

# STATES OF JERSEY



## DRAFT REFERENDUM (JERSEY) LAW 201-

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Lodged au Greffe on 31st January 2017  
by the Privileges and Procedures Committee

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STATES GREFFE





Jersey

## **DRAFT REFERENDUM (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chairman of the Comité des Connétables has made the following statement –

In the view of the Chairman of the Comité des Connétables, the provisions of the Draft Referendum (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Connétable L. Norman of St. Clement**

*Chairman, Comité des Connétables*

Dated: 27th January 2017

## REPORT

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Arising from its review of public election law, the Privileges and Procedures Committee (PPC) has considered changes to the Referendum (Jersey) Law 2002 in order to provide for the designation of campaign groups in referenda, the regulation of spending and the provision of advice on the questions asked in referenda, in line with international best practice.

There is no obvious person or organisation in Jersey who could undertake such roles, similar to the Electoral Commission in the UK. For example, decisions on which campaign groups should be recognised as ‘official’ lead groups are likely to be politically sensitive, and it would be inappropriate for politicians or independent officeholders such as the Bailiff, the Judicial Greffier, the Greffier of the States or Jurats of the Royal Court to be given that responsibility.

As an alternative, PPC recommends the establishment of a standing referendum commission which would have 2 functions. Firstly, it is proposed that a proposition for a referendum Act may not be lodged unless the commission has published its opinion on the suitability of the wording proposed for the referendum question. The commission is also required, if practicable, to publish its opinion on any amendment lodged to that wording before the Act is debated by the States. This would help ensure that Jersey meets international best practice in terms of the conduct of referenda. For example, guidance from the Council of Europe’s Venice Commission stipulates that “The question put to the vote must be clear; it must not be misleading; it must not suggest an answer; electors must be informed of the effects of the referendum; voters must be able to answer the questions asked solely by yes, no or a blank vote”.<sup>1</sup> The referendum commission would be expected to advise the Assembly on these matters and its advice is likely to be highly persuasive.

The referendum commission would also designate the lead campaign groups campaigning for each side in the referendum. A lead campaign group must be an entity such as a company, fidéicomis, political party, trade union or employers’ association, or must satisfy the commission that its constitution or location, or the means by which it can be held to account, do not render them unfit to act as a lead campaign group. In other words, a loose organisation without legal personality or a constitution must be able to satisfy the commission that it has members in Jersey who can take responsibility for its actions. In addition, a lead campaign group must appear to the commission to be likely to be able to represent to the greatest extent those supporting that outcome. This is an improvement on the equivalent wording in the UK which refers to lead campaign groups “representing those campaigning for the outcome in question”.

Lead campaign groups would have access to the electoral register for campaigning purposes, and would have official assistance in publishing campaign material. There are likely to be other advantages to being designated as a lead campaign group, for example in terms of increased media exposure.

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<sup>1</sup> Guidelines on the Holding of Referendums adopted by the Council for Democratic Elections at its 18th meeting (Venice, 12th October 2006) and the Venice Commission at its 68th plenary session (Venice, 13–14th October 2006) paragraph 3.1.c.

Under the draft Law, lead campaign groups could spend more on a referendum campaign than other campaigners, adapting the provisions set out in the [Public Elections \(Expenditure and Donations\) \(Jersey\) Law 2014](#). Different provision could be made in a referendum Act.

It is proposed that the referendum commission should have 5 members and a quorum of 3. The members would be appointed by PPC (which must give the Assembly 2 weeks' notice of appointments), and the recruitment of commissioners would be overseen by the Jersey Appointments Commission. Commissioners would serve in an honorary capacity.

Due to the extent of the amendments to the Referendum (Jersey) Law 2002, the original statute is repealed and replaced by this draft Law. The opportunity has been taken to deal with problems in Article 2(1) of the existing Law, which has not kept up with changes to the franchise, such as the introduction of supplementary registers to allow for late registration before an election. As far as practicable, the provisions in relation to who can vote in a referendum mirror the current provisions of the [Public Elections \(Jersey\) Law 2002](#).

### **Financial and manpower implications**

Referendum commissioners will not be paid but may receive expenses. As referenda are relatively infrequent, these should not be considerable and can be met from the States Assembly's budget. It is envisaged that the administrative work in support of the commission will be undertaken by the States Greffe using existing resources.

### **Human Rights**

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

## APPENDIX TO REPORT

### Human Rights Notes on the Draft Referendum (Jersey) Law 201-

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

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

Certain rights under the ECHR are potentially engaged by the provisions of the draft Law. Article 3 of the First Protocol of the ECHR (“**A3P1**”) provides that –

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

Case law establishes that referendums do not fall within the scope of A3P1 because they are not “elections concerning the choice of the legislature” and, accordingly, that no right to vote in a referendum is derived from that Article. The draft Law will not, therefore, engage A3P1, since a referendum is a vote by the electorate on a particular question and is not an election of members of a legislature.

Article 10 of the ECHR provides that –

- “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

The draft Law will provide for restrictions on expenditure in a referendum and can engage the right in Article 10(1) of the ECHR, but such interference can be justified by reference to Article 10(2) of the ECHR as it will be prescribed by law and proportionate in pursuit of a legitimate aim, including the promotion of fairness between competing candidates, preventing those with the finances to do so from dominating a campaign for a referendum at the expense of others with more limited funds.

Article 1 of the First Protocol to the ECHR (“**A1P1**”) may also be engaged in respect of restrictions in the draft Law on those who would make anonymous donations, or which limit the level of donation or level of spending, and in respect of the provisions of the draft Law by which anonymous donations are to be forfeited by a campaign group and passed to the Treasurer of the States for the making of a gift to charity. A1P1 provides as follows –

- “1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
- 2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

Although A1P1 is engaged, there is a legitimate aim in the protection of others, namely other campaigners and voters, and a broad purpose to ensure that only those with a direct and legitimate interest in the democratic process in Jersey are able to spend money to influence the outcome of the referendum, and to prevent those with the finances to do so from dominating a campaign for a referendum at the expense of others with more limited funds.

The draft Law provides for lead campaign groups to be given access to electoral registers and for the registers also to be available to the Judicial Greffier, the *Autorisés* and *Adjoints*. The collection and retention of data to establish personal identity, as well as any disclosure of this data by the provision of copies of the register, engages the rights under Article 8 ECHR, which provides as follows –

- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

Such data disclosure as is enabled by the draft Law pursues legitimate aims under Article 8(2) ECHR, principally to protect the rights of others by ensuring fairness at a referendum that uses the data. By allowing only certain persons access to the electoral registers, under safeguards, the provisions strike the right balance between the private life of electors and the public interest in running a fair poll.

