

# **STATES OF JERSEY**

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## **DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (SCRUTINY PANELS, PAC AND PPC) (JERSEY) REGULATIONS 200**

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**Lodged au Greffe on 21st February 2006  
by the Privileges and Procedures Committee**

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**STATES GREFFE**





Jersey

# **DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (SCRUTINY PANELS, PAC AND PPC) (JERSEY) REGULATIONS 200**

## **REPORT**

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### **Introduction**

Throughout the development of the scrutiny function in Jersey it has been clear to the Privileges and Procedures Committee that the scrutiny panels and the PAC require adequate powers to enable them to operate effectively. In P.79/2003 (Machinery of Government – establishment of scrutiny panels and Public Accounts Committee) the Committee made it very clear that scrutiny would be hampered if it did not have appropriate powers to call for any papers or records relevant to the subject of a review and to require any person to attend before the panels.

The Committee researched the powers given to similar committees in other jurisdictions and found that parliamentary committees across the world are given very far-reaching powers to enable them to undertake their work effectively. During the development of the scrutiny function the PPC examined the procedures of the Scottish Parliament very carefully and it was noted that the Committees in that legislature are given extensive powers through Section 23(1) of the Scotland Act 1998, with criminal sanctions for non-compliance. In the discussions held with officers of the Scottish Parliament in 2003 it was ascertained that the powers had, at that time, never actually been used as their mere existence was sufficient to obtain what was required voluntarily. When there had been reluctance to produce certain documents, due to considerations such as commercial confidentiality or the disclosure of personal information, the matter had usually been resolved by agreement between the Committee concerned and the person being asked to produce the information.

In P.79/2003 the then PPC made it clear that the proceedings of panels and the PAC would be considered to be proceedings that were covered by parliamentary privilege and, as a result, those participating, whether as members or by giving evidence, would need to be protected from being sued or prosecuted for anything they said in good faith during the proceedings.

In adopting P.79/2003 as amended on 24th July 2003, the States –

- “(f) agreed that the scrutiny panels and the Public Accounts Committee shall have the power to call for any papers or records relevant to the matter under consideration and the power to require any person to attend before them;
- (g) agreed that the proceedings of the scrutiny panels and the Public Accounts Committee shall be covered by Parliamentary privilege so that no civil or criminal proceedings may be instituted against any member or officer, or against any person giving evidence to a Panel or to the Public Accounts Committee, for any act done, or words spoken before, or written in a report to, or by, the scrutiny panels or Public Accounts Committee”.

These Regulations are designed to give full effect to the States’ decision. Extensive consultation with the Law Officers Department has taken place during the development of the Regulations as there is clearly a balance that needs to be struck between the requirement to ensure that panels and the PAC have adequate powers to operate effectively and the need to ensure that those who are required to appear and/or produce documents are treated fairly and that adequate safeguards exist to ensure that the powers are not used in an inappropriate manner.

### *Regulation 1*

This Regulation makes it clear that expressions used in the Regulations have the same meaning as defined in Standing Orders. This refers, for example, to the definition of the PAC or the PPC.

### *Regulation 2*

Throughout the development of the new States of Jersey Law 2005 and the new Standing Orders of the States of Jersey it has been made clear on numerous occasions that the privileges and autonomy of the States of Jersey must be preserved from any undue interference by the Courts. As a result the Code of Conduct (included at Schedule 3 to the Standing Orders) makes it a requirement for elected members to co-operate when requested to appear and give evidence before, or produce documents to, scrutiny panels, the PAC, or the PPC for the purpose of an investigation of a suspected breach of the Code. As the requirement to co-operate is included in the Code of Conduct, any failure to comply can be dealt with through the Assembly's own internal disciplinary proceedings. For this reason the Regulations are specifically expressed not to apply to members of the States as, if they did apply, it could become a criminal offence if a member did not comply and this would clearly go against the important principle of maintaining the independence of the legislature.

