

STATES OF JERSEY



AMENDMENT (NO. 54) TO STANDING ORDERS – AMENDMENTS TO THE CODE OF CONDUCT FOR ELECTED MEMBERS AND RELATED MATTERS

**Lodged au Greffe on 4th January 2022
by the Privileges and Procedures Committee
Earliest date for debate: 8th February 2022**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion to make the following amendments to the Standing Orders of the States of Jersey, with immediate effect –

1 Page 12, Standing Order 1 [Interpretation]

After the entry for “Public Finances Law” insert the following new entry –

““Relevant person” means –

- (a) the member’s spouse, civil partner or cohabitee;
- (b) a child of the member or of their spouse, civil partner or cohabitee;
- (c) a dependent of a child referred to in paragraph (b); and
- (d) any other relative or household member with whom the member has a close relationship.”.

2 Page 24, Standing Order 21A [Additional requirements for proposition to suspend member]

In the title, after the words “suspend member” and in paragraph 3, after the words “be suspended” insert the words “as a sanction for certain actions”.

3 Page 24, Standing Order 21A [Additional requirements for proposition to suspend member]

In paragraph 3, after the words “duration of the suspension” insert the words “which must not be for longer than 28 days”.

4 Page 24, after Standing Order 21A, insert the following new Standing Order –

“21AA Additional requirements for proposition to suspend member as a neutral act

A proposition that a member of the States be suspended as a neutral act may only be lodged by the PPC and must propose the duration of the suspension.”.

5 Page 26, Standing Order 26 [Minimum lodging period]

In paragraph (3)(d) delete the words “or expelled from the States”.

6 Page 61, Standing Order 103 [Member cannot speak twice in debate]

In paragraph (2)(e) substitute the words “censure or suspend” for the words “censure, suspend or expel”.

7 Page 63, Standing Order 104A [Time limits on speeches in debates]

In paragraph (5) substitute the words “censure or suspend” for the words “censure, suspend or expel”.

8 Page 63, replace Standing Order 106 [Declaration of interests] with the following new Standing Order –

“106 Declaration of interests

(1) A member of the States must declare an interest at the earliest opportunity, clearly stating the nature of the interest, if –

- (a) the member, or another relevant person, has an interest in –
 - (i) a matter which is the subject of a proposition or of a written or oral question, or
 - (ii) any other matter before the States or one of its committees or panels; and
- (b) the member is aware of that interest.

(2) The Greffier of the States must ensure that declarations are recorded in the minutes, including the nature of the interest.

(3) In the event that the interest being declared is a financial interest which is personal to that member, or which is shared with a small number of other people, the member shall withdraw from any debate on the matter and shall not vote on any proposition relating to the matter.

(4) The Bailiff shall issue guidance on the interpretation of this standing order.”.

9 Page 84, Standing Order 130 [Privileges and Procedures Committee: proceedings]

Delete paragraphs (6), (7) and (8) and renumber the remaining paragraphs accordingly

10 Page 96, Standing Order 152 [Elected members’ interests that must be registered]

Replace paragraph (2) with the following new paragraph:

- “(2) Other than in relation to land owned outside Jersey to which paragraph 7(4) of Schedule 2 does not apply, the requirement to register applies to an interest regardless of whether the interest is held (or the subject of the interest is received, arises, or is owned) within or outside Jersey.”

11 Page 96, Standing Order 152 [Elected members’ interests that must be registered]

Delete paragraph (4) and renumber paragraph (5) accordingly.

12 Page 96, Standing Order 152 [Elected members' interests that must be registered]

In paragraph (5), replace the words "spouse or civil partner or cohabitee" with the words "spouse, civil partner or cohabitee or other relevant person".

13 Page 96, replace Standing Order 153 [Process for registering members' interests] with the following new Standing Order –

"153 Process for registering members' interests

(1) An elected member must, within 30 days from the day on which he or she takes the oath of office as a Connétable or Deputy (whether following his or her election or re-election), complete a return of his or her interests that must be registered and submit it to the Greffier.