Article 11 of the draft Law says that no court may entertain any proceedings for questioning the numbers of any ballot papers counted, or the answer given, in the referendum, and thus prevents access to a court for a person disputing the result. Case law has established that “proceedings concerning electoral disputes do not generally fall under Article 6”, and consequently the draft Law does not engage Article 6(1) ECHR, which insofar as is relevant for this purpose provides as follows –

*“In the determination of his civil rights and obligations, ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*

## Explanatory Note

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This Law repeals and replaces the Referendum (Jersey) Law 2002 (the “current Law”), in order to add provision for the establishment of a referendum commission (the “commission”) to advise on wording of questions and to designate lead campaign groups, and to add provision regulating referendum campaign spending on lines similar to election campaign spending. This Law reproduces the provisions of the current Law (with new numbering), and adds the necessary provisions.

To allow time for designation of lead campaign groups, the referendum cannot be held sooner than 3 months after the Act resolving to hold it. In the simplest case there would be a “yes” or “no” question, with multiple applicants for lead campaign group on each side. The commission would appoint, for the “yes” side, the applicant group that was, out of all the applicants on that side, the most representative of those campaigning for the “yes” outcome. It would similarly appoint a group for the “no” side on the equivalent basis for that outcome. The commission would publish the details of the designated lead campaign group for each side, and those groups would then have access to the relevant electoral registers for the purpose of the referendum campaign, and would have campaign material published as in an election.

*Part 1* consists of *Article 1* which defines terms used in the Law.

*Part 2* provides for the referendum commission.

*Article 2* provides for the appointment of the referendum commission, and its general functions. The commission has 5 members, including a chairman (there is a quorum of 3 members – see note on *Article 3*). The members are appointed by the Privileges and Procedures Committee (“PPC”). PPC will agree the terms and conditions of the appointments with the appointees, which may include terms as to termination and as to expenses, but not remuneration. PPC can only appoint persons who have been recommended by a panel made up of the Greffier of the States, and 2 other panel members nominated by PPC. A person cannot be appointed as a commissioner if he or she is a States member or a paid officer or employee of the States or of a parish. PPC must give notice to the Assembly at least 2 weeks before making an appointment.

*Article 3* provides for the functions and procedures of the commission. Its principal functions are to advise on the wording of the referendum question and to designate lead campaign groups (if it can do so – see note on *Article 7* below). But a referendum Act may confer supplementary functions on the commission in relation to a particular referendum. The commission can still perform its functions even if a commissioner post is vacant. Each commissioner has one vote, and there is a quorum of 3 commissioners. Otherwise the commission regulates its own procedure, subject to any provision made in a referendum Act for a particular referendum.

*Article 4* provides for the costs of the commission and of referendums. For the holding of a referendum it places the costs on the States, except for the costs of setting up in a parish, to mirror the effect of Article 15 of the Public Elections (Jersey) Law 2002 in a senatorial election. The States also fund the costs of operation of the commission, including the expenses of the commissioners (but no remuneration is payable – see note on *Article 2*). That includes the costs of appointment of commissioners and other costs that do not relate to a particular referendum. In relation to a particular referendum, the referendum Act may make alternative provision as to the costs of the referendum and the commission.



*Article 5* excludes liability for acts or omissions in purported performance of functions under this Law or a referendum Act. The exclusion does not cover lead campaign groups, and related bodies. The exclusion does not apply if the act or omission was in bad faith, or was incompatible with a person's human rights.

*Part 3* deals with the conduct of a referendum.

*Article 6* provides for the Act that determines the holding of a referendum. This Article reproduces Article 1 of the current Law, with the following differences.

- (a) In paragraph (2)(a) it requires the date fixed for the holding of the referendum to be at least 3 months after the Act (to give time for the commission to designate the lead campaign groups).
- (b) In the new paragraphs (3) to (5) it requires the commission to be given the opportunity to publish its opinion on the proposed wording of the referendum question (including any proposed amendment to that wording).
- (c) In paragraph (6)(b) it makes express reference to the Public Elections (Jersey) Law 2002 as one of the election-related enactments that can be adapted by the Act to apply to the referendum.

*Article 7* provides for the commission to designate lead campaign groups. The commission must issue (and publish, to bring it to public attention) a notice inviting groups to apply for designation as the lead campaign group for each of the possible outcomes of the referendum. The invitation notice must specify how and when to make an application, and the information to accompany it.

For a group to be able to apply for designation it must be of a type listed in paragraphs (a) to (d) of the definition "group", or it must pass the test in paragraph (e) of that definition. The list covers companies, foundations, other bodies incorporated under or by an enactment (such as an incorporated fidéicommis), registered trade unions and employers' associations, registered political parties, and unincorporated fidéicommis. Other groups have to satisfy the commission that they are not rendered unfit to act as a lead campaign group by their constitution or location, or by the means by which they can be held to account. So for example, if a group is an unincorporated association with no written constitution, no members based in Jersey and no other links to Jersey by which it could be held to account for its activities, then it is unlikely that the commission could be satisfied that it was fit to be designated.

The commission cannot designate any lead campaign groups at all for the referendum unless it can do so in compliance with the criteria set out in paragraph (6)(a) to (d).

- (a) Even if only one group applies in respect of an outcome, it cannot be designated unless the commission considers it appears likely to be able to represent adequately those supporting that outcome (and a group cannot claim to pass that test just on the strength of having passed the separate prior test of fitness in the definition "group" – see above). If more than one applicant group passes this adequacy test in respect of the same outcome, the commission must appoint the one appearing likely to be able to represent to the greatest extent those supporting that outcome.
- (b) No outcome is to be left without a lead campaign group.
- (c) Only one lead campaign group is to be designated for each outcome.
- (d) Each lead campaign group is to be designated for only one outcome. But if there are more than 2 possible outcomes, the referendum Act may make special provision to the contrary, or the commission may decide to designate one group

for more than one of the outcomes if those outcomes are sufficiently similar. In any case the same group cannot be designated for all of the possible outcomes.

If the commission designates lead campaign groups, it must publish information as to which group it has designated for each outcome.

Designation has only 3 legal effects as such, namely to require the commission to publish the group's campaign material (see notes on *Article 8* below), to require the parishes to give the group access to the electoral registers (see notes on *Article 8* below), and to set a higher limit for the group's referendum expenses than that for other campaigners (see notes on *Articles 14* and *15* below).

*Article 8* requires the commission to make arrangements for publication of campaign material provided by each lead campaign group. The provisions reflect those in Article 17 of the Public Elections (Expenditure and Donations) (Jersey) Law 2014 in relation to candidates' election material. The commission must make the arrangements, which must be equally available to all of the lead campaign groups. The commission can specify the format, length, size and closing date for submission of material, which must include at least a summary of the group's case for the relevant outcome in the referendum. Only the author of the material can be liable for its publication (and see notes above on exclusion of liability under *Article 5*).

