STATES OF JERSEY

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DRAFT STANDING ORDERS OF THE STATES OF JERSEY (P.162/2005): AMENDMENT

Lodged au Greffe on 13th September 2005
by Deputy J.L. Dorey of St. Helier

STATES GREFFE

DRAFT STANDING ORDERS OF THE STATES OF JERSEY (P.162/2005): AMENDMENT

PAGE 110, SCHEDULE 2 –

In paragraph 8 delete sub-paragraph (2) and the numbering of sub-paragraph (1).

DEPUTY J.L. DOREY OF ST. HELIER

REPORT

Sub-paragraph (2), as proposed by the Committee, requires a Member to"register details of any interest which the elected member or his or her spouse or cohabitee has which, although it does not confer any pecuniary advantage or benefit on the elected member or his or her spouse or cohabitee, the elected member believes might reasonably be thought by other persons to influence his or her actions as an elected member."

The declaration of members' interests is not an entirely straightforward matter, chiefly because, if Standing Orders only refer to interests directly held by a States Member, it would be a simple matter for any Member to circumvent such provisions by transferring any such interests into the name of his or her spouse or partner, and then not declaring them. For that reason, I support the vast majority of the provisions set out in Schedule 2.

In including a provision, however – Schedule 2(8)(2)– which seeks to ensure declaration of non-pecuniary interests, I believe the Privileges and Procedures Committee has taken a step too far, for the following reasons:

Clarity:

It is not remotely clear, from what the Committee are proposing, which class or classes of interest they are seeking to catch within this provision. Should a member be required to declare that his or her partner was –

a Samaritan?

a member of Save Jersey's Heritage?

a regular participant in sport, or in the Eisteddfod?

an occasional writer on social or current affairs?

All of the above 'interests' might conceivably have some influence on a Member's thoughts in preparing for a particular debate – indeed, the world would be a strange place if our spouse's/partners interests, in the most general sense, had *no* influence on our thinking – but does that mean that they should all be declarable?

In any case, why stop at partners' non-pecuniary interests? We are all a product of the totality of our contacts with other human beings throughout our lives. If we were to have to declare any matter which might have influenced our thinking in any way, the process would be never-ending. At what point would an 'interest' become so minor as to be, in the Privileges and Procedures Committee's view, non-declarable?

In preparing to bring forward this amendment, I have discussed the matter with the Data Protection Registrar. Her comments to the Committee, copied to me, included the following statement –

> "My first comment relates to the lack of clarity as to what exactly needs to be registered. Decisions as to what is or is not 'reasonably thought… to influence' are entirely subjective and would require detailed guidance."

Unfortunately, the Committee, in this aspect and others, appear to have chosen to ignore the Data Protection Registrar's advice.

Enforceability:

Sub-paragraph (2) requires registration of an interest *if the elected member believes that it might reasonably be thought by other persons to influence his or her actions*. All that a Member would need to do, therefore, if he or she wished to circumvent this provision, would be to maintain (if challenged) that he or she did *not* believe such a thing. There is no requirement on the *Member* to be 'reasonable'.

If the provision had any effect at all, then, it would be to ensure registration of those non-pecuniary interests which the Member felt inclined to register. Anything a Member wished to conceal, could be safely concealed

without any possibility of enforcement.

It is a characteristic of the worst sort of intrusive, bureaucratic legislation, that it typically puts the law-abiding, scrupulous person to expense of time and trouble, while completely failing to catch anyone who wishes to avoid it.

Equality of treatment:

The purpose of declaration-of-interest provisions which cover partners' interests, as stated in my introduction, is to ensure that Members cannot simply get around the requirement to register a financial interest, by transferring it into a partner's name. This can simply not apply in the case of non-pecuniary interests – after all, you can't 'transfer' your membership of the Samaritans, or your interest in creative writing, to your partner.

Since there can be no question of any attempt to evade the spirit of Standing Orders by transfer of interests like these, any justification for such an 'anti-evasion' provision falls away.

Privacy:

At this point, I think it would be helpful to quote once more from the Data Protection Registrar's advice to the Committee –

> "Secondly, the fact that such a potentially wide category of registrable particulars extends to spouses and co-habitees requires careful consideration. As such information will be available for public scrutiny, possibly via the Internet, there will inevitably be an impact on the privacy of those individuals. Decisions relating to such disclosures need to account for the fact that this individual will not be directly involved in positions of political power, but only by virtue of their marriage/partnership. Their rights need to be fully accounted for. Invariably, for the sake of open and accountable government, a degree of invasion into members' private lives is going to be inevitable. To that end, a carefully considered balance needs to be struck when that invasion extends to third parties.
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> I therefore recommend that further consideration be given to clarifying those interests that will need to be registered as well as the implications of such disclosures by individuals who are not members."

We all accept that, when we enter politics, we become, to some extent, 'public property' – but we need to treat with great caution the idea of extending that principle into the private lives of our loved ones. The Committee has seemed, so far, incapable of grasping the point that their sub-paragraph (2) would require a Member to betray the privacy of his or her partner, even if the partner was unwilling for such details to be made public. At the very least – as pointed out by the Data Protection Registrar – such a move would require the most careful preparation, so that the States could make a decision in full knowledge of all the possible ramifications.

Legal implications:

Strangely, the Committee appears to have decided to plough ahead with this contentious provision, despite the note of caution expressed in the Data Protection Registrar's advice – and without having received Law Officers' advice. The response I received from the Privileges and Procedures Committee on this point reads –

> "The Committee considered your point… concerning the interests of spouses and cohabitees. Unfortunately no formal advice has been received from the Law Officers yet, although advice from the Data Protection Registrar was considered. The Committee decided to make no changes to the provision as it felt that there may be certain circumstances where a spouse/cohabitee's non-pecuniary interests could be perceived to influence a member's conduct, for example if a member's wife was Chairman of a large charity."

One reason why the Committee have not received legal advice on this issue, is that they have not sought it. I *have* done so, and have undertaken to share that advice with the Committee when I receive it.

In the meantime, in order to meet the deadline for amendments, I have been obliged to table this amendment before having the benefit of that legal advice – but I would be astonished if the legal advice, ultimately, was that a requirement on politicians to declare the non-pecuniary interests of their partners was either 'proportionate' or human-rights-compliant.

This amendment has no implications for the financial or manpower resources of the States, other than a possible minor saving arising from reduced bureaucracy.