

# STATES OF JERSEY



## **DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 4th April 2011  
by the Privileges and Procedures Committee**

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**STATES GREFFE**





Jersey

# **DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 201-**

## **REPORT**

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### **Introduction**

This legislation renews, with a number of minor amendments as described below, the Triennial Regulations introduced in 2008 to regulate election expenses. That legislation, the Public Elections (Expenditure and Donations) (Jersey) Regulations 2008, expires in July this year and needs to be renewed to ensure that appropriate controls are in place for the single election day in October 2011. PPC was pleased to note that the system put in place for the 2008 elections appeared to work well and PPC received no adverse comments after the elections.

Although 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) it is a feature of many democratic systems that some limitation is placed on campaign expenditure to ensure that there can be no suggestion that candidates have 'bought' their way into the legislature. In addition the 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 the source of the funding.

These draft Regulations cover 4 main areas, namely the imposition of a limit on expenditure, the requirement for a declaration of the amounts spent and the source of the funding, rules on the receipt of gifts and donations and the regulation of third party expenditure during election campaigns.

### **Regulation 1**

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

### **Regulation 2**

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

### **Regulation 3**

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

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

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

Paragraph (8) introduces a new provision that was not included in the 2008 Regulations. The new provision covers goods that are used in an election that have already been declared as an expense in a previous election. The most obvious example is the re-use of posters and other items such as rosettes.

### **Regulation 4**

Regulation 4 is an extremely important provision as it sets out the actual monetary limits that candidates are entitled to spend in an election campaign. These have been increased in line with inflation (rounded as necessary for convenience) from the amounts set out in the 2008 Triennial Regulations. The 2008 amounts of £2,500 and £1,500 are increased to £2,700 and £1,600 respectively and the 10p amount increased to 11p.

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 2008 elections candidates for Senator would have been allowed to spend £8,771.78, a candidate in St. Helier No. 3 District for Deputy would have been able to spend £2,435.56 and a candidate for Deputy of St. Mary £1,725.18. These amounts will, of course, vary slightly in October 2011 depending on the final number of electors on the electoral register.

### **Regulation 5**

Candidates will not be permitted to keep any anonymous donations as to allow them to do so would potentially open a significant loophole in the legislation. If there was no restriction, a single anonymous donor could give a series of anonymous donations to a candidate and the rules on declaring the identity of donors could be circumvented. In

the event that any anonymous donation is received by a candidate he or she will be required to forward it to the Treasurer of the States who will make arrangements for it to be distributed to charities in Jersey.

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

These 3 Regulations refer to the process for making a public declaration of election expenditure. Regulation 6 sets out the procedure that must be followed by any candidate, whether or not he or she has been successful in the election, to make a return of expenditure. This will be delivered to the Judicial Greffier because of his role in assisting the Royal Court with the organisation of elections. As can be seen the declaration must contain full details of election expenditure itemising the amounts spent and the goods or services involved. In addition candidates must declare full details of any donations received with a value of over £100 so that there is full transparency on the source of any funding received by a candidate.

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

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

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

### **Regulation 9**

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

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

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 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 exactly the provisions of the 2008 Regulations, strikes an appropriate balance.

Regulation 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 Regulation 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 Regulation nevertheless makes it clear that people who incur expenses separately but who are co-ordinating their efforts are also considered as one single third party. This definition is important to ensure that people who are co-ordinating their efforts cannot claim to be acting individually and thereby be entitled to have more than one third party limit on election expenditure.

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

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

### **Regulation 10**

This Regulation gives the limits applicable to third party expenditure. This will be limited to one half of the maximum allowed to a candidate in the election. If the new amounts proposed had been used at the time of the autumn 2008 elections any third party would not have been permitted to spend more than £4,385.89 in the senatorial elections and a third party campaigning in St. Mary alone would not have been permitted to spend more than £862.59.

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

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

These 3 Regulations mirror the provisions for candidates described above in relation to the prohibition on anonymous donations, on the making a declaration of expenses after the election and on the verification of expenditure. Third parties that spend less

than £550 are not required to make a declaration (this amount has been updated for inflation from the £500 figure in the 2008 Regulations).