*Article 9* makes new provision for the relevant parish officials to make copies of the electoral registers available to the lead campaign groups free of charge. If the referendum is on the same day as an ordinary election, and the referendum Act provides that the same people are eligible to vote in both the election and the referendum, then the copies are to be made available to lead campaign groups on the same occasions as to candidates in the elections. If the referendum is not linked to an election, two copies must be provided – one as at the date of designation of the lead campaign groups and one as at 7 days before the referendum day (the last day on which voters can register – see notes on *Article 10* below). A lead campaign group, like any member of the public, may also inspect an electoral register at a parish hall or library during office hours, under Article 11(1) or (3) of the Public Elections (Jersey) Law 2002.

*Article 10* provides for the persons entitled to vote in the referendum. This Article is adapted from Article 2 of the current Law, under which, if the referendum is on an election day, the referendum Act can provide that eligibility is the same for both votes (now in paragraph (3) of this Article), and otherwise eligibility depends on the person's name being on the register kept for elections (now in paragraph (1)(a) of this Article).

The opportunity has also been taken to deal with problems in Article 2(1) of the current Law, which has not kept up with the legislation on elections (in cases where the referendum is not held on an election day).

- (a) The current Law provides the person's name must be on the register at least 21 days before the referendum. That was based on Article 12 of the Public Elections (Jersey) Law 2002, under which the latest date for registration is the day before the nomination meeting for an election. However, Article 9A was added to that Law, requiring a "supplementary electoral register" to be set up, to allow late registration up to the seventh day before the election. The introductory words of paragraph (1) of this Article reproduce the effect of this, without requiring separate registers to be set up (when no election is being held), by setting the seventh day before the referendum as the last date by which the person's name must have been entered on the main electoral register.

- (b) Paragraph (1)(a) of this Article reflects the current Law in making eligibility to vote in the referendum depend on appearing on the electoral register. However, eligibility to vote in an election no longer tallies exactly with appearing on the register. Under the Public Elections (Jersey) Law 2002, as subsequently amended, voters can ask not to appear on the register if there is a significant risk or threat of personal harm, and can apply to vote if left off the register by administrative error. Also those who are too young, or who have recently moved, can appear on the register (but not yet vote) in anticipation of reaching the required age or residence period. Paragraphs (1)(b), (1)(c) and (2) of this Article therefore ensure (even when no election is being held) that the right to vote in the referendum matches the right to vote in an election in those cases.
- (c) Provision is also now made in the Public Elections (Jersey) Law 2002 for voting at polling stations, by postal vote and by pre-poll vote, with different rules as to the type of voting in the different cases where the person is left off the register. Paragraph (4) of this Article therefore ensures that the referendum Act can provide for the manner in which votes may be cast, to cater for such cases (and to cater for when a person's name must appear on the register if they are to be able to vote by pre-poll or postal vote sooner than 7 days before the referendum day).

*Article 11* reproduces Article 3 of the current Law without change. It prohibits legal proceedings questioning the numbers of ballot papers counted, or the answer given, in a referendum.

*Part 4* provides for limits on campaign spending in a referendum. Its provisions are adapted from those of the Public Elections (Expenditure and Donations) (Jersey) Law 2014 (the "2014 Law"), and can be further adapted by a referendum Act in relation to a particular referendum.

*Article 12* and the *Schedule* contain interpretation provisions for this Part, adapted from Articles 3 and 9 of and the Schedule to the 2014 Law, as that Law applies to a senatorial election. A referendum Act can substitute other definitions in relation to a particular referendum. A lead campaign group is the equivalent of a candidate in the 2014 Law (and referendum expenses are the equivalent of election expenses), and the concept of a "third party" is adapted from that Law, while the term "campaigner" is introduced to cover both lead campaign groups and third parties. Rules relating to assessment of donations are also adapted from the 2014 Law to fit the context of a referendum.

*Article 13* provides for the application of the rules on campaign spending, and allows for alternative provision to be made in relation to a particular referendum by its referendum Act. *Part 4* applies except as far as a referendum Act provides otherwise. The Act can disapply the whole Part where controls over expenses are not warranted at all for that referendum, can disapply just the cap on expenses and leave the provisions on declaration of expenses in place, or can replace the whole of the Part with different provisions still resulting in an effect appropriately similar to that of the 2014 Law. The Act can also provide for whether, and under what conditions, the States can or cannot incur expenses to promote one outcome in the particular referendum (as opposed to providing services on the same terms to each side – see paragraph 8 of the Schedule).

*Article 14* restricts a lead campaign group's referendum expenses, adapting Article 4 of the 2014 Law as it applies to senatorial elections, setting the cap at £2,800 plus 11 pence per voter. A referendum Act can vary those figures. As under the 2014 Law, it is an offence, carrying an unlimited fine, to exceed the limit. There is a defence of

having taken all reasonable steps to avoid the offence (adapted from Article 15(1) of the 2014 Law).

*Article 15* restricts a third party's referendum expenses, adapting Article 10 of the 2014 Law as it applies to senatorial elections, setting the cap at half of that for a lead campaign group. As under the 2014 Law, it is an offence, carrying an unlimited fine, to exceed the limit. Again there is a defence of having taken all reasonable steps to avoid the offence (adapted from Article 15(1) of the 2014 Law).

*Article 16* prohibits campaigners from keeping anonymous donations (adapting Articles 5 and 11 of the 2014 Law). The campaigner must send the anonymous donation to the Treasurer of the States, who must make arrangements for it to be distributed to local charities. As under the 2014 Law, it is an offence, carrying an unlimited fine, to fail to pass the donation to the Treasurer, subject to a defence of reasonable excuse (adapted from Article 15(2) of the 2014 Law).

*Article 17* requires a campaigner to make a declaration of expenses and donations, on the appropriate form, to the Judicial Greffier (or to another officer specified in the Act, if the referendum is not held on the same day as an election) within 15 working days after the referendum (adapting Articles 6 and 12 of the 2014 Law). As under the 2014 Law, a third party is not required to make a declaration if its spending is less than £600, and a donor's name need only be given if the aggregate of that donor's donations exceeds £120. As under the 2014 Law, it is an offence, carrying an unlimited fine, to fail to make the declaration (subject to a defence of reasonable excuse, adapted from Article 15(2) of the 2014 Law) or to make a false declaration. A referendum Act can alter the monetary threshold above which the requirement to declare the name of a donor arises, or the period within which a campaigner must make a declaration following a referendum or must give notification of a variation in a declaration.

*Article 18* empowers the Judicial Greffier (or other responsible officer specified in the Act) to require a campaigner to produce proof of the referendum expenses (adapting Articles 7 and 13 of the 2014 Law). As under the 2014 Law, it is an offence, carrying an unlimited fine, to fail to produce the proof, subject to a defence of reasonable excuse (adapted from Article 15(2) of the 2014 Law).

