

STATES OF JERSEY

r

DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 2)(JERSEY) REGULATIONS 200-

**Lodged au Greffe on 10th August 2007
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 2)(JERSEY) REGULATIONS 200-

REPORT

On 25th April 2006, the States adopted Proposition P.17/2006 of the Council of Ministers which sought to enable more States employees to participate in the political process, such as standing for election to the States.

These amendments to the Employment of States of Jersey Employees Regulations and to the States of Jersey Law (P.107/2007) have been drafted to give effect to the States' decision.

The proposed amendment to the States of Jersey Law has been approved by the Privileges and Procedures Committee.

Consultation has taken place with all of the Public Sector Trade Unions/Staff Associations on the draft amendments and copies circulated to them.

There are minimal financial and manpower implications for the States arising from these amendments.

Explanatory Note

These Regulations make provision in relation to the employment of States' employees who engage in political activities.

Regulation 1 is an interpretative provision.

Regulation 2 amends the long title to the Law.

Regulations 3 and 4 make consequential amendments to references in the Law to the Schedule.

Regulation 5 inserts a new Part 5 into the Employment of States of Jersey Employees (Jersey) Law 2005, relating to political activities of States' employees.

References in this note to Article numbers are to Articles set out in the proposed new Part.

Article 30 sets out certain expressions used in the Part.

Article 30(2) sets out an "inclusive" definition of what constitutes "taking public part in a political matter" – that is to say, it does not set out *all* the behaviour that may be held to be within the meaning of the phrase, but specifically mentions some. The behaviour that is specifically included in the expression is –

- (a) speaking publicly on a political matter;
- (b) writing letters to newspapers, or writing pamphlets, leaflets or books, in relation to political matters;
- (c) standing for election as a Senator, Deputy or Connétable; or
- (d) publicly supporting any other person standing for election as a Senator, Deputy or Connétable.

The definition also specifically excludes the following behaviour from constituting "taking public part in a political matter" –

- (a) taking part in any activities organized by a trade union; or
- (b) expressing the legitimate interests of members of a trade union or trade unions, when acting as a representative of a trade union.

Article 31 determines whether a person is a politically eligible States' employee or a politically ineligible States' employee.

Persons who are members of a class listed in Schedule 2, who are not members of a class listed in Schedule 3, or whose positions are re-classified as a position occupied by a politically eligible States' employee, are politically eligible States' employees.

Persons who are listed in Schedule 3 or whose positions are re-classified as positions occupied by a politically ineligible States' employee are politically ineligible States' employees.

Article 32 sets out how the position held by a politically ineligible States' employee may, at the request of the employee, be re-classified by the States Employment Board as a position occupied by a politically eligible States' employee. The Board may re-classify the position if it is satisfied that –

- (a) the nature of the information to which the States' employee has access;
- (b) the degree to which the States' employee is involved in the determination or deliberation of policy at a ministerial level;
- (c) the extent, if any, to which the position requires the holder to regularly speak to members of the public on behalf of a Minister or a department or unit of administration; and
- (d) the degree of contact that the States' employee has with elected members of the States,

are such that to enable the holder of the position to take public part in any political matter would not inhibit, or appear to inhibit, loyal and effective service to a Minister or the States.

If a position is re-classified, the Chief Minister is required to notify the States at the next sittings of the States.

Article 33 sets out how the position held by a politically eligible States' employee may, at the request of the Chief Officer of the department or unit of administration in which the position is situated, be re-classified by the States

Employment Board as a position occupied by a politically ineligible States' employee.

The Board may re-classify the position if it is satisfied that, having regard to the matters listed in paragraphs (a) to (d) under Article 32 above, to enable the holder of the position to take public part in any political matter may inhibit, or appear to inhibit, loyal and effective service to a Minister or the States.

If a position is re-classified, the Chief Minister is required to notify the States at the next sittings of the States.

Article 34 sets out the principles governing the political activities of politically eligible States' employees: that they may take public part in any political matter (which includes standing for election, making public utterances about political matters, publicly supporting candidates), but that they may be disciplined, or have their employment terminated, if they engage in "gross misconduct". A politically eligible States' employee shall have engaged in gross misconduct if he or she has, in the course of taking public part in any political matter –

- (a) commented on existing States' policies in an immoderate manner;
- (b) engaged in personal attacks on members of the States; or
- (c) used for political purposes information that the person was only able to obtain because the person is a States' employee.

Article 35 establishes that taking public part in any political matter shall not be taken to prevent the re-employment of a person who was a politically eligible States' employee. However the Board may determine not to re-employ such a person if it considers that the person engaged in behaviour that constituted gross misconduct, and that the behaviour is such that the person ought not be re-employed as a States' employee.