#### **Regulation 14**

These Regulations contain a range of offences that are set out in the relevant Regulations. 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 these Regulations as there is a clear parallel between the 2 pieces of legislation. The period is currently 6 months from the date of the order of the Royal Court for the holding of the election but this will be increased to 12 months from the date of the election once the amendments to the Public Elections (Jersey) Law 2002 agreed by the States on 16th March 2011 in the Public Elections (Amendment No. 4) (Jersey) Law 201- (P.14/2011) are sanctioned by the Privy Council and registered in Jersey.

Paragraph (2) of Regulation 14 sets out the procedure that the Judicial Greffier must follow if he suspects that the Regulations may have been contravened. Because any contravention of the Regulations is a normal criminal offence the matter will be passed to the Attorney General for it to be investigated. The Attorney General may, of course, ask the police to investigate and, if appropriate, a criminal prosecution could be instituted.

#### **Regulation 15**

This Regulation makes it clear that any declarations received by the Judicial Greffier will be available for public inspection. PPC is particularly keen that the 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.

#### **Regulation 16**

This Regulation reenacts the provisions of the 2008 Regulations in relation to the publication of a supplement in a local newspaper setting out candidates' manifestos. This provision was put in place for the 2008 elections and the 2010 senatorial by-election and was an effective way to reach a large proportion of the population. Candidates will need to comply with the deadline fixed for publication by PPC which will take account of the timescale to format the publication for insertion in the newspaper and will need to comply with the format specified. In 2008 and 2010 candidates were able to insert a 650 word statement and a photograph. Although it is not covered by any statutory provision in these Regulations, PPC intends to establish an election website as well for this autumn's elections to assist with the dissemination of information about candidates.

Paragraph (6) provides protection for the publisher 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.

### **Regulation 17**

This Regulation is simply the citation provision and provides that the Regulations will come into force on 25th July 2011 when the 2008 Regulations expire.

### **Schedule**

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

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

Paragraph 5 refers to services provided free of charge to all candidates by PPC. PPC had initially hoped to be able to offer a free posting service of candidates' manifestos but discussions with Jersey Post showed that the current regulatory requirements on the postal operator mean that the cost of doing this would unfortunately be prohibitive and the Committee does not believe that this use of many £1,000s of taxpayers' money could be justified.

Paragraph 6 is an important exception. PPC has made it clear from the outset that it wished to do nothing to prejudice the very long tradition of voluntary assistance provided to candidates by friends and family. Paragraph 6 therefore makes it clear that any services provided by volunteers will not be counted as election expenditure. The supply of any goods associated with the services must nevertheless be counted as a donation to avoid any loophole in the system of regulation 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 is referred to above in the description of Regulation 3(8) above and makes it clear that donations that have been previously declared in an earlier election is not counted as a donation as long as the donation was declared on the previous occasion.

Paragraph 8 makes it clear that news reporting of election campaigns is not restricted by this legislation. Although some have criticized the editorial content of newspapers it is, of course, a fundamental principle of democratic societies that there should be a free press. Any advertisements published by candidates or third parties will, of course, be caught by the restriction on election expenditure and sub-paragraph (2) of paragraph 7 makes this clear.

### **Financial and manpower implications**

The Judicial Greffier managed the receiving and processing of returns after the 2008 and 2010 elections 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 Regulations comes from the cost of the newspaper supplements which may amount to some £10,000 per supplement to cover the cost of design and distribution. PPC will meet this cost from its existing budget.

## Explanatory Note

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These triennial Regulations replace, with some modifications, the Public Elections (Expenditure and Donations) (Jersey) Regulations 2008 (the “2008 Regulations”). Those Regulations, which are also triennial Regulations, expire on 24th July 2011.

Although this Explanatory Note explains the draft Regulations in full, specific attention is drawn to any provision that did not appear in, or differs from the equivalent provision in, the 2008 Regulations.

### *Part 1 – Introductory provisions*

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

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

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

*Regulation 3* describes what constitutes a “candidate’s election expenses”. The expression includes expenses incurred at any time before the poll for the election in which the person is a candidate. It includes not only expenses incurred by the 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 these Regulations is to impose a limit on expenditure that applies to candidates equally, “expenditure”, for these purposes, includes the value attributable to goods and services that are supplied for use by the candidate either at a discount to their true worth or free of charge. The discount or the value of the free supply is included in the candidate’s election expenditure as a notional expense. Money actually expended by the candidate is a direct expense.

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

New provision is added to this Regulation to make it clear that expenses incurred in connection with the supply of goods are only counted once as an election expense.