(2) An elected member must notify the Greffier, in writing, of any change in or addition to his or her interests that must be registered within 30 days of the change or addition occurring.

(3) The Greffier must, on the 1st June each year (other than a year in which a general election takes place) or on the first working day after 1st June, send each elected member a copy of their registered interests and request that the registered interests be reviewed and updated where necessary; an elected member must, within 30 days of receipt of the Greffier's communication, provide a written reply to confirm that the registered interests are correct or to make changes or additions.

(4) If an elected member does not, without reasonable excuse, provide a written response to the Greffier in accordance with paragraphs (1) or (3), the Greffier must report the matter to the Commissioner for Standards.

(5) If the Greffier is made aware of a potential irregularity in an elected member's registered interests he or she must draw the elected member's attention to the matter and request that it be resolved within 30 days; if after that period the Greffier considers that the matter has not been resolved, he or she must report the matter to the Commissioner for Standards.

(6) An elected member may include in his or her return of interests, or notify the Greffier at any time of, any interest which, although not required to be registered, is in the opinion of the member an interest which should be disclosed to the public."

14 Page 100, replace Standing Order 164 [Suspension of member of the States] with the following new Standing Order –

"164 Suspension of a member of the States

(1) A member of the States who is suspended (as a sanction for certain actions or as a neutral act) must not, during the period of suspension –

(a) discharge the functions of –

(i) any Ministerial office relating to the business of the Assembly or of a committee or panel,

(ii) any functions as a member of any committee or panel, to which he or she is appointed in accordance with these standing orders, or

(iii) any functions of any other post held by virtue of being a States Member; or

(b) in his or her own right –

(i) lodge a proposition,

(ii) give any question to the Greffier, or give notice to the Greffier of any question, that is to be answered by the tabling of a written reply in a meeting or orally during a meeting, or

(iii) present any report or comment to the States.

(2) For the purposes of provision being made for the discharge of the functions mentioned in paragraph (1)(a), the member of the States who is suspended shall be taken to be temporarily absent during the period of suspension.

(3) A member of the States who is suspended as a sanction for certain acts must leave the precincts of the States immediately and, during the period of suspension, not return.

(4) A member of the States who is suspended as a sanction for certain acts shall not receive the remuneration and allowances to which he or she would otherwise be entitled as a member for the duration of the suspension.

(5) The day on which a suspension occurs shall count as the 1st day of the suspension.

(6) A period of suspension lapses upon the expiry of the member concerned's term of office."

15 Page 108, Schedule 2 [Register of Interests of Elected Members]

In paragraph 1 [Employment, offices, directorships and partnerships], sub-paragraph (3), after the words "must also" insert the words "state the amount of remuneration received within the previous 12 month period from that person and".

16 Page 108, Schedule 2 [Register of Interests of Elected Members]

In paragraph 2 [Self-employment, etc.], sub-paragraph (1), after the words "paragraph 1" insert the words "and must state the total amount of remuneration received in relation to such work within the previous 12 month period".

17 Page 108, Schedule 2 [Register of Interests of Elected Members]

In paragraph 2 [Self-employment, etc.], sub-paragraph (2), replace the words "a significant portion", where they first occur, with the words "at least 5%" and, where they occur on the second occasion, with the words "at least 10%" .

18 Page 109, Schedule 2 [Register of Interests of Elected Members]

In paragraph 3 [Shareholdings], sub-paragraph (1), replace the words “the elected member’s spouse, civil partner or cohabitee” with the words “a relevant person”

19 Page 110, Schedule 2 [Register of Interests of Elected Members]

In paragraph 4 [Sponsorship] sub-paragraph (3) after the word “sponsorship” insert the words “including the amount of sponsorship received within the previous 12 month period”.

20 Page 110, Schedule 2 [Register of Interests of Elected Members]

Replace paragraph 5 [Gifts, hospitality and other benefits] with the following new paragraph –

“5 Gifts, hospitality and other benefits

(1) An elected member must register the name and address of any person who gives or offers the elected member, or his or her spouse, civil partner or cohabitee or other relevant person, any gift, hospitality or other benefit which has a monetary value greater than £40 (or a cumulative value of more than £100 if more than one gift is given or offered by a person over a 12 month period) if the giving or offer of the gift, hospitality or benefit is, or could reasonably be considered to be, in any way, related to membership of the States.