Article 36 sets out that when a politically eligible States' employee publicly nominates for election as a Senator, Deputy or Connétable, he or she shall be granted unpaid special leave until he or she resigns or returns to work under Article 37, and shall make the pension contributions that his or her employer would otherwise be required to make in respect of him or her during that period.

Article 37 states that a politically eligible States' employee who is elected Senator, Deputy or Connétable shall be taken to have resigned as a States' employee the day before he or she is sworn into that office. If the person is not elected, he or she must, within 7 days after the announcement of the election results, resign (to take effect immediately the notice is given) or notify his or her Chief Officer that he or she intends to return to work. The return to work shall take place on a day, not more than 4 weeks after the results of the election are announced, that is agreed with his or her Chief Officer. If the person does neither, he or she shall be taken to resign with effect 7 days after the announcement of the election results.

Article 38 sets out the principles governing the political activities of politically ineligible States' employees: that they shall not take public part in any political matter, that if they do so, they may be disciplined, and that if they do so and the States Employment Board determines that the behaviour is such that the person ought not continue to be employed as a States' employee, they may have their employment terminated.

Article 39 specifies that a person who was formerly a politically ineligible States' employee shall not be prevented from being re-employed as a States employee, unless –

- (a) while he or she was a politically ineligible States' employee, the person took a public part in any political matter in such a way that the person ought not be re-employed as a States' employee; or
- (b) the Board determines that –
 - (i) the person, during any relevant election period, engaged in behaviour that would have constituted gross misconduct for the purposes of Article 34, had the person been a politically eligible States' employee when the behaviour occurred, and
 - (ii) the behaviour is such that the person ought not be re-employed as a States' employee.

Article 40 specifies what is to occur when a politically ineligible States' employee wishes to stand for election as a Senator, Deputy or Connétable.

In these circumstances he or she is required to give notice to his or her Chief Officer as soon as possible. The Chief Officer is then to determine whether it is, in all the circumstances, appropriate for the States' employee to continue to carry out, until he or she shall be taken under Article 41 to have resigned, the functions that he or she was carrying out before the notice was given.

If the Chief Officer determines that it isn't appropriate, the Chief Officer may direct the States' employee to carry

out, instead, other functions specified by the Chief Officer.

Article 41 specifies that a politically ineligible States' employee shall be taken to have resigned as a States' employee the day before he or she begins to publicly campaign or to be nominated for election as a Senator, Deputy or Connétable.

Regulation 6 inserts new schedules into the Law, setting out lists of politically eligible, and politically ineligible, States' employees.

Regulation 7 specifies the name by which these Regulations may be cited and that the Regulations will come into force 7 days after they are made.



Jersey

DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 2)(JERSEY) REGULATIONS 200-

Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Long title</u>
<u>3</u>	<u>Article 2 amended</u>
<u>4</u>	<u>Article 13 amended</u>
<u>5</u>	<u>New Part 5</u>
<u>6</u>	<u>Renumbering</u>
<u>7</u>	<u>New Schedules</u>
<u>8</u>	<u>Citation and commencement</u>

SCHEDULE



Jersey

DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 2)(JERSEY) REGULATIONS 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 30 of the Employment of States of Jersey Employees (Jersey) Law 2005^[1], have made the following Regulations –

1 Interpretation

In these Regulations, “the Law” means the Employment of States of Jersey Employees (Jersey) Law 2005 ^[2].

2 Long title

The long title to the Law is amended by inserting before the words “, to amend” the words “, the regulation of certain political activities of certain States’ employees”.

3 Article 2 amended

In Article 2(4) of the Law, in subparagraph (a), for the words “the Schedule” there shall be substituted the words “Schedule 1”.

4 Article 13 amended

In Article 13 of the Law, for the words “the Schedule” there shall be substituted the words “Schedule 1”.

5 New Part 5

In the Law, after Part 4, there shall be inserted the following Part –

“PART 5

POLITICAL ACTIVITIES OF STATES’ EMPLOYEES

Interpretative provisions

- (1) In this Part, unless the context otherwise requires –
 - ‘politically eligible States’ employee’ has the meaning assigned to that expression by Article 31;
 - ‘politically ineligible States’ employee’ has the meaning assigned to that expression by Article 31.
- (2) In this Part, a reference to a States’ employee taking public part in a political matter includes, but is not limited to including, a reference to the employee –
 - (a) speaking publicly on a political matter;
 - (b) writing letters to newspapers, or writing pamphlets, leaflets or books, in relation to political matters;
 - (c) standing for election as a Senator, Deputy or Connétable; or
 - (d) publicly supporting any other person standing for election as a Senator, Deputy or Connétable,
 but does not include –
 - (i) taking part in any activities organized by a trade union; or
 - (ii) expressing the legitimate interests of members of a trade union or trade unions, when acting as a representative of a trade union.