The provision in Regulation 2(b) that the Regulations do not confer any privileges or immunity on a member of the States is included because statutory immunity is already given to members in Article 34 of the States of Jersey Law 2005.

### *Regulation 3*

Regulation 3, which refers to Part 2 of the Regulations, makes it clear that the powers conferred on scrutiny panels and the PAC by the Regulations are only exercisable in the context of a review falling within the terms of reference of the Panel or the PAC. It would clearly be entirely inappropriate for the powers to be used for purposes other than those falling within this remit.

### *Regulation 4*

It is very much hoped that the statutory powers to require attendance before a scrutiny panel or the PAC will be nothing more than a last resort when the normal voluntary invitations to appear have been unsuccessful. Regulation 4 makes it clear that a panel or the PAC must initiate reasonable attempts to request a person to appear on a voluntary basis before a summons can be issued in accordance with these Regulations. As can be seen the panel or the PAC must act reasonably in attempting to find a convenient time for the appearance and must give sufficient undertakings in relation to the way in which private or confidential evidence will be treated. It is only if a person refuses to comply with a request made in these circumstances that the power to issue a summons is given.

### *Regulation 5*

A summons will be issued by the Greffier of the States on behalf of the panel or the PAC. Some general indication of the issues on which the person will be questioned, or an indication of the documents that the person is required to produce, must be given in the summons. In addition, to ensure that any person summoned is fully aware of the way in which a summons can be challenged, full information about this must accompany the summons. The person must also be informed of the potential offences for failure to comply. Paragraph (5) states that at least 10 working days must elapse between the date of service and the date of appearance.

### *Regulation 6*

In the interests of natural justice it is clearly appropriate that any person who receives a summons has the opportunity to challenge it. Regulation 6 explains how this can happen. Paragraphs (1)(a) to (c) allow a challenge to be made on the grounds that the necessary statutory steps set out in Regulations 3 to 5 have not been complied with. Paragraphs (1)(d) to (f) set out further grounds for challenge. Sub-paragraph (f) refers to a challenge on the grounds that the prejudice to a person that would arise if the summons was complied with was such that it would outweigh the usefulness of the evidence or documents. This provision could, for example, be used as a ground for challenge in the case of documents that contained sensitive personal information or in cases of extreme commercial confidentiality.

The challenge must be notified to the Greffier and the summons is put on hold until the challenge has been considered and adjudicated on by the PPC.

### *Regulation 7*

In P.79/2003 it was made clear that the PPC would undertake the review of any challenge. Now that the Chairmen's Committee is responsible for oversight of the scrutiny function, the PPC, which is a mixture of Ministers/Assistant Ministers and members who are not, is considered to be the appropriate body to undertake this review in an independent and impartial manner. Paragraph (2) of Regulation 7 nevertheless makes it clear that any

member of PPC who is connected with the matter must take no part in the review.

PPC can undertake whatever investigations it sees fit before adjudicating on whether or not to uphold the challenge. When adjudicating on the grounds set out in Regulation 6(e) and (f) there will obviously be a degree of judgement needed by PPC to decide where the appropriate balance lies.

Even if it does not entirely uphold a challenge PPC can make alterations to the summons and this could, for example, relate to the date (as the original date may have passed) or could exclude certain documents from production whilst upholding the summons in relation to others. It should be stressed that once the review by PPC has been undertaken there is no further appeal mechanism for a person who has been summoned and any failure to comply would make a person liable to an offence under Regulation 23.

#### *Regulation 8*

This Regulation refers to a challenge in relation to a question put to a person when actually appearing before a scrutiny panel or the PAC. The grounds for challenge mirror some of the grounds in Regulation 6 and the challenge procedure follows that set out for an initial challenge when a summons is issued. If PPC concludes that the question must be answered then the person must comply or become liable to prosecution.