For example, if a candidate declares the cost of campaign posters in his return of expenditure relating to one election, the candidate need not declare the cost of the posters again if they are used in a subsequent election.

*Regulation 4* sets the limit on a candidate’s election expenses. A small increase in the limits has been made, in order to take into account, in broad terms, the effect of inflation since 2008.

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

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

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

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

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

*Regulation 9* describes who is a third party and what are a third party’s election expenses in relation to an election. A third party is a person or 2 or more persons who are neither candidates in the election for which they are incurring expenses nor acting with the express or implied consent of a candidate (in which event, the expenditure would be that of the candidate, by virtue of *Regulation 3*) and who campaign in favour of or against candidates in the election. The existence of a third party 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.

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

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

*Regulation 12* is the requirement for a third party to make a declaration following an election. The time limits, forms to be used and obligation to make a subsequent declaration of any variations or additions are the same as those in *Regulation 6*. However, a third party is not required to make a declaration if its spending in relation to an election is less than £550 (increased from £500 in the 2008 Regulations). Also, the declaration by a third party must be signed by each person who is part of it.

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

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

*Regulation 14* makes 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 Regulations. The limit is the same as that which applies to criminal prosecutions under the Public Elections (Jersey) Law 2002. As that Law is currently in force, the limit is the expiry of 6 months following the date of the order of the Royal Court for

the holding of the election. The Public Elections (Amendment No. 4) (Jersey) Law 201- (P.14/2011) would extend the period from 6 to 12 months.

This Regulation also requires the Greffier to pass any declaration or documentation to the Attorney General if it appears to the Greffier that an offence may have been committed.

*Regulation 15* requires the Greffier to make declarations made under *Regulation 6* or *12* available for inspection by the public at his or her offices.

*Regulation 16* requires the Privileges and Procedures Committee to make arrangements for election material supplied by all candidates to be published in or distributed with an English language newspaper.

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 Regulation.

*Regulation 17* provides for the citation of these Regulations. They will come into force upon the expiry of the 2008 Regulations and remain in force for 3 years.

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 these Regulations. These are –

- any arrangements for distribution or publication of election material that are provided by the Privileges and Procedures Committee to all candidates in the election either free of charge or at a reduced rate;
- a donation of goods that has previously been declared in relation to an election (for consistency with the new rule in Regulation 3 regarding use of goods that have been disclosed as an expense in a previous election);
- the services of a volunteer helper;
- matter published in a newspaper or periodical or broadcast on the television or radio including such matter as it is published on a website (other than an advertisement).

New provision is made to clarify the last 2 of these exceptions

It is made clear that if a volunteer uses his own goods in the course of acting as a volunteer, and incurs any incidental expense when using the goods, the value of the use of the goods and the incidental expense are not election expenses.

The application of the last exception to material published on a website is refined. 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.





Jersey

## DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 201-

### Arrangement

#### Regulation

<b>PART 1</b>	<b>17</b>
<hr/>	
INTRODUCTORY PROVISIONS	17
1 Interpretation .....	17
2 Meaning of “donation” and “anonymous donation” .....	18
<b>PART 2</b>	<b>18</b>
<hr/>	
CANDIDATE’S ELECTION EXPENSES AND DONATIONS	18
3 Meaning of “candidate’s election expenses” .....	18
4 Restriction on candidate’s election expenses .....	19
5 Prohibition of candidate keeping anonymous donation .....	19
6 Requirement for candidate to make declaration following election.....	19
7 Verification of expenses .....	20
8 Requirement to provide information and documents to candidate.....	20
<b>PART 3</b>	<b>21</b>
<hr/>	
THIRD PARTY’S ELECTION EXPENSES AND DONATIONS	21
9 Meaning of “third party” and “third party’s election expenses” .....	21
10 Restriction on third party’s election expenses.....	22
11 Prohibition of third party keeping anonymous donation.....	22
12 Requirement for third party to make declaration following election .....	22
13 Verification of expenses.....	23
<b>PART 4</b>	<b>23</b>
<hr/>	
GENERAL AND CLOSING PROVISIONS	23
14 Offences: general.....	23
15 Greffier to make declarations available for inspection.....	24
16 Arrangements for publication and distribution of election material .....	24
17 Citation, commencement and duration.....	25