31 Meaning of ‘politically eligible States’ employee’ and ‘politically ineligible States’ employee’

- (1) In this Part, a States’ employee is a politically eligible States’ employee if he or she –
 - (a) is a member of a class of States’ employees specified in Schedule 2;
 - (b) is a member of any class of States’ employees not specified in Schedule 2 or 3; or
 - (c) holds a position as a States’ employee that is classified under Article 32(2) as a position occupied by a politically eligible States’ employee.
- (2) In this Part, a States’ employee is a politically ineligible States’ employee if he or she –
 - (a) is a member of a class of States’ employees specified in Schedule 3; or
 - (b) holds a position as a States’ employee that is classified under Article 33(2) as a position occupied by a politically ineligible States’ employee.
- (3) In this Part, a person who is a politically ineligible States’ employee in respect of a position occupied as a States’ employee shall be a politically ineligible States’ employee in respect of all positions he or she occupies as a States’ employee.

Political classification of States’ employees

32 Request by politically ineligible States’ employee for re-classification of political status

- (1) A States’ employee who is a politically ineligible States’ employee may apply to the States Employment Board for his or her position as a States’ employee to be classified as a position occupied by a politically eligible States’ employee.
- (2) The States Employment Board, may, after receiving an application from a States’ employee under paragraph (1) in relation to a position, classify, or refuse to classify, the position as a position occupied by a politically eligible States’ employee.
- (3) The States Employment Board may, under paragraph (2), only classify a position as a position occupied by a politically eligible States’ employee if it is satisfied that –

- (a) the nature of the information to which the States' employee has access;
- (b) the degree to which the States' employee is involved in the determination or deliberation of policy at a ministerial level;
- (c) the extent, if any, to which the position requires the holder to regularly speak to members of the public on behalf of a Minister or a department or unit of administration; and
- (d) the degree of contact that the States' employee has with elected members of the States,

are such that to enable the holder of the position to take public part in any political matter would not inhibit, or appear to inhibit, loyal and effective service to a Minister or the States.

- (4) The Chief Minister shall notify the States of any classification made by the States Employment Board under paragraph (2), at the next sittings of the Assembly after the classification is made.

33 Request by Chief Officer for re-classification of political status of politically eligible States' employee

- (1) The Chief Officer of a department or a unit of administration may apply to the States Employment Board for the position of a politically eligible States' employee who is employed in the department or unit of administration to be classified as a position occupied by a politically ineligible States' employee.
- (2) The States Employment Board, may, after receiving an application under paragraph (1) in relation to a position, classify, or refuse to classify, the position as a position occupied by a politically ineligible States' employee.
- (3) The States Employment Board may, under paragraph (2), only classify a position as a position occupied by a politically ineligible States' employee if it is satisfied that –
 - (a) the nature of the information to which the States' employee has access;
 - (b) the degree to which the States' employee is involved in the determination or deliberation of policy at a ministerial level;
 - (c) the extent, if any, to which the position requires the holder to regularly speak to members of the public on behalf of a Minister or a department or unit of administration; and
 - (d) the degree of contact that the States' employee has with elected members of the States,

are such that to enable the holder of the position to take public part in any political matter may inhibit, or appear to inhibit, loyal and effective service to a Minister or the States.

- (4) The Chief Minister shall notify the States of any classification made by the States Employment Board under paragraph (2), at the next sittings of the Assembly after the classification is made.

Politically eligible States' employees

34 Political activities of politically eligible States' employees

- (1) A politically eligible States' employee may take public part in any political matter.
- (2) However, the States' Employment Board may, by notice in writing to a States'

employee who is a politically eligible States' employee, discipline the employee, or terminate his or her employment as a States' employee, if the employee has engaged in behaviour that constitutes gross misconduct within the meaning of paragraph (3).

- (3) A politically eligible States' employee shall be taken to have engaged in behaviour that constitutes gross misconduct if while he or she is a States' employee he or she has, in the course of taking public part in any political matter –
 - (a) commented on existing States' policies in an immoderate manner;
 - (b) engaged in personal attacks on members of the States; or
 - (c) used for political purposes information that the person was only able to obtain because the person is a States' employee.