#### *Regulation 9*

As set out in the introduction above, PPC has always believed that persons appearing before scrutiny panels or the PAC should be given adequate statutory protection from proceedings in respect of any evidence given or documents produced. Regulation 9 gives this immunity to such persons although paragraph (3) makes it clear that the immunity is not given if a person deliberately gives evidence or produces documents which he or she knows to be untrue.

#### *Regulation 10*

As mentioned above the States of Jersey Law 2005 gives appropriate immunity to members of the States in relation to the proceedings of any Committees or panels established by Standing Orders. The purpose of Regulation 10 is to extend this immunity to the members of PAC who are not elected members of the States. It is clearly appropriate and necessary to ensure that they are adequately protected when taking part in the work of the PAC.

#### *Regulation 11*

Scrutiny panels are able to establish sub-panels or to appoint one member to undertake a review and Regulation 11 extends the application of this Part of the Regulations to the proceedings of any such sub-panel or review undertaken by a member.

#### *Regulation 12*

Part 3 of the Regulations gives appropriate powers to the PPC when investigating a suspected breach of the Code of Conduct. Many of the provisions in Part 3 are identical to the provisions given in Part 2 for scrutiny panels and the PAC. It should be pointed out that Regulation 2, which disapplies the Regulations to members of the States, also refers to this part as any failure by an elected member to co-operate with an investigation into a suspected breach of the Code is, in itself, a breach and would no doubt be dealt with extremely severely by the PPC.

#### *Regulations 13 to 15*

The procedures set out in these Regulations mirror the provisions explained above in relation to the procedures for scrutiny panels and the PAC.

#### *Regulation 16*

It is clearly not possible for the PPC to review its own summons and, as there is no other existing body that could appropriately review any such matter, the Regulations provide that a panel of senior members be established if any such challenge needs to be reviewed. The panel would consist of the senior Senator, senior Connétable and senior Deputy although any of these who is a member of the PPC or otherwise involved in the matter would be excluded. (This would mean, for example, that at the present time Senator Syvret, who is the first Senator called in the roll of members, would always be excluded from this panel as he is a member of the PPC).

The panel of three members would operate in an identical manner to that in which the PPC will operate in relation to a challenge made in relation to a summons issued by a scrutiny panel or the PAC.

#### *Regulation 17*

This Regulation allows a person appearing before the PPC in response to a summons to challenge a question put

by the Committee. The procedure mirrors the procedure described above in Regulation 8 and, once again, the panel of senior members would review the matter.

#### *Regulation 18*

Regulation 18 mirrors the provisions in Regulation 9.

#### *Regulation 19*

Standing Orders allow the PPC to establish a panel for the purpose of investigating breaches of the Code of Conduct (although the actual adjudication on the case is always made by the PPC to preserve parliamentary autonomy). This Regulation grants immunity to any person who is not a member of the States who is taking part in the proceedings of any such panel on behalf of PPC. As with the unelected members of PAC this is clearly a necessary protection for any persons who are not members of the States participating in the work of an investigation panel.

#### *Regulation 20*

This Regulation extends Part 3 to the proceedings of any panel acting for PPC in the investigation of a breach of the Code of Conduct.

#### *Regulations 21 and 22*

Because of the need to follow the procedures set out in Regulations 4 and 13 before a summons can be issued it will, in practice, be the case that the relevant Committee or panel will already be in touch with the person concerned before serving a summons. These two Regulations therefore provide alternative means by which a summons can be served. A summons could be served by personal service, by leaving it with the person concerned, or could be served by post if that was considered more appropriate. In practice it is anticipated that the Committee or panel concerned will always check that a summons has been correctly received and, in case of any doubt, necessary steps could be taken to ensure it is received.

#### *Regulation 23*

When Eugene Windsor, a team leader from the Scottish Parliament, addressed a seminar for States members and officers on 28th March 2003, he stated, as quoted in P.79/2003 -

“Committees need adequate powers to do the job; I think this is the most important lesson that we have learnt over the first session. They need the stick, they need details in the legislation of what they can do and, although they may not always have to use them, powers do need to be there, they need to have the teeth”.