(2) An elected member must register the name and address of any person to whom he or she gives or offers any gift, hospitality, or other benefit which has a monetary value greater than £40 (or a cumulative value of more than £100 if more than one gift is given or offered by a person over a 12 month period) if the giving or offer of the gift, hospitality or benefit is, or could reasonably be considered to be, in any way, related to membership of the States.

(3) When registering the name and address under paragraphs (1) or (2) the elected member must also provide a brief description of the gift, hospitality or other benefit given or offered.”.

21 Page 110, Schedule 2 [Register of Interests of Elected Members]

In paragraph 6 [Overseas visits], replace the words “spouse or civil partner or cohabitee” with the words “spouse, civil partner or cohabitee or other relevant person”.

22 Page 110, Schedule 2 [Register of Interests of Elected Members]

Replace paragraph 7 [Land] with the following new paragraph –

“7 Land

(1) An elected member must register a description of any land in Jersey sufficient to identify it, which is wholly owned, or jointly owned with another person (including land wholly or jointly owned by a company or holding company in relation to which the elected member has registered a shareholding under paragraph 3) –

- (a) by or on behalf of the elected member or his or her spouse, civil partner or cohabitee or other relevant person; or
- (b) by or on behalf of the elected member and his or her spouse, civil partner or cohabitee or other relevant person jointly.

(2) The value of any land registered under paragraph (1) must be included if the value exceeds £100,000.

(3) No declaration is required in respect of land so owned which is the principal place of residence of the elected member or of his or her spouse, civil partner or cohabitee.

(4) An elected member must register a brief description of any land (whether in Jersey or elsewhere) from which the elected member or his or her spouse, civil partner or cohabitee or other relevant person derives an income, including the amount of income received from this source over the previous 12 months if that amount exceeds £10,000.”.

23 Page 110, Schedule 2 [Register of Interests of Elected Members]

In paragraph 8 [Miscellaneous], replace the words “spouse or civil partner or cohabitee” with the words “spouse, civil partner or cohabitee or other relevant person”.

24 Page 112, Schedule 3 [Code of Conduct for Elected Members]

In section 3 [Personal Conduct] leave out the words from “holders of public office –” until the end and insert the following words:

“Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.”.

25 Page 112, Schedule 3 [Code of Conduct for Elected Members]

Replace the existing section 7 [Gifts and Hospitality] with the following new section –

“The giving or acceptance of gifts, hospitality and services can give rise to a perception of corruption. In giving or receiving any gift, hospitality or service, members should consider whether they could justify acceptance to the public. In the event of doubt, members should seek advice from the Greffier of the States or the Commissioner for Standards.

Elected members should not accept gifts, hospitality or services which might appear to a reasonable person to compromise their personal judgement or integrity or place the recipient under any form of obligation to the giver, in order to guard against corruption or the perception of corruption. The same principle applies to gifts, hospitality or services offered or received to a family member or cohabitee.

The giving, receipt or offer of a gift, hospitality or service which a reasonable person might consider to be connected to membership of the States must, if it is of sufficient value, be registered in accordance with the rules on the registration of interests.”.

26 Page 114, Schedule 3 [Code of Conduct for Elected Members]

In section 9 [Co-operation with committees and panels], in paragraph (a), after the words “a scrutiny” insert the words “or review”.

27 Page 115, Schedule 3 [Code of Conduct for Elected Members]

In section 9 [Co-operation with committees and panels], in paragraph (b), after the words “the PAC” insert the words “and the PPC”; replace the words “terms of reference;” with the words “and the PPC’s terms of reference; and”; in paragraph (c) delete the word “and”; and delete paragraph (d).

PRIVILEGES AND PROCEDURES COMMITTEE

REPORT

The Privileges and Procedures Committee is bringing forward these proposed changes to Standing Orders following a review of the Code of Conduct for Elected Members and associated processes triggered by the Comptroller and Auditor General's (C&AG's) report entitled "Anti-Corruption Arrangements" (R.21/2021).