*Article 19* adapts Article 8 of the 2014 Law. Because a lead campaign group's referendum expenses include expenses incurred with the group's express or implied consent, a person who incurs or pays expenses on the group's behalf must provide the group with the information that it will need to complete the declaration of expenses. As under the 2014 Law, it is an offence, carrying an unlimited fine, to fail to comply with this duty, subject to a defence of reasonable excuse (adapted from Article 15(2) of the 2014 Law).

*Article 20* adapts Articles 16 and 14(2) of the 2014 Law. The expenses documents must be made available for public inspection. The Judicial Greffier (or other responsible officer specified in the Act) must pass an expenses declaration or document to the Attorney General if a relevant offence may have been committed.

*Article 21* imposes a limitation period of 12 months after the referendum for prosecution for offences under this Part, adapting Article 14(1) of the 2014 Law.

*Part 5* contains miscellaneous and final provisions.

*Article 22* provides for the criminal liability of officers and others where offences under this Law are committed by bodies corporate and others.

*Article 23* repeals the Referendum (Jersey) Law 2002, which this Law replaces.

*Article 24* names this Law and would bring it into force on the day after its registration by the Royal Court.

*The Schedule* defines terms, including “third party”, “referendum expenses” and “donation” for the purpose of *Part 4* (see notes on that Part above).





Jersey

## DRAFT REFERENDUM (JERSEY) LAW 201-

### Arrangement

#### Article

<b>PART 1</b>	<b>17</b>
INTERPRETATION	17
1 Interpretation .....	17
<b>PART 2</b>	<b>18</b>
REFERENDUM COMMISSION	18
2 Appointment of referendum commission .....	18
3 Functions and procedures of commission .....	18
4 Costs of referendum and commission .....	19
5 Exclusion of liability .....	19
<b>PART 3</b>	<b>19</b>
CONDUCT OF REFERENDUM	19
6 Act for holding of a referendum .....	19
7 Commission to designate lead campaign groups .....	20
8 Arrangements for publication of campaign material .....	22
9 Lead campaign groups to be given access to electoral registers .....	22
10 Persons entitled to vote .....	23
11 Exclusion of legal proceedings .....	24
<b>PART 4</b>	<b>24</b>
CAMPAIGN SPENDING	24
12 Interpretation .....	24
13 Application of this Part and power to make other provision by Act .....	24
14 Restriction on lead campaign group's referendum expenses .....	25
15 Restriction on third party's referendum expenses .....	26
16 Prohibition of campaigner keeping anonymous donation .....	26
17 Requirement for campaigner to make declaration following referendum .....	26
18 Verification of expenses .....	27
19 Requirement to provide information and documents to lead campaign group .....	28

20	Treatment of documents received by responsible officer .....	28
21	Limitation period for offences under this Part .....	28
<b>PART 5</b>		<b>28</b>
<hr/>		
MISCELLANEOUS AND FINAL		28
22	Offences by bodies corporate and others .....	28
23	Repeal of Referendum (Jersey) Law 2002.....	29
24	Citation and commencement.....	29
<b>SCHEDULE</b>		<b>30</b>
<hr/>		
THIRD PARTIES, REFERENDUM EXPENSES, DONATIONS AND OTHER TERMS DEFINED FOR THE PURPOSE OF PART 4		30
1	Third party and campaigner .....	30
2	Referendum expenses .....	30
3	Expenses: direct and notional .....	31
4	Donation: money.....	31
5	Donation: goods and services .....	32
6	Value attributable to donation of loans, goods or services .....	32
7	Anonymous donations .....	33
8	Donation: exception for services provided on equal terms by or for commission, States or parishes .....	33
9	Donation: exception for services of individual volunteers .....	33
10	Donation: exception for newspapers and broadcasts .....	33
11	Donation and expenses: exception for re-used goods.....	34





Jersey

## DRAFT REFERENDUM (JERSEY) LAW 201-

A LAW to provide for the holding of referendums, for the establishment of a commission to advise on referendum questions and designate lead campaign groups, for the control of referendum expenses, and for related purposes

*Adopted by the States* [date to be inserted]

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

*Registered by the Royal Court* [date to be inserted]

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

### PART 1

#### INTERPRETATION

##### 1 Interpretation

In this Law, unless the context otherwise requires –

“commission” means the commission appointed under Article 2;

“commissioner” means a member of the commission (including the chairman);

“electoral register” means an electoral register kept under the Public Elections Law;

“lead campaign group” means a lead campaign group designated under Article 7 in relation to a referendum;

“Public Elections Law” means the Public Elections (Jersey) Law 2002<sup>1</sup>;

“referendum Act” means an Act under Article 6 resolving to hold a referendum;

“responsible officer” has the meaning given by Article 17.

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**PART 2****REFERENDUM COMMISSION****2 Appointment of referendum commission**

- (1) A referendum commission is to be appointed.
- (2) The commission is to consist of –
  - (a) a chairman; and
  - (b) 4 other commissioners,  
appointed under paragraph (3).
- (3) The chairman and each of the other commissioners are to be appointed –
  - (a) by the Privileges and Procedures Committee established under Article 48(2) of the States of Jersey Law 2005 (the “PPC”);
  - (b) for no more than 5 years in the first instance, renewable to a total of no more than 10 years; and
  - (c) on such other terms and conditions, including as to termination of service and as to expenses, but not including remuneration, as may be agreed between the PPC and the person appointed.
- (4) The PPC must not appoint a person unless that person has been recommended to the PPC by a panel comprising –
  - (a) the Greffier of the States; and
  - (b) 2 other persons nominated by the PPC.
- (5) The PPC must not appoint a person if that person –
  - (a) is a member of the States;
  - (b) holds any paid office or employment in the service of the States or of any administration of the States; or
  - (c) holds any paid office or employment in the service of a parochial authority.
- (6) The PPC must, at least 2 weeks before making an appointment, present to the States a notice of the PPC’s intention to make the appointment.

**3 Functions and procedures of commission**

- (1) The principal functions of the commission are –
  - (a) to consider and give an opinion on the wording of a proposed referendum question, and of an amendment to such a question, for the purposes of Article 6(3) and (5); and
  - (b) to designate the lead campaign groups in relation to a referendum.
- (2) A referendum Act may confer supplementary functions on the commission for the purpose of the referendum to which that Act relates.
- (3) The performance of the functions of the commission is not affected by any vacancy in its membership.
- (4) Each commissioner has one vote.

- (5) The quorum for a meeting of the commission is 3 members.
- (6) Except as otherwise provided by this Law or by the referendum Act, the commission may regulate its own procedure.