35 Re-employment of politically eligible States' employees

- (1) Nothing in this Part, apart from paragraph (2), shall be taken to prevent the re-employment as a States' employee of a person who was a politically eligible States' employee.
- (2) The States Employment Board may refuse to re-employ as a States' employee a person who was a politically eligible States' employee if the Board determines that –
 - (a) the person engaged in behaviour while a States' employee that constituted gross misconduct under Article 34; and
 - (b) the behaviour is such that the person ought not be re-employed as a States' employee.

36 Where politically eligible States' employee intends to stand for election

- (1) A politically eligible States' employee who intends to stand for election as a Senator, Deputy or Connétable shall, as soon as reasonably practicable, notify the Chief Officer of the department or unit of administration in which the employee is employed.
- (2) A politically eligible States' employee shall be granted unpaid special leave on and from the date of his or her public nomination for office, until –
 - (a) he or she resigns from employment as a States' employee; or
 - (b) he or she returns to work under Article 37(3).
- (3) If a politically eligible States' employee who is required to make contributions under any pension scheme established under the Public Employees (Retirement) (Jersey) Law 1967, or the Teachers' Superannuation (Jersey) Law 1979, shall be granted unpaid special leave under paragraph (2) –
 - (a) the employer of the person for the purposes of the scheme shall not be required under the scheme to make any contributions in relation to the period in which the person is on unpaid special leave in accordance with that paragraph; and
 - (b) the person shall (in addition to any contributions he or she is required to make as an employee under the scheme) make those contributions, in relation to the period in which the person is on unpaid special leave in accordance with paragraph (2) that his or her employer would, but for sub-paragraph (a), be required to make under that scheme as the employer of the person.
- (4) In this Article, the date of public nomination for office in relation to a States' employee is the date on which –
 - (a) the employee is nominated for election as a Senator or Deputy at a nomination meeting held under the Public Elections (Jersey) Law 2002; or
 - (b) public notice is given of his or her nomination for election as a Connétable.

37 Position of politically eligible States' employee after election

- (1) A politically eligible States' employee who is elected Senator, Deputy or Connétable, shall, unless he or she has earlier resigned, be taken to have resigned from employment as a States' employee the day before he or she is sworn in to the office of Senator, Deputy or Connétable.
- (2) A politically eligible States' employee who is not elected to be a Senator, Deputy, or Connétable, in an election for which he or she has been nominated as a candidate, shall, within 7 days from the date on which an announcement of the results of the election is made, either –
 - (a) resign from employment as a States' employee; or
 - (b) notify the Chief Officer of the department or unit of administration in which the employee is employed that he or she intends to return to work.
- (3) If a States' employee gives notice under paragraph (2)(b), he or she shall return to work on the date agreed with the Chief Officer of the department or unit of administration in which the employee is employed.
- (4) The date agreed with the Chief Officer under paragraph (3) shall be a date before 4 weeks after the date of the announcement of the results of the election for Senator Deputy, or Connétable, for which the States' employee has been nominated as a candidate.
- (5) If a States employee does not comply with paragraph (2) or does not (without reasonable excuse) comply with paragraph (3), he or she shall be taken to have resigned from employment as a States' employee.
- (6) Despite any other provision of an enactment or the contract of employment of a States' employee –
 - (a) if the employee resigns from employment as a States' employee under paragraph (2), the resignation shall take effect immediately the notice is given under that paragraph; or
 - (b) if the employee is taken under paragraph (5) to have resigned from employment as a States' employee, the resignation shall take effect after 7 days after the date on which an announcement of the results of the election is made,

and he or she shall not be required to give a longer period of notice of the resignation.
- (7) A politically eligible States' employee who has given notice under paragraph (2)(b) shall be entitled to be reinstated to the position that he or she held before he or she notified the Chief Officer in accordance with Article 36 that he or she intended to stand for election.
- (8) Nothing in paragraph (7) limits the application of Article 34 to a person.

Politically ineligible States' employees

38 Politically ineligible States' employees not to take public part in political matters

- (1) A politically ineligible States' employee shall not take a public part in any political matter.
- (2) The States' Employment Board may discipline a politically ineligible States' employee who has contravened paragraph (1).
- (3) The States' Employment Board may terminate the employment of a politically ineligible

States' employee if –

- (a) he or she has contravened paragraph (1); and
- (b) the Board determines that the contravention is such that the person ought not continue to be employed as a States' employee.