This Regulation contains details of the offences that would be committed if a person failed to comply with a summons or failed to answer a question put to him or her. As can be seen the maximum fine is level 4 on the standard scale which is currently £5,000. It should be stressed that this is the maximum fine and any amount up to the maximum could be imposed by the Court. There is no option of imprisonment.

The PPC very much hopes that there will never be a need to institute proceedings under these Regulations. In the vast majority of cases evidence will hopefully be received on a voluntary basis without the need to issue a summons and, on the rare occasions when a summons is issued, it is hoped that the person concerned will realise that it is necessary to comply, particularly once they have exhausted the review mechanism. It is, nevertheless, necessary to have the ultimate criminal sanction available to ensure that scrutiny panels, the PAC and PPC are able to undertake their work effectively and obtain the necessary relevant information.

### **Financial and manpower implications**

There are no additional financial or manpower implications arising from these Regulations. There will inevitably be some additional work for officers serving the Committees and panels concerned to implement the procedures, but this will be managed within existing resources.

## **Explanatory Note**

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### *Part 1 – Preliminary*

*Regulation 1* provides for the definitions in standing orders to apply to these Regulations.

*Regulation 2* provides that nothing in the Regulations confers a power to issue a summons requiring a member of the States to appear or produce documents, or confers any privileges or immunity on a member of the States.

### *Part 2 – Scrutiny Panels and the PAC*

*Regulation 3* provides that a scrutiny panel or the PAC may only exercise the powers conferred by the Regulations for the discharge of the functions arising from its terms of reference.

*Regulation 4* sets out the circumstances in which a scrutiny panel or the PAC may issue a summons. A scrutiny panel or the PAC cannot issue a summons without first asking the person to appear, accommodating the person's reasonable request as to the day and time of his or her appearance and, if appropriate, undertaking to receive the person's evidence in private or documents in confidence. It is only if the person refuses to comply, and if the scrutiny panel or the PAC is satisfied that his or her evidence or documents are relevant to the matter under investigation, that a summons may be issued.

*Regulation 5* sets out the procedure for the issue of a summons. The day on which a person is required to appear must be at least 10 working days after the day the summons is served.

*Regulation 6* entitles the recipient of a summons to challenge it, on grounds that are set out in paragraph (1). Paragraphs (2) and (3) set out the procedure for challenging a summons.

*Regulation 7* sets out the procedure for the review of a challenge to a summons. The PPC has responsibility for reviewing the challenge and, as part of that process, may request submissions from interested parties. The PPC may uphold the summons, vary it or direct that it is of no effect.

*Regulation 8* entitles a person appearing before a scrutiny panel or the PAC pursuant to a summons to challenge a question on grounds which are set out in paragraph (1). The procedure for review of the challenge by the PPC is broadly the same as that for the review of a challenge to a summons.

*Regulation 9* confers privileges and immunity against self-incrimination upon a person giving evidence or producing documents before a scrutiny panel or the PAC (either at its request or when summoned). The immunity against self-incrimination does not extend to evidence or a document which a person gives or produces knowing it to be untrue. Evidence given or documents produced by the person may be used in proceedings for an offence under *Regulation 23*.

*Regulation 10* confers immunity on the members of the PAC who are not members of the States insofar as they are speaking within or writing any report to or on behalf of the PAC.

*Regulation 11* relates to the appointment, by a scrutiny panel, of a sub-panel of elected members or of one of the scrutiny panel's members, to review, scrutinize or report on a particular matter. The sub-panel or person may request a person to appear or produce documents but only the scrutiny panel itself may issue a summons requiring another person to appear before the sub-panel or person. A person appearing before or producing documents to a sub-panel or person is given the same immunity as he or she would have before the scrutiny panel itself.