---

<b>SCHEDULE</b>	<b>26</b>
<b>DONATIONS</b>	<b>26</b>
1 Money .....	26
2 Goods and services .....	26
3 Value attributable to donation of loans, goods or services .....	27
4 Anonymous donations .....	27
5 Exception for services provided by the Committee .....	27
6 Exception for services of an individual provided without charge.....	27
7 Exception for goods donated for previous election.....	28
8 Exception for newspapers and broadcasts .....	28





Jersey

## **DRAFT PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of the Order in Council of 14th April 1884<sup>1</sup>, have made the following Regulations –

### **PART 1**

#### **INTRODUCTORY PROVISIONS**

##### **1 Interpretation**

In these Regulations, unless the context otherwise requires –

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

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

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

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

“Committee” means the Privileges and Procedures Committee established by Standing Orders of the States of Jersey<sup>3</sup>;

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

“Greffier” means the Judicial Greffier;

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

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

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

“working day” means any day other than Christmas Day, Good Friday, a Sunday or a day observed as a bank holiday pursuant to the Public Holidays and Bank Holidays (Jersey) Law 1951<sup>4</sup>.

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

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

## **PART 2**

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

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

- (1) Expenses are a candidate’s election expenses if they are incurred, at any time before the poll –
  - (a) by the candidate or with the candidate’s express or implied consent; and
  - (b) for the supply or use of goods or the provision of services which are used –
    - (i) to promote or procure the candidate’s election at the election, or
    - (ii) to prejudice the electoral prospects of another candidate in the same election.
- (2) Where a candidate is endorsed by a political party, the candidate shall be deemed, for the purposes of paragraph (1)(a), to have consented to the party incurring expenses on his or her behalf.
- (3) A candidate’s election expenses may be direct expenses or notional expenses.
- (4) A direct expense is the amount of any liability incurred for the supply or use of goods or the provision of services which are used as described in paragraph (1)(b).
- (5) A notional expense is incurred when goods or services supplied either free of charge or at a discount are used as described in paragraph (1)(b).
- (6) A notional expense is also a donation and, accordingly –
  - (a) the value of a notional expense is determined in accordance with paragraph 3 of the Schedule; and
  - (b) there shall be disregarded any notional expense that, by virtue of paragraph 5, 6, 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.

- (8) Where a candidate uses, or re-uses, in an election goods supplied for the purposes of a previous election, the expenses previously incurred for the supply of the goods shall be disregarded if and to the extent that they were declared by the candidate as election expenses of the previous election in accordance with Regulation 6 or any enactment replaced by it.

#### **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, £2,700, or, where the candidate is a candidate for election as Deputy or Connétable, £1,600; 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, without reasonable excuse, the limit imposed by paragraph (1) is guilty of an offence and liable to a fine.

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

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

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

- (1) Subject to paragraph (2), a candidate shall, no later than 15 working days after the day the poll is held, deliver to the Greffier a written declaration of –
- (a) the candidate's election expenses, itemising the amounts expended (whether direct or notional) and the goods and services on which they are expended; and
  - (b) the donations that the candidate has received, specifying –
    - (i) in relation to each donation of, or having a value of, more than £100, the name of the donor, the amount or value of the donation, and whether the donation is of –
      - (A) money,
      - (B) a loan of money,
      - (C) goods or the use of goods, or
      - (D) services,

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- (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 signed by the candidate.
  - (6) A candidate who fails, without reasonable excuse, to deliver a declaration, or further declaration, in accordance with this Regulation is guilty of an offence and liable to a fine.
  - (7) A candidate who delivers a declaration, or a further declaration, under this Regulation, knowing or believing it to be false in a material particular, is guilty of an offence and liable to a fine.

## **7 Verification of expenses**

- (1) The Greffier may request, in writing, a candidate to produce invoices, receipts and other proof of the candidate's election expenses.
- (2) A candidate shall comply with a request made under paragraph (1) within 15 working days of it being made.
- (3) A candidate who fails, without reasonable excuse, to comply with paragraph (2) 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 Regulations 6 and 7.
- (2) A person who fails, without reasonable excuse, to comply with paragraph (1) is guilty of an offence and liable to a fine.

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### 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 these Regulations, 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) 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.
- (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 Regulation 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, without reasonable excuse, the limit imposed by paragraph (1) or (2) is guilty of an offence and liable to a fine.
- (4) In this Regulation "ordinary election" means an ordinary election held pursuant to the States of Jersey Law 2005<sup>5</sup> or the Connétables (Jersey) Law 2008<sup>6</sup>.