#### **4 Costs of referendum and commission**

- (1) This Article applies to the extent that a referendum Act does not prescribe otherwise in relation to a particular referendum.
- (2) The following costs are to be met by the States –
  - (a) the costs of the holding of the referendum, subject to paragraph (3);
  - (b) the costs of the operation of the commission; and
  - (c) the payment of the expenses of the commissioners.
- (3) The costs of setting up in a parish, incurred for the holding of the referendum in that parish, are to be met by that parish.

#### **5 Exclusion of liability**

- (1) A person is not liable in damages for any act in the performance or purported performance of a function of that person under –
  - (a) this Law; or
  - (b) a referendum Act.
- (2) Paragraph (1) does not apply to a person who is –
  - (a) a lead campaign group;
  - (b) an applicant group, within the meaning of Article 7;
  - (c) a third party, within the meaning of the Schedule;
  - (d) a person who is a member of, or is acting on behalf of, such a lead campaign group, applicant group or third party;
  - (e) any other person on whom a duty is imposed by Article 19, in respect of the performance of that duty.
- (3) Paragraph (1) does not apply –
  - (a) if it is shown that the act was in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>2</sup>.

### **PART 3**

#### **CONDUCT OF REFERENDUM**

#### **6 Act for holding of a referendum**

- (1) The States may by Act resolve that a referendum be held on any matter, and this Part and Part 4 apply in any case where the States have so resolved.

- 
- (2) The referendum Act must –
    - (a) fix the date for the holding of the referendum, which must be not less than 3 months after the making of the Act; and
    - (b) set out the form of the ballot paper to be used in the referendum, including the text of the referendum question.
  - (3) A proposition for a referendum Act may not be lodged unless the commission has published its opinion on the suitability of the wording proposed for the referendum question.
  - (4) Paragraph (5) applies if –
    - (a) a proposition (an “amending proposition”) is lodged to amend a proposition for a referendum Act; and
    - (b) the amending proposition would alter the wording of the referendum question.
  - (5) The commission must, if practicable, publish, before the first date on which the amending proposition may be debated, its opinion on the suitability of the proposed wording of the referendum question as so altered.
  - (6) The referendum Act –
    - (a) may make such other provision as to the conduct of the referendum and for announcing its result as the States consider necessary or expedient; and
    - (b) without prejudice to the generality of sub-paragraph (a), may apply in relation to the referendum, with such adaptations, modifications or exceptions as may be specified in the Act, any provisions of the Public Elections Law or of any other enactment for the time being in force relating to public elections to the States, including any provisions that create or relate to offences.
  - (7) In this Article “referendum question” means the question or questions to be asked in the referendum.

## **7 Commission to designate lead campaign groups**

- (1) For the purpose of this Article –

“applicant group” means a group that has applied in accordance with the invitation notice;

“group” means –

  - (a) a company, a foundation or any other body incorporated under or by any enactment;
  - (b) a trade union or employers’ association registered under the Employment Relations (Jersey) Law 2007<sup>3</sup>;
  - (c) a political party registered under the Political Parties (Registration) (Jersey) Law 2008<sup>4</sup>;
  - (d) a fidéicomis created under Article 3 of the Loi (1862) sur les tenures en fidéicomis et l’incorporation d’associations<sup>5</sup>, or to

which the court has extended the benefits of that Loi under Article 17 of that Loi;

- (e) any other body, partnership or association that –
  - (i) does not consist solely of one natural person, and
  - (ii) satisfies the commission that it is not, by reason of its constitution or location or of the means by which it may be held to account, unfit to act as a lead campaign group under this Law;

“invitation notice” means a notice issued under paragraph (2);

“outcome” means a possible outcome of the referendum.

- (2) The commission must issue a notice inviting groups to apply for designation under paragraph (4) as the lead campaign group for each of the outcomes.
- (3) The invitation notice must specify –
  - (a) the form and manner in which the application is to be made;
  - (b) the period within which the application is to be made; and
  - (c) the information that is to accompany the application, being such information as appears to the commission to be likely to be of assistance in determining the application.
- (4) If the condition in paragraph (6) is met, the commission must designate as the lead campaign group, for each outcome, the applicant group appearing to the commission to be likely to be able to represent to the greatest extent those supporting that outcome.
- (5) If the condition in paragraph (6) is not met, the commission must refuse all applications for all of the outcomes, and accordingly must designate no lead campaign groups in respect of the referendum.
- (6) The condition is that the designations, in respect of the referendum as a whole, comply with all of the following criteria, namely –
  - (a) that every lead campaign group appears to the commission to be likely to be able to represent adequately those supporting the outcome for which that group is designated;
  - (b) that no outcome is to be left without a lead campaign group;
  - (c) that only one lead campaign group is to be designated for each outcome; and
  - (d) that each lead campaign group is to be designated for only one outcome, unless paragraph (7) applies.
- (7) In a referendum in which there are more than 2 outcomes, the commission may designate the same group for more than one, but not all of, the outcomes –
  - (a) if the referendum Act so provides; or
  - (b) in the absence of such provision, if those outcomes appear sufficiently similar to the commission for the designation of a single lead campaign group.

- (8) Nothing in the definition “group” in paragraph (1) (including a decision by the commission under sub-paragraph (e)(ii) of that definition that an applicant group is not unfit to act as a lead campaign group) is to be read as limiting the power of the commission to decide that an applicant group is unlikely to have the ability required for the purpose of paragraphs (4) and (6)(a).
- (9) The commission must publish, in such a manner as appears likely to the commission to bring it to the attention of the public –
  - (a) the notice issued under paragraph (2); and
  - (b) if it makes designations, information identifying each lead campaign group and the outcome for which it is designated.

### **8 Arrangements for publication of campaign material**

- (1) The commission must make arrangements for campaign material provided to it by a lead campaign group to be published in Jersey.
- (2) The campaign material must include information summarizing the lead campaign group’s case for the outcome for which it is designated (whether or not it contains other information).
- (3) Nothing in paragraph (1) obliges the commission to publish campaign material if that material –
  - (a) does not comply with paragraph (2);
  - (b) is provided after the closing date specified by the commission for the provision of the material;
  - (c) is provided in a format other than a format specified by the commission; or
  - (d) exceeds a length or size specified by the commission.
- (4) In paragraph (3) “specified” means specified by notice in writing from the commission to the lead campaign groups.
- (5) The arrangements made under this Article must be available to each lead campaign group in the referendum on equal terms.
- (6) No person other than the author of campaign material published under paragraph (1) incurs any civil or criminal liability by virtue of the publication.
- (7) Paragraph (6) is not to be read as derogating from Article 5.