### *Part 3 – Investigation by PPC of Breach of Code of Conduct*

*Regulation 12* provides that the PPC may only exercise the powers conferred by the Regulations for the purpose of a suspected breach of the code of conduct for elected members.

*Regulations 13 to 15* make the same provision for the issue of a summons by the PPC and its challenge as is made by *Regulations 4 to 6* in relation to scrutiny panels and the PAC.

*Regulation 16* provides for the review of a challenge of summons issued by the PPC. The review is conducted by a panel comprising the most senior Senator, the most senior Connétable and the most senior Deputy, disregarding any member of the PPC or other person who has an interest in the matter. The panel may, as part of its investigations, request submissions from parties. The panel may then uphold the summons, with or without alteration, or direct that it need not be complied with.

*Regulation 17* entitles a person appearing before the PPC pursuant to a summons to challenge a question put by

the PPC on grounds which are set out in paragraph (1). The procedure for review of the challenge is broadly the same as that for review of a challenge to a summons

*Regulation 18* confers privileges and immunity upon a person appearing to give evidence before or producing documents to the PPC, when it is investigating a breach of the code of conduct, which are comparable to those provided by *Regulation 9* in relation to scrutiny panels and the PAC.

*Regulations 19 and 20* relate to the appointment by the PPC, in accordance with standing orders, of a panel to investigate a suspected breach of the code of conduct. *Regulation 19* confers immunity on a member of the panel who is not also a member of the States, insofar as the person is speaking within the panel or writing any report on behalf of the panel. *Regulation 20* confers the same powers in relation to the panel, and the same immunities for a person appearing before it, as are conferred by *Regulation 11* in relation to a sub-panel or person appointed by a scrutiny panel.

#### *Part 4 – Miscellaneous and closing*

*Regulation 21* states how personal service is to be effected.

*Regulation 22* states how ordinary service is to be effected.

*Regulation 23* makes it an offence to disobey, without reasonable excuse, a summons or, when summoned, to refuse, without reasonable excuse, to be examined before or answer any lawful and relevant question put by the committee or panel in question.

*Regulation 24* is the citation and commencement provision.







Jersey

# DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (SCRUTINY PANELS, PAC AND PPC) (JERSEY) REGULATIONS 200

## Arrangement

### Regulation

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#### **PART 1**

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##### PRELIMINARY

- 1      Interpretation
- 2      Application to members of the States

#### **PART 2**

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##### SCRUTINY PANELS AND THE PAC

- 3      Application of Part 2
- 4      Power of scrutiny panel or the PAC to issue summons
- 5      Procedure for issue of summons by a scrutiny panel or the PAC
- 6      Challenging a summons issued by a scrutiny panel or the PAC
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- 8      Challenge and review of question put by a scrutiny panel or the PAC
- 9      Privileges and immunity of person appearing before or producing documents to a scrutiny panel or the PAC
- 10     Immunity of member of the PAC who is not a member of the States
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#### **PART 3**

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##### INVESTIGATION BY PPC OF BREACH OF CODE OF CONDUCT

- 12     Application of Part 3
- 13     Power of the PPC to issue summons
- 14     Procedure for issue of summons by the PPC
- 15     Challenging a summons issued on behalf of the PPC
- 16     Review of challenge of summons issued on behalf of the PPC
- 17     Challenge and review of question put by the PPC
- 18     Privileges and immunity of person appearing before or producing documents to the PPC
- 19     Immunity of member of panel acting for the PPC who is not a member of the States
- 20     Application of Part 3 to panel acting for the PPC

#### **PART 4**

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##### MISCELLANEOUS AND CLOSING

<u>21</u>	<u>Personal service</u>
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<u>23</u>	<u>Offences</u>
<u>24</u>	<u>Citation and commencement</u>





Jersey

# **DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (SCRUTINY PANELS, PAC AND PPC) (JERSEY) REGULATIONS 200**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Article 48 of the States of Jersey Law 2005<sup>[1]</sup>, have made the following Regulations –

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## **PART 1**

### **PRELIMINARY**

#### **1 Interpretation**

Expressions defined in standing orders have the same meaning in these Regulations.