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

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

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

- (1) Subject to paragraph (2), a third party shall, no later than 15 working days after the day the poll is held, deliver to the Greffier a written declaration of –
  - (a) the third party's election expenses, itemising the amounts expended (whether direct or notional) and the goods and services on which they are expended; and
  - (b) the donations that the third party has received, specifying –
    - (i) in relation to each donation of, or having a value of, more than £100, the name of the donor, the amount or value of the donation, and whether the donation is of –
      - (A) money,
      - (B) a loan of money,
      - (C) goods or the use of goods, or
      - (D) services,
    - (ii) the sum of the anonymous donations received, and sent to the Treasurer of the States, by the third party.

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- (2) Paragraph (1) shall not apply to a third party whose election expenses for the election are less than £550.
  - (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 Regulation shall be made jointly by those persons and signed by each of them.
  - (8) A third party who fails, without reasonable excuse, to deliver a declaration, or further declaration, in accordance with this Regulation is guilty of an offence and liable to a fine.
  - (9) A third party who delivers a declaration, or a further declaration, under this Regulation, knowing or believing it to be false in a material particular, is guilty of an offence and liable to a fine.

### **13 Verification of expenses**

- (1) The Greffier may request, in writing, a third party to produce invoices, receipts and other proof of the third party's election expenses.
- (2) A third party shall comply with a request made under paragraph (1) within 15 working days of it being made.
- (3) A third party who fails, without reasonable excuse, to comply with paragraph (2) 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 Public Elections (Jersey) Law 2002 on the institution of a criminal prosecution under that Law applies also to the institution of a criminal prosecution under these Regulations.

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- (2) The Greffier shall pass any declaration made or documents produced under these Regulations to the Attorney General where it appears to the Greffier that an offence against any provision of these Regulations may have been committed.
  - (3) Where an offence under these Regulations committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
    - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
    - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
  - (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 Greffier to make declarations available for inspection**

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

#### **16 Arrangements for publication and distribution of election material**

- (1) The Committee shall make arrangements for election material provided to it by a candidate to be published in or distributed with an English language newspaper circulating 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 or distribute 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 or distribute 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 Regulation shall be available to each candidate in an election on equal terms.
- (6) No person other than the author of election material published or distributed pursuant to paragraph (1) shall incur any civil or criminal liability by virtue of the publication or distribution.



**17 Citation, commencement and duration**

- (1) These Regulations may be cited as the Public Elections (Expenditure and Donations) (Jersey) Regulations 201- .
- (2) These Regulations shall come into force on 25th July 2011 and shall remain in force for 3 years, unless revoked earlier.

**SCHEDULE**

(Regulation 2)

**DONATIONS****1 Money**

- (1) A gift of money is a donation if –
  - (a) it is made at any time before the poll (including before the nomination meeting), and the giver signifies, either expressly or by implication, that the money is intended for use to pay the recipient's election expenses; or
  - (b) it is made after the nomination meeting and before the poll, and is either made anonymously or the giver does not signify the intended use of the money.
- (2) A loan of money is a donation if –
  - (a) 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 Regulation 3(1)(b), or
      - (B) where the recipient is a third party, for the purposes described in Regulation 9(1)(i) or (ii),

- (ii) after the nomination meeting and before the poll, and is either made anonymously or the 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 provision of the goods and the actual cost to the recipient.
- (4) The value of a donation of the supply of services is the amount equal to the difference between the open market rate for their supply and the actual cost to the recipient.

**4 Anonymous donations**

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

**5 Exception for services provided by the 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 Exception for services of an individual provided without charge**

- (1) The provision by an individual of his or her own services which he or she provides voluntarily, in his or her own time and without charge, is not a donation.
- (2) 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.
- (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.

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**7 Exception for goods donated for previous election**

Where a candidate uses, or re-uses in an election, goods supplied by way of a donation for the purposes of a previous election, the donation shall be disregarded if and to the extent that it was declared by the candidate as a donation in the previous election, in accordance with Regulation 6 or any enactment replaced by it.

**8 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.
- (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.

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- <sup>1</sup> *chapter 16.700*
  - <sup>2</sup> *chapter 16.600*
  - <sup>3</sup> *chapter 16.800.15*
  - <sup>4</sup> *chapter 15.560*
  - <sup>5</sup> *chapter 16.800*
  - <sup>6</sup> *chapter 16.250*