Dealing first with the Code of Conduct for Elected Members, the C&AG recommended that the Code be reviewed "to reflect the risk of corruption with supporting guidance provided where appropriate" (recommendation 6). The Committee sought further advice from the Deputy C&AG on which areas to focus on, receiving the suggestion that the section on gifts and hospitality was particularly in need of attention. This section (section 7) currently reads as follows:

Elected members should not accept gifts, hospitality or services that might appear to place the recipient under any form of obligation to the giver. In receiving any gift or hospitality, members should consider whether they would be prepared to justify acceptance to the public.

Paragraph 25 in this proposition considerably expands on this provision by making an explicit link between gifts and hospitality and corruption and the perception of corruption; including the giving and offer of gifts and hospitality as well their acceptance; and including the receipt or offer of gifts and hospitality to family members and co-habitees. In this context, gifts and hospitality must be connected to membership of the States and does not affect a member in giving, receiving or offering gifts or hospitality in relation to their private lives, unconnected to membership of the States.

Paragraph 20 above makes associated provision in the Register of Interests, dealing with three C&AG recommendations:

- Review the threshold for declaring States Members' gifts and hospitality to define a cumulative monetary value received from a single person or organisation (recommendation 20).
- Revise the gifts and hospitality guidance for States Members to include the requirement to record offers of gifts and hospitality that have been refused (recommendation 21).
- Revise the gifts and hospitality guidance for States Members to include the requirement to record gifts and hospitality given (recommendation 22).

Key here is the reduction in the threshold above which gifts or hospitality must be registered from 10% of salary to £40 (or £100 if more than one gift under £40 is given, received or offered within a 12 month period). This brings the rules for States Members into line with those for Ministers and Assistant Ministers.

Standing Orders currently require interests to be registered and declared in respect of the spouse, civil partner or cohabitee of a Member, as well as the Member themselves. This is out of step with rules in other areas, including the accounting standards followed by the States of Jersey. Ministers are required to make declarations under these standards for 'close family members', which are defined as follows:

Note on Close members of the Family

For the purposes of this declaration “close members of the family” of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity (States of Jersey and its subsidiaries) and include but not limited to:

- *that person's children and spouse or domestic partner;*
- *children of that person's spouse or domestic partner; and*
- *dependents of that person or that person's spouse or domestic partner”.*

(Family members listed above are always considered to be close family members)

Additional, consideration should also be given to wider relationships, examples include:

- *Parents and step-parents;*
- *Brothers and sister; and*
- *Any other members of the same household.*

Paragraphs 1, 12, 18, 21 and 23 translate this definition into the language of the Standing Orders and apply it where declaration or registration for spouses, civil partners or cohabitants is currently necessary.

Paragraph 24 replaces the current set of ‘principles of conduct’, which are at the heart of the Code of Conduct, with the up-to-date principles of conduct in public life. This will be a considerable improvement in terms of the clarity of the Code. For example, the current provision on ‘honesty’ is “Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest” which, although laudable, is not to do with honesty. The proposed principle of honesty is more straightforward: “Holders of public office should be truthful.”

Finally on the Code, paragraphs 26 and 27 update references to scrutiny panels, in the context of co-operation with panels, to include review panels.

There are a number of changes to the rules relating to the registration of interests which arise directly from the C&AG’s recommendations.

Her recommendation 7 requested the Committee to:

Review the declarations requirements for States Members to consider whether openness could be improved by disclosure of:

- value of remuneration from employment or self-employment; and
- value of land holdings or rental income.

Paragraphs 15, 16, 17 and 22 deal with these points, requiring the amount of remuneration from employment, self-employment or land ownership to be registered, if that remuneration is above various thresholds. The Committee is also proposing another change in relation to land ownership. At the moment, Members must register details of any land they own anywhere in the world, in sufficient detail so that the land can be identified. This provision is being retained for land in Jersey (except for a Member’s main home) but not for land owned elsewhere, where this is no clear rationale for the provision. However, income from land owned outside of Jersey (above £10,000 per annum) must be declared. Paragraphs 9 and 10 are consequential amendments to Standing Order 152 to reflect these changes.