#### **2 Application to members of the States**

These Regulations shall not –

- (a) confer any power to issue a summons requiring the appearance of, or the production of documents by, a member of the States; or
- (b) confer any privileges or immunity on a member of the States.

## **PART 2**

### **SCRUTINY PANELS AND THE PAC**

#### **3 Application of Part 2**

- (1) The powers conferred by this Part on a scrutiny panel are exercisable only for the purpose of the review, consideration or scrutiny of a matter by the panel pursuant to its terms of reference and the topics assigned to it in standing orders.
- (2) The powers conferred by this Part on the PAC are exercisable only for the purpose of the preparation of a report upon or assessment of any matter pursuant to the PAC's terms of reference in standing orders.

#### **4 Power of scrutiny panel or the PAC to issue summons**

- (1) Before issuing a summons requiring a person to appear before it and to give evidence and produce documents to it, a scrutiny panel or the PAC must –
  - (a) request the person to so appear;
  - (b) accommodate any reasonable request by the person as to the day and time of the appearance; and
  - (c) where it would be appropriate to do so, having regard to the nature of the evidence or documents, undertake to hear the evidence in private or receive the documents in confidence.
- (2) If a person refuses to comply with a request made under paragraph (1) the scrutiny panel or the PAC may summons the person to appear before it and to give evidence and produce documents to it if the panel or the PAC is satisfied that the evidence is, or the documents sought from the person are, relevant to a matter that it is investigating.

## **5 Procedure for issue of summons by a scrutiny panel or the PAC**

- (1) A scrutiny panel or the PAC shall inform the Greffier of its decision to issue a summons.
- (2) The Greffier shall prepare the summons and sign it.
- (3) The summons shall –
  - (a) state the day and time when the person is required to appear;
  - (b) indicate, in general terms, the issues on which the scrutiny panel or PAC proposes to question the person;
  - (c) be accompanied by information regarding –
    - (i) how the summons may be challenged, and
    - (ii) the offences in Regulation 23.
- (4) The summons may require the person to produce –
  - (a) all documents;
  - (b) specified documents;
  - (c) documents described by reference to their subject matter or any other factor, which are relevant to the matter that the scrutiny panel or PAC is investigating.
- (5) The day on which the person is to appear must be at least 10 working days after the day the summons is served on the person.
- (6) The Greffier shall cause the summons to be served on the person by personal service or ordinary service.

## **6 Challenging a summons issued by a scrutiny panel or the PAC**

- (1) A person may challenge a summons issued by a scrutiny panel or the PAC on any of the following grounds –
  - (a) that the summons was not issued for a purpose described in Regulation 3;
  - (b) that Regulation 4(1) was not complied with before the summons was issued;
  - (c) that any requirement of Regulation 5 was not complied with in respect of the summons;
  - (d) that the evidence is, or the documents are, not relevant or necessary to the matter that the scrutiny panel or the PAC is investigating;
  - (e) that the evidence is or documents are privileged;
  - (f) that the prejudice to the person that would ensue from appearing before the scrutiny panel or the PAC and giving the evidence and, where required, producing the documents, so far outweighs the usefulness of the evidence or documents to the panel or the PAC that it would

be unreasonable to require the person to appear.

- (2) The person must notify the Greffier, in writing, that he or she wishes to challenge the summons and of the grounds for his or her challenge.
- (3) Once the person has so notified the Greffier –
  - (a) the Greffier shall inform the PPC and the scrutiny panel or the PAC of the challenge; and
  - (b) the person shall not be required to obey the summons unless, on review, it is upheld by the PPC.