### **9 Lead campaign groups to be given access to electoral registers**

- (1) If a referendum Act makes provision under Article 10(3) for a referendum that is to be held on the same day as an ordinary election, the duties of an electoral administrator under Articles 9A(9) and 12(2) of the Public Elections Law apply in respect of a lead campaign group as they apply in respect of a candidate in the election.
- (2) If paragraph (1) does not apply, the person responsible, in each parish, for preparing and maintaining the electoral register must cause to be available free of charge to each lead campaign group –

- (a) a copy of the electoral register as in force at the end of the day on which the group is designated; and
  - (b) unless there is no subsequent change in the electoral register, a copy of the electoral register as in force at midday on the day that is 7 days before the date fixed for the holding of the referendum.
- (3) Nothing in this Article is to be read as preventing a lead campaign group from exercising a right of public inspection of an electoral register under Article 11(1) or (3) of the Public Elections Law.

## 10 Persons entitled to vote

- (1) A person is entitled to vote in the referendum if, at midday on the day that is 7 days before the date fixed for the holding of the referendum, the person's name –
- (a) is on an electoral register;
  - (b) would have been on such a register but for being omitted from that register under Article 9 of the Public Elections Law; or
  - (c) would have been on such a register but for an administrative error –
    - (i) in respect of which the requirements of Article 3 of the Public Elections Law are satisfied, if that Article is applied by the referendum Act in respect of polling stations, or
    - (ii) in circumstances in which the person's name is to be added to a copy of the electoral register by the Judicial Greffier under Article 46B(4) of the Public Elections Law, if that Article is applied by the referendum Act in respect of a pre-poll vote or postal vote.
- (2) Despite paragraph (1), a person is not entitled to vote in the referendum if –
- (a) the person's name is on the electoral register, or would have been on that register in a case falling within paragraph (1)(b) or (c), by virtue of Article 5A of the Public Elections Law; and
  - (b) the date that is entered in that register, under paragraph Article 5A(6)(b) of that Law in respect of that person, or that would have been so entered in a case falling within paragraph (1)(b) or (c), falls after the date fixed for the holding of the referendum.
- (3) Despite paragraphs (1) and (2), if a referendum Act has the effect that a referendum is to be held on the same day as an ordinary election that is to be held under Article 6 of the States of Jersey Law 2005<sup>6</sup> or under Article 2 of the Connétables (Jersey) Law 2008<sup>7</sup>, the Act may provide that the persons who are entitled to vote in the referendum are the persons who are entitled to vote in the ordinary election.
- (4) Despite paragraphs (1) to (3), a referendum Act may, under Article 6(6) –
- (a) provide for whether a person entitled to vote must or may do so in a particular manner, whether at a polling station, by postal vote, by pre-poll vote, or in any other manner; and

- (b) in relation to postal voting and pre-poll voting, provide for a date earlier than the date specified in paragraph (1) as the date by reference to which a person's eligibility to vote is to be determined under the sub-paragraphs of paragraph (1) or under paragraph (2).

## **11 Exclusion of legal proceedings**

No court may entertain any proceedings for questioning the numbers of any ballot papers counted, or the answer given, in the referendum.

## **PART 4**

### **CAMPAIGN SPENDING**

## **12 Interpretation**

- (1) This Part is to be construed in accordance with the Schedule.
- (2) A referendum Act may, for the purpose of construing this Part in relation only to the referendum held under that Act, disapply any provision in the Schedule and apply any other defining provision instead.
- (3) In this Part "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>8</sup>.

## **13 Application of this Part and power to make other provision by Act**

- (1) This Part applies in respect of a referendum except to the extent that provision is made otherwise under paragraph (2).
- (2) In a referendum Act the States may, having particular regard to the significance of the question or questions to be asked in the referendum under that Act –
  - (a) if satisfied that the relevant referendum does not warrant any controls over referendum expenses, provide that this Part does not apply to the relevant referendum;
  - (b) if satisfied that the relevant referendum does not warrant limits on referendum expenses, but does warrant declaration of referendum expenses, provide that Articles 14 and 15 do not apply to the relevant referendum; or
  - (c) if satisfied that there are exceptional circumstances in relation to the relevant referendum, disapply the whole of this Part and make any provision falling within paragraph (3) in relation to the relevant referendum.
- (3) The provision mentioned in paragraph (2)(c) is provision to regulate the expenditure of, and donations towards the expenses of –
  - (a) a lead campaign group in a referendum; and
  - (b) any other person or group (within the meaning of Article 7 or otherwise) attempting to promote or procure, or otherwise



campaigning for or against, any of the possible outcomes of a referendum,

in a manner appearing to the States to have an effect appropriately similar, subject to modifications for a referendum campaign, to the effect of the Public Elections (Expenditure and Donations) (Jersey) Law 2014<sup>9</sup> in relation to an election campaign.

- (4) Without prejudice to the generality of paragraph (3), a provision falling within that paragraph may –
  - (a) make a contravention of the provision an offence punishable by a fine, but not by imprisonment;
  - (b) apply in relation to the relevant referendum, with such adaptations, modifications or exceptions as may be specified in the referendum Act, any provision of the Public Elections (Expenditure and Donations) (Jersey) Law 2014, including any provision that creates or relates to offences.
- (5) A referendum Act may include provision, in relation to the relevant referendum –
  - (a) that the States must not, or may, incur expenses for a purpose mentioned in paragraph 1(3)(a) or (b) of the Schedule; or
  - (b) that expenses so incurred by the States are not to be treated as the expenses of a campaigner for the purpose of this Part.
- (6) Nothing in paragraph (5) is to be read as –
  - (a) derogating from Article 8 or from paragraph 8 of the Schedule; or
  - (b) enabling an Act to permit anything that is prohibited by any other enactment.
- (7) In this Article “the relevant referendum”, in relation to a referendum Act, means the referendum that is to be held under that referendum Act.

#### **14 Restriction on lead campaign group’s referendum expenses**

- (1) A lead campaign group’s referendum expenses must not exceed, in the aggregate –
  - (a) £2,800, or such other amount as may be specified in a referendum Act for a particular referendum; and
  - (b) 11 pence, or such other amount as may be specified in a referendum Act for a particular referendum, for each person entitled to vote in the referendum.
- (2) A lead campaign group whose referendum expenses exceed the limit imposed by paragraph (1) is guilty of an offence and liable to a fine.
- (3) It is a defence for a lead campaign group charged with an offence under paragraph (2) to prove that the lead campaign group took all reasonable steps to avoid the commission of the offence.

**15 Restriction on third party's referendum expenses**

- (1) A third party's referendum expenses for a referendum must not exceed, in the aggregate, one half of the maximum that would be allowed to a lead campaign group in the referendum by virtue of Article 14.
- (2) A third party whose referendum expenses exceed the limit imposed by paragraph (1) is guilty of an offence and liable to a fine.
- (3) It is a defence for a third party charged with an offence under paragraph (2) to prove that the third party took all reasonable steps to avoid the commission of the offence.