Paragraph 19 requires the amount of any sponsorship received by a Member to be registered.

The process for registering interests is reformed in paragraph 13. Firstly, the Commissioner for Standards has identified that the current wording of Standing Order 153 is defective in not requiring Members to submit their return of their interests within 30 days of election (or 30 days of a change to those interests). This is addressed in proposed paragraphs (1) and (2) of the new Standing Order 153.

The C&AG recommended the introduction of “a formal annual review process of States Members’ declarations that includes review of the online register and also requires each Member to confirm completeness and compliance of declarations made” (recommendation 24). This is dealt with in proposed paragraphs (3), (4) and (5) of the new Standing Order 153. In particular, the Greffier will now formally invite Members to review their registered interests each year and will be required to notify the Commissioner of Standards of non-compliance with registration requirements, in the absence of reasonable excuse, and of potential irregularities in a Members’ return.

Paragraph 8 deals with the declaration of interests, by replacing the notoriously complex Standing Order 106 with a simpler text. There are two changes of substance: one is to require the Bailiff to provide guidance on the interpretation of the Standing Order, the intention being to provide a guide to Members and the public as to the which interests should be declared and which might require a Member to withdraw from a debate and vote. The other is the explicit extension of these declaration requirements to committees and panels. At present, only the States and PPC are covered. As a consequence of this change, paragraph 11 deletes the specific declaration rules in Standing Order 130.

Paragraphs 2, 3, 4 and 14 relate to the suspension of Members from the Assembly. Paragraphs 2 and 3 create a new form of suspension – ‘suspension as a neutral act’ – where PPC (and PPC alone) considers that a Member should be suspended but not as a sanction. This could apply where, for example, a Member faces a criminal trial: the Member is innocent until proven guilty, but their continued participation in the Assembly during the period preceding and during the trial might be problematic. Senior executives in such a situation would be suspended from their roles: the same rules should apply to States Members. A Member suspended under the proposed Standing Order 21AA would be remunerated and would have access to the States Building but would not be able to discharge functions as a minister in the Assembly, as a member of a committee or panel, or in any other capacity held by virtue of being a States Member and would be unable to lodge a proposition, present a report or comments or table a question.

As well as establishing the different treatment of Members suspended as a sanction and as a neutral act, paragraph 14 (which replaces the existing Standing Order 164) ends the graduated approach to the suspension of Members as a sanction. It would enable a Member to be suspended without pay for a ‘first offence’ during an Assembly term and for longer than the current maximum period for a first suspension of a mere seven days. Paragraph 3 sets 28 days as the maximum permissible period of suspension. Although these provisions have been very rarely used, in the event of a serious breach of the Code the public would be astonished to find that PPC cannot propose the suspension of a first time offender for more than seven days and that the Member would continue on full pay. Indeed, to be suspended without pay a Member must be suspended on three separate occasions during an Assembly term, which is very unlikely to occur.

Finally, paragraphs 5, 6 and 7 delete references in the Standing Orders to propositions to expel Members of the States. It is questionable whether the States has the power to expel a Member, given that Members swear their oaths of office in front of the Royal Court, which orders their elections. Although these references to expulsion exist, Standing Orders provide no procedural requirements for an expulsion proposition, such as a certain number of signatories, and there are no modern precedents for such an action. The Committee's view is that Members are elected by the people and should be expelled by the people, if they so wish, and not expelled by their colleagues. Consequently, the rules should be tidied up to remove the references to expulsion.

During the course of its review the Committee has also considered the possibility of introducing a behaviour code for Members (something currently being discussed by the Diversity Forum) and a recall procedure, by which the public have the opportunity to call for a by-election in the event of a Member committing a serious breach of the Code of Conduct. These are matters to which the next PPC may wish to return.

Financial and manpower implications

There are no financial and manpower implications. The work involved in preparing these changes and implementing them is part of the ordinary operations of the States Greffe.