## **7 Review of challenge of summons issued by a scrutiny panel or the PAC**

- (1) The PPC shall review the challenge as soon as is practicable.
- (2) A member of the PPC who is connected with or involved in the matter being investigated by the scrutiny panel or PAC whose summons is being challenged, or who is a member of the scrutiny panel or PAC, shall not take any part in the review.
- (3) The PPC shall undertake such investigations into the matter as it sees fit and may, as part of the investigations, request submissions, either in writing or in person, from –
  - (a) the chairman and any member of the scrutiny panel or PAC;
  - (b) the person who has challenged the summons;
  - (c) any other person whose submission is, in the opinion of the PPC, relevant to its review of the challenge.
- (4) After it has concluded its investigations the PPC shall either –
  - (a) uphold the summons as served;
  - (b) uphold the summons with such alterations as it considers appropriate; or
  - (c) direct that the person is not required to obey the summons.
- (5) The PPC shall inform the person who challenged the summons, and the scrutiny panel or the PAC, of its decision and the reasons for it.

## **8 Challenge and review of question put by a scrutiny panel or the PAC**

- (1) A person appearing before a scrutiny panel or the PAC in answer to a summons may challenge a question put by the scrutiny panel or PAC on the ground that –
  - (a) the question is not relevant or necessary to the matter that the scrutiny panel or PAC is investigating;
  - (b) the evidence sought is privileged; or
  - (c) the prejudice to the person that would ensue if he or she answered the question so far outweighs the usefulness of the answer to the scrutiny panel or PAC that it would be unreasonable to require the person to answer.
- (2) Once the person has made the challenge, he or she is not required to answer the question unless the PPC directs that it must be answered.
- (3) Paragraphs (1) to (3) of Regulation 7 shall apply to a review of a challenge to a question as they apply to a review of a challenge to a summons.
- (4) After it has concluded its investigations the PPC shall direct –
  - (a) that the question must be answered; or
  - (b) that the question need not be answered.
- (5) The PPC shall inform the person who challenged the question, and the scrutiny panel or PAC, of its decision and the reasons for it.

**9 Privileges and immunity of person appearing before or producing documents to a scrutiny panel or the PAC**

- (1) A person asked or required to give evidence or produce documents before a scrutiny panel or the PAC shall be entitled, in respect of such evidence and documents, to legal professional privilege and privilege against self-incrimination.
- (2) An answer given by a person to a question put to that person, an oral or written statement made by a person, or a document produced by a person, in the course of his or her appearance before a scrutiny panel or the PAC shall not, except in the case of proceedings for an offence under these Regulations, be admissible in evidence against that person in any civil or criminal proceedings.
- (3) Paragraph (2) shall not apply to evidence given or documents produced by that person which he or she knows to be untrue.

**10 Immunity of member of the PAC who is not a member of the States**

No civil or criminal proceedings may be instituted against a member of the PAC who is not also a member of the States for any words spoken or written –

- (a) before or within the PAC; or
- (b) in a report to the PAC or a report presented by the PAC to the States.

**11 Application of Part 2 to sub-panel etc of a scrutiny panel**

Where a scrutiny panel establishes a sub-panel under standing order 135, or appoints a member under standing order 136, to review, consider, scrutinize or liaise upon any particular matter, this Part shall have effect with the modifications necessary –

- (a) to enable the sub-panel or member to make a request under Regulation 4(1);
- (b) to empower the scrutiny panel to issue a summons requiring a person to appear and give evidence before and produce documents to the sub-panel or member;
- (c) to confer on a person who gives evidence before or produces any document to the sub-panel or member the same privileges and immunity as a person who gives evidence before or produces any document to a scrutiny panel.

## **PART 3**

### **INVESTIGATION BY PPC OF BREACH OF CODE OF CONDUCT**

**12 Application of Part 3**

The powers conferred by this Part on the PPC are exercisable only for the purpose of an investigation, pursuant to standing orders, of a suspected breach of the code of conduct for elected members.