**16 Prohibition of campaigner keeping anonymous donation**

- (1) A campaigner must not keep an anonymous donation.
- (2) A campaigner who receives an anonymous donation must, within 10 working days of receiving it, send it to the Treasurer of the States.
- (3) The Treasurer of the States must 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 campaigner who contravenes paragraph (2) is guilty of an offence and liable to a fine.
- (5) It is a defence for a campaigner charged with an offence under paragraph (4) to prove that the campaigner has a reasonable excuse for the commission of the offence.

**17 Requirement for campaigner to make declaration following referendum**

- (1) Subject to paragraph (2), a campaigner must, no later than 15 working days after the day the poll is held, deliver to the responsible officer a written declaration of –
  - (a) the campaigner's referendum 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 campaigner has received, specifying –
    - (i) in relation to each donation of, or having a value of, more than £120, the name of the donor, the amount or value of the donation, and whether the donation consists of money, services, a loan of money, goods or the use of goods, and
    - (ii) the sum of the anonymous donations received, and sent to the Treasurer of the States, by the campaigner.
- (2) Paragraph (1) does not apply to a campaigner who –
  - (a) is a third party; and
  - (b) whose referendum expenses for the referendum are less than £600.
- (3) For the purposes of paragraph (1)(b)(i) –
  - (a) the value of a donation is to be determined in accordance with paragraph 6 of the Schedule; and

- 
- (b) the donations made by a donor to the campaigner are to be aggregated.
  - (4) The declaration required by paragraph (1) must –
    - (a) be made using a form supplied by the responsible officer;
    - (b) include a statement by the campaigner that, to the best of its knowledge, information and belief, the information contained in it is true, complete and correct; and
    - (c) be signed by the campaigner.
  - (5) If, having made a declaration, a campaigner becomes aware of any variation in or addition to the information required to be declared, the campaigner must, as soon as possible and, in any event, no later than 10 working days after becoming so aware, deliver to the responsible officer a further written declaration of the variation or addition.
  - (6) A declaration delivered under paragraph (5) must include a statement conforming to paragraph (4)(b) and be signed by the campaigner.
  - (7) If 2 or more persons constitute one third party, under paragraph 1(2)(b) of the Schedule, any declaration required from that third party by this Article must be made jointly by those persons and signed by each of them.
  - (8) A campaigner who fails to deliver a declaration, or further declaration, in accordance with this Article is guilty of an offence and liable to a fine.
  - (9) It is a defence for a campaigner charged with an offence under paragraph (8) to prove that the campaigner has a reasonable excuse for the commission of the offence.
  - (10) A campaigner who delivers a declaration, or a further declaration, under this Article, knowing or believing it to be false in a material particular, is guilty of an offence and liable to a fine.
  - (11) A referendum Act may amend, for a particular referendum –
    - (a) the monetary amount expressed in paragraph (1)(b)(i);
    - (b) the period of time expressed in paragraph (1);
    - (c) the period of time expressed in paragraph (5).
  - (12) In this Article, and Articles 18 and 20, “responsible officer” means –
    - (a) if the referendum Act makes provision under Article 10(3) for the referendum being held on the same day as an ordinary election, the Judicial Greffier; or
    - (b) in any other case, the Greffier of the States or other person specified in the Act for this purpose.

## **18 Verification of expenses**

- (1) The responsible officer may request, in writing, a campaigner to produce invoices, receipts and other proof of the campaigner’s referendum expenses.

- (2) A campaigner must comply with a request made under paragraph (1) within 15 working days of it being made.
- (3) A campaigner who contravenes paragraph (2) is guilty of an offence and liable to a fine.
- (4) It is a defence for a campaigner charged with an offence under paragraph (3) to prove that the campaigner has a reasonable excuse for the commission of the offence.

#### **19 Requirement to provide information and documents to lead campaign group**

- (1) A person who incurs or pays a lead campaign group's referendum expenses must, as soon as is practicable, provide the lead campaign group with such information and documents as the lead campaign group requires to comply with Articles 17 and 18.
- (2) A person who contravenes paragraph (1) is guilty of an offence and liable to a fine.
- (3) It is a defence for a person charged with an offence under paragraph (2) to prove that the person has a reasonable excuse for the commission of the offence.

#### **20 Treatment of documents received by responsible officer**

The responsible officer must –

- (a) make declarations received by him or her under this Part available for inspection, free of charge, at the offices of the responsible officer, during normal working hours; and
- (b) pass any declaration made or document produced under this Part to the Attorney General where it appears to the responsible officer that an offence against any provision of this Part may have been committed.

#### **21 Limitation period for offences under this Part**

No criminal prosecution for an offence under this Part, arising from facts that have occurred at a referendum or relate to a referendum, may be instituted after the expiration of 12 months from the date of that referendum.

### **PART 5**

#### **MISCELLANEOUS AND FINAL**

#### **22 Offences by bodies corporate and others**

- (1) In this Article –  
“relevant offence” means an offence under this Law that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;

“relevant person” means –

- (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
  - (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –
    - (i) a general partner, or
    - (ii) a limited partner who is participating in the management of the partnership;
  - (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
    - (i) a director, manager, secretary or other similar officer of the body corporate, and
    - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member’s functions of management; and
  - (d) a person purporting to act in any capacity described in subparagraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.
- (2) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) If a relevant offence –
- (a) is an offence that may be committed by neglect; and
  - (b) is proved to be attributable to any neglect on the part of a relevant person,

that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

### **23 Repeal of Referendum (Jersey) Law 2002**

The Referendum (Jersey) Law 2002<sup>10</sup> is repealed.

### **24 Citation and commencement**

This Law may be cited as the Referendum (Jersey) Law 201- and comes into force on the day after its registration.

**SCHEDULE**

(Article 12)

**THIRD PARTIES, REFERENDUM EXPENSES, DONATIONS AND OTHER  
TERMS DEFINED FOR THE PURPOSE OF PART 4****1 Third party and campaigner**

- (1) A campaigner, in relation to a referendum, is a lead campaign group or a third party in that referendum.
- (2) A third party, in relation to a referendum, is –
  - (a) a person who incurs expenses for the supply or use of relevant goods, or for the provision of relevant services, if that person –
    - (i) is not a lead campaign group in the referendum, and
    - (ii) is not acting with the express or implied consent of a lead campaign group in the referendum; or
  - (b) all of 2 or more persons acting together in incurring expenses for the supply or use of relevant goods, or for the provision of relevant services, if each of those persons –
    - (i) is not a lead campaign group in the referendum, and
    - (ii) is not acting with the express or implied consent of a lead campaign group in the referendum.
- (3) For the purpose of sub-paragraph (2), goods or services are relevant goods or services if they are used –
  - (a) to promote or procure any outcome in a referendum; or
  - (b) to prejudice the prospects of any outcome in a referendum.
- (4) For the purposes of sub-paragraph (2)(b), the persons act together –
  - (a) if they are jointly liable for the expenses;
  - (b) if the expenses are incurred with the express or implied consent of all of them; or
  - (c) if, although they incur and are liable for the expenses separately, nevertheless –
    - (i) they are working together, or liaising to co-ordinate their respective expenditure, and
    - (ii) the expenditure is for shared purposes.