39 Political behaviour of politically ineligible States' employee may be considered in determining whether to re-employ him or her

- (1) Nothing in this Part, apart from paragraph (2), shall be taken to prevent a person who was, before he or she shall be taken to have resigned under Article 41, a politically ineligible States' employee, being re-employed as a States' employee.
- (2) The States Employment Board may refuse to re-employ as a States' employee a person who was a politically ineligible States' employee, if –
 - (a) the Board determines that the person contravened Article 38(1) while he or she was a politically ineligible States' employee and the contravention is such that the person ought not be re-employed as a States' employee; or
 - (b) the Board determines that –
 - (i) the person, during the relevant election period, engaged in behaviour that would have constituted gross misconduct for the purposes of Article 34 had the person been a politically eligible States' employee when the behaviour occurred, and
 - (ii) the behaviour is such that the person ought not be re-employed as a States' employee.
- (3) In this Article, 'relevant election period', in relation to a person, means any period that –
 - (a) begins on the day on which –
 - (i) he or she began to publicly campaign for election as a Senator, Deputy or Connétable,
 - (ii) he or she is nominated for public election as a Senator or Deputy at a nomination meeting held under the Public Elections (Jersey) Law 2002, or
 - (iii) public notice is given of his or her nomination for election as a Connétable; and
 - (b) ends on the day after the day on which any election for which he or she had nominated is held.

40 Where politically ineligible States' employee intends to stand for election

- (1) A politically ineligible States' employee who intends to stand for election as a Senator, Deputy or Connétable shall, as soon as reasonably practicable, notify the Chief Officer of the department or unit of administration in which the employee is employed.
- (2) If a Chief Officer is given notice under paragraph (1) by a States' employee, the Chief Officer shall determine whether it is, in all the circumstances, appropriate for the States' employee to continue to carry out, until he or she shall be taken under Article 41 to have resigned, the functions that he or she was carrying out before the notice was given.
- (3) If a Chief Officer determines that it is not, in all the circumstances, appropriate for the States' employee to continue to carry out, until he or she shall be taken under Article 41 to have resigned, the functions that he or she was carrying out before the notice was given under paragraph (1), the Chief Officer may direct the States' employee to carry out, instead, other functions specified by the Chief Officer.

41 Politically ineligible States' employee shall resign before campaign begins or nomination

- (1) A politically ineligible States' employee shall be taken to have resigned from employment as a States' employee on the day before the day on which –
 - (a) he or she began to publicly campaign for election as a Senator, Deputy or Connétable;
 - (b) he or she is nominated for public election as a Senator or Deputy at a nomination meeting held under the Public Elections (Jersey) Law 2002; or
 - (c) public notice is given of his or her nomination for election as a Connétable,whichever of those days is earlier.
- (2) Despite any other provision of an enactment or the contract of employment of a States' employee, if the employee is to be taken under paragraph (1) to have resigned from employment as a States' employee –
 - (a) the resignation shall take effect from the day on which he or she is taken to have resigned; and
 - (b) he or she shall not be required to give a longer period of notice of the resignation.”.

6 Renumbering

In the Law –

- (a) Parts 5 and 6 shall be renumbered Parts 6 and 7 respectively;
- (b) Articles 30 and 31 shall be renumbered Articles 42 and 43 respectively;
- (c) the Schedule shall be numbered “Schedule 1”.

7 New Schedules

In the Law, after Schedule 1 (as so renumbered by Regulation 6), there shall be added the Schedules set out in the Schedule to these Regulations.

8 Citation and commencement

- (1) These Regulations may be cited as the Employment of States of Jersey Employees (Amendment No. 2) (Jersey) Regulations 200.
- (2) These Regulations shall come into force 7 days after they are made.

SCHEDULE

(Regulation 7)

“SCHEDULE 2

(Article 31)

CLASSES OF POLITICALLY ELIGIBLE STATES’ EMPLOYEES

- (a) Airport Electricians;
- (b) Members of the Airport Rescue and Fire-fighting Service;
- (c) Educational, Technical and Support staff, who are of Grade 11 or below;
- (d) Members of the Emergency Ambulance Service;
- (e) Family Support Workers;
- (f) Industrial workers;
- (g) Members of the Fire and Rescue Service;
- (h) Lecturers at Highlands College;
- (i) Manual Workers;
- (j) Medical staff;
- (k) Nurses and Midwives;
- (l) Postal Workers;
- (m) Prison Officers;
- (n) Prison Managers;
- (o) Residential Child Care Workers;
- (p) States’ employees (other than industrial or manual workers) who are of Grade 11 or below;
- (q) Teachers;
- (r) Youth Workers.

SCHEDULE 3

(Article 31)

CLASSES OF POLITICALLY INELIGIBLE STATES' EMPLOYEES

- (a) Chief Officers;
- (b) Area Managers of the Fire Service;
- (c) Head Teachers;
- (d) Prison Governor or Deputy Prison Governor;
- (e) States' employees (other than industrial or manual workers) who are of Grade 12 or above."

[1]

chapter 16.325

[2]

chapter 16.325