressed in paragraph (4).

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 to comply with paragraph (2) is 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 Articles 6 and 7.
- (2) A person who fails 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 or 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 this Law, any reference to a third party is a reference to a person described in paragraph (1)(a) or, where 2 or more persons are acting together as described in paragraph (1)(b), all of those persons.
- (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) Subject to paragraphs 7 and 8 of the Schedule, 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, in either case, for the purposes of an election campaign.

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- (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, 7 or 8 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 Article 4.
- (2) Where a third party campaigns in more than one ordinary election held in a year, 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 in the ordinary election for Senators.
- (3) A third party whose election expenses exceed the limit imposed by paragraph (1) or (2) is guilty of an offence and liable to a fine.
- (4) In this Article "ordinary election" means an ordinary election held pursuant to the States of Jersey Law 2005³ or the Connétables (Jersey) Law 2008⁴.

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 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 £120, 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 £600.
 - (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 2 or more persons acting together, any declaration required by this Article shall be made jointly by those persons and signed by each of them.
 - (8) A third party who fails to deliver a declaration, or further declaration, in accordance with this Article is guilty of an offence and liable to a fine.
 - (9) A third party who delivers a declaration, or a further declaration, under this Article, knowing or believing it to be false in a material particular, is guilty of an offence and liable to a fine.
 - (10) The States may by Regulations amend –
 - (a) the period of time expressed in paragraph (1);
 - (b) the monetary amount in paragraph (1)(b)(i);
 - (c) the monetary amount in paragraph (2);
 - (d) the period of time expressed in paragraph (5).

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 to comply with paragraph (2) is guilty of an offence and liable to a fine.

PART 4**GENERAL AND CLOSING PROVISIONS****14 Offences: general**

- (1) The limitation in Article 68 of the 2002 Law on the institution of a criminal prosecution under that Law applies also to the institution of a criminal prosecution under this Law.
- (2) The Greffier shall pass any declaration made or documents produced under this Law to the Attorney General where it appears to the Greffier that an offence against any provision of this Law may have been committed.
- (3) Where an offence under this Law committed by a body corporate, a limited liability partnership or a separate limited partnership 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.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) 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.

15 Offences: defences

- (1) It shall be a defence for a person charged with an offence against Article 4(2) or 10(3) to prove that he or she took all reasonable steps to avoid the commission of the offence.
- (2) It shall be a defence for a person charged with an offence against Article 5(4), 6(6), 7(3), 8(2), 11(4), 12(8) or 13(3) to prove that he or she has a reasonable excuse for the commission of the offence.

16 Greffier to make declarations available for inspection

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

17 Arrangements for publication of election material

- (1) The Committee shall make arrangements for election material provided to it by a candidate to be published in Jersey.
- (2) The election material shall include information summarizing the candidate's background and manifesto (whether or not it contains other information).
- (3) The Committee shall not be obliged to publish election material provided to it by a candidate after the closing date specified by the Committee for the provision of such material.
- (4) The Committee shall not be obliged to publish election material provided to it by a candidate if –
 - (a) the material is provided in a format other than a format specified by the Committee; or
 - (b) the material exceeds a length or size specified by the Committee.
- (5) The arrangements made under this Article shall be available to each candidate in an election on equal terms.
- (6) No person other than the author of election material published pursuant to paragraph (1) shall incur any civil or criminal liability by virtue of the publication.

18 Consequences of conviction of successful candidate in election

- (1) This Article applies to a candidate elected in an election and convicted of an offence under Article 4(2), 5(4), 6(6) or (7) or 7(3) connected with his or her election expenses for the election.
- (2) Upon the proceedings for the offence being concluded, the convicted candidate shall be disqualified for taking the office to which he or she has been elected or, if he or she has already taken the office, shall cease to hold the office.
- (3) Paragraph (2) does not prevent the convicted candidate standing as a candidate in the election held to fill the vacancy in office caused by that paragraph.
- (4) Proceedings for an offence are concluded upon –
 - (a) the convicted candidate's conviction being confirmed by a court without any further right of appeal; or
 - (b) the expiry of any time allowed for the convicted candidate to appeal, without an appeal being made.

19 Repeal

There are repealed –

- (a) the Public Elections (Expenditure and Donations) (Jersey) Regulations 2011⁵; or
- (b) if those Regulations have, before the commencement of this Law, expired or been revoked and, in either case, replaced by further triennial Regulations regulating the expenditure of, and donations towards, the election expenses of a candidate in a public elections, those further triennial Regulations.

20 Citation and commencement

- (1) This Law may be cited as the Public Elections (Expenditure and Donations) (Jersey) Law 201-.
- (2) If this Law is registered on or before 15th August 2014, it shall come into force 7 days after it is registered.
- (3) If this Law is registered after 15th August 2014, it shall come into force on such day as the States by Act appoint.

SCHEDULE

(Article 2)

DONATIONS AND EXPENSES

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) it 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) it 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 supply of goods (including a supply by way of loan or rental) or a supply of services is a donation if –
 - (a) it is made free of charge or at a discount to the open market value of or rate for the supply of the goods or services; and
 - (b) it is made –
 - (i) at any time before the poll, and the person making the supply 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 Article 3(1)(b), or
 - (B) where the recipient is a third party, for the purposes described in Article 9(1)(i) or (ii),

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- (ii) after the nomination meeting and before the poll, and is either made anonymously or the person making the supply does not signify the intended use of the goods or services.
 - (2) A supply of goods or services is made at the time when the goods or services are provided to the recipient.

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 the 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 use 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 Committee

Where –

- (a) the 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 Exceptions relating to services of an individual provided without charge

- (1) The provision by an individual of his or her own services is not a donation if he or she provides his or her services –
 - (a) as a volunteer;
 - (b) without charge; and
 - (c) otherwise than in the course of his or her employment, trade or profession or any other business.
- (2) Subject to sub-paragraph (3), 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.

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- (3) Where, in the course of the provision of the individual's own services, an individual uses his or her own goods, the use of the goods and any expenditure incurred by the individual that is incidental to the use of the goods, is not a donation.

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 circulating in Jersey;
 - (b) in a programme broadcast by a television or radio service provider; 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 or a third party's election expense.
- (2) The exception in sub-paragraph (1) does not apply to an advertisement.
- (3) Where the publisher of a newspaper or periodical circulating in Jersey also publishes a web-based edition of the newspaper or periodical, the reference in sub-paragraph (1)(a) to the newspaper or periodical includes the web-based edition of it.
- (4) Where a television or radio service provider, in addition to broadcasting a programme, makes the programme accessible by streaming or download from a website, the reference in sub-paragraph (1)(b) to the broadcast programme includes the programme as it may be accessed from a website.

8 Exception for re-used goods

Where –

- (a) goods were supplied for use by a candidate or third party in an election (the "previous election");
- (b) the goods are used by the candidate or third party in a later election (the "subsequent election"); and
- (c) either –
 - (i) any direct and notional expenses for their supply were taken into account in determining, for the purposes of this Law or any Regulations that it replaced, the amount of the candidate's or third party's election expenses in relation to the previous election, or
 - (ii) the previous election preceded the ordinary elections in 2008,

any direct and notional expenses for the supply of the goods are neither a donation nor an election expense in relation to the subsequent election.

¹ *chapter 16.600*
² *chapter 15.560*
³ *chapter 16.800*
⁴ *chapter 16.250*
⁵ *R&O.66/2011 (chapter 16.580)*