**2 Referendum expenses**

- (1) Expenses are referendum expenses if they are a lead campaign group's referendum expenses or a third party's referendum expenses.
- (2) Expenses are a lead campaign group's referendum expenses if they are incurred, at any time before the poll –
  - (a) by the lead campaign group or with the lead campaign group'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 outcome for which that lead campaign group is designated in the same referendum, or
  - (ii) to prejudice the prospects of another outcome in the same referendum.
- (3) Expenses are a third party's referendum expenses if –
  - (a) they are incurred at any time before the poll, and
  - (b) the person by whom they are incurred is a third party, under paragraph 1(2), by virtue of incurring them.
- (4) If a lead campaign group is endorsed by a political party, the lead campaign group is to be taken, for the purposes of sub-paragraph (2)(a), to have consented to the party incurring expenses on his or her behalf.
- (5) If referendum expenses are incurred by, or with the express or implied consent of, 2 or more campaigners, it is to 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.

### **3 Expenses: direct and notional**

- (1) A campaigner's referendum expenses may be direct expenses or notional expenses.
- (2) A direct expense is the amount of any liability incurred for the supply or use of goods or the provision of services, if the goods or services are used as described in paragraph 1(3)(a) or (b).
- (3) 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(3)(a) or (b).
- (4) A notional expense is also a donation and, accordingly –
  - (a) the value of a notional expense is determined in accordance with paragraph 6; and
  - (b) there is to be disregarded any notional expense that, by virtue of paragraph 8, 9, 10 or 11, is not a donation.

### **4 Donation: money**

- (1) A gift of money is a donation if –
  - (a) it is made at any time before the poll (including before the lodging of the proposition for the referendum Act), and the giver signifies (whether expressly or by implication) that the money is intended for use to pay the recipient's referendum expenses; or
  - (b) it is made after the lodging of the proposition for the referendum Act and before the poll, and either –
    - (i) it is made anonymously, or

- (ii) 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 (including before the lodging of the proposition for the referendum Act), and the lender signifies, either expressly or by implication, that the loan is intended for use to pay the recipient’s referendum expenses, or
    - (ii) after the lodging of the proposition for the referendum Act 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.

## **5 Donation: 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) the person making the supply –
    - (i) does so anonymously, in the case of a supply made in the period between the lodging of the proposition for the referendum Act and the poll,
    - (ii) does not signify the intended use of the goods or services, in the case of a supply made in that period, or
    - (iii) signifies (whether expressly or by implication) that the goods or services are intended for use for a purpose described in paragraph 1(3)(a) or (b), in the case of a supply made at any time before the poll (including before the lodging of the proposition for the referendum Act).
- (2) A supply of goods or services is made at the time when the goods or services are provided to the recipient.

## **6 Value attributable to donation of loans, goods or services**

- (1) The value of a donation that is a loan of money is the amount equal to the difference between the cost, to the recipient, of the loan if it had been made on commercial terms and the actual cost to the recipient.
- (2) The value of a donation of goods is the amount equal to the difference between the open market value of the goods and the actual cost to the recipient.



- (3) The value of a donation of the use of goods is the amount equal to the difference between the open market rate for the use of the goods and the actual cost to the recipient.
- (4) The value of a donation of the supply of services is the amount equal to the difference between the open market rate for their supply and the actual cost to the recipient.

**7 Anonymous donations**

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

**8 Donation: exception for services provided on equal terms by or for commission, States or parishes**

The provision of services is not a donation if the services –

- (a) consist of making arrangements for the publication of campaign material under Article 8;
- (b) are provided by any person under such arrangements; or
- (c) are otherwise provided by or on behalf of the commission, the States Greffe or a parish to all of the lead campaign groups in a referendum on the same terms.

**9 Donation: exception for services of individual volunteers**

- (1) The provision by an individual of his or her own services is not a donation if he or she provides his or her services –
  - (a) as a volunteer;
  - (b) without charge; and
  - (c) otherwise than in the course of his or her employment, trade or profession or any other business.
- (2) Subject to sub-paragraph (3), the exception in sub-paragraph (1) does not extend to any goods used by or supplied by the individual in the course of the provision of the individual's own services.
- (3) If, in the course of the provision of an individual's own services, the individual uses his or her own goods –
  - (a) the use of the goods is not a donation; and
  - (b) any expenditure incurred by the individual, that is incidental to the use of the goods, is not a donation.

**10 Donation: exception for newspapers and broadcasts**

- (1) Subject to sub-paragraph (2), the publication of any matter relating to the referendum –
  - (a) in a newspaper or periodical circulating in Jersey;

- (b) in a programme broadcast by a television or radio service provider;  
or
  - (c) on a website as part of the news service of a television or radio service provider or news agency,
- is not a donation or a third party's referendum expense.
- (2) The exception in sub-paragraph (1) does not apply to an advertisement.
  - (3) Where the publisher of a newspaper or periodical circulating in Jersey also publishes a web-based edition of the newspaper or periodical, the reference in sub-paragraph (1)(a) to the newspaper or periodical includes the web-based edition of it.
  - (4) Where a television or radio service provider, in addition to broadcasting a programme, makes the programme accessible by streaming or downloading 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.

#### **11 Donation and expenses: exception for re-used goods**

- (1) Sub-paragraph (2) applies to goods if –
  - (a) they were supplied for use by a lead campaign group or third party in a referendum (the “previous referendum”);
  - (b) they are used by the lead campaign group or third party in a later referendum (the “subsequent referendum”); and
  - (c) one of the following conditions is met, namely that –
    - (i) the direct and notional expenses for their supply were taken into account in determining, for the purposes of this Law, the amount of the lead campaign group's referendum expenses or a third party's referendum expenses in relation to the previous referendum, or
    - (ii) the previous referendum was held before the coming into force of this Law.
- (2) The direct or notional expenses for the supply of the goods are neither a donation nor a referendum expense in relation to the subsequent referendum.

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- 1 *chapter 16.600*
  - 2 *chapter 15.350*
  - 3 *chapter 05.260*
  - 4 *chapter 16.555*
  - 5 *chapter 04.120*
  - 6 *chapter 16.800*
  - 7 *chapter 16.250*
  - 8 *chapter 15.560*
  - 9 *chapter 16.580*
  - 10 *L.37/2002 (chapter 15.640)*