**13 Power of the PPC to issue summons**

- (1) Before issuing a summons requiring a person to appear before it and to give evidence and produce documents to it, the PPC must –
  - (a) request the person to so appear;
  - (b) accommodate any reasonable request by the person as to the day and time of the appearance;



and

- (c) where it would be appropriate to do so, having regard to the nature of the evidence or documents, undertake to hear the evidence in private or receive the documents in confidence.
- (2) If a person refuses to comply with a request made under paragraph (1) the PPC may summons the person to appear before it and to give evidence and produce documents to it if the PPC is satisfied that the evidence is, or the documents sought from the person are, relevant to a matter that it is investigating.

#### **14 Procedure for issue of summons by the PPC**

- (1) The PPC shall inform the Greffier of its decision to issue a summons.
- (2) The Greffier shall prepare the summons and sign it.
- (3) The summons shall –
  - (a) state the day and time when the person is required to appear;
  - (b) indicate, in general terms, the issues on which the PPC proposes to question the person;
  - (c) be accompanied by information regarding –
    - (i) how the summons may be challenged, and
    - (ii) the offences in Regulation 23.
- (4) The summons may require the person to produce –
  - (a) all documents;
  - (b) specified documents;
  - (c) documents described by reference to their subject matter or any other factor, which are relevant to the matter that the PPC is investigating.
- (5) The day on which the person is to appear must be at least 10 working days after the day the summons is served on the person.
- (6) The Greffier shall cause the summons to be served on the person by personal service or ordinary service.

#### **15 Challenging a summons issued on behalf of the PPC**

- (1) A person may challenge a summons on any of the following grounds –
  - (a) that the summons was not issued for the purpose described in Regulation 12;
  - (b) that Regulation 13(1) was not complied with before the summons was issued;
  - (c) that any requirement of Regulation 14 was not complied with in respect of the summons;
  - (d) that the evidence is, or the documents are, not relevant or necessary to the matter that the PPC is investigating;
  - (e) that the evidence is or the documents are privileged;
  - (f) that the prejudice to the person that would ensue from appearing before the PPC and giving the evidence and, where required, producing the documents so far outweighs the usefulness of the evidence or documents to the PPC that it would be unreasonable to require the person to appear.
- (2) The person must notify the Greffier, in writing, that he or she wishes to challenge the summons and of the grounds for his or her challenge.
- (3) Once the person has so notified the Greffier –
  - (a) the Greffier shall inform the PPC of the challenge; and

- (b) the person shall not be required to obey the summons unless, on review, it is upheld by the panel described in Regulation 16(1).

## **16 Review of challenge of summons issued on behalf of the PPC**

- (1) The challenge shall be reviewed, as soon as is practicable, by a panel comprised of the 1st Senator called in the roll of elected members, the 1st Connétable so called and the 1st Deputy so called, disregarding any Senator, Connétable or Deputy who –
  - (a) is a member of the PPC; or
  - (b) is connected with or involved in the matter that the PPC is investigating.
- (2) The panel shall undertake such investigations into the matter as it sees fit and may, as part of the investigations, request submissions, either in writing or in person, from –
  - (a) the chairman and any member of the PPC;
  - (b) the person who has challenged the summons;
  - (c) any other person whose submission is, in the opinion of the panel, relevant to its review of the challenge.
- (3) After it has concluded its investigations the panel shall either –
  - (a) uphold the summons as served;
  - (b) uphold the summons with such alterations as it considers appropriate; or
  - (c) direct that the person is not required to obey the summons.
- (4) The panel shall inform the person who challenged the summons, and the PPC, of its decision and the reasons for it.

## **17 Challenge and review of question put by the PPC**

- (1) A person appearing before the PPC in answer to a summons may challenge a question put by the PPC on the ground that –
  - (a) the question is not relevant or necessary to the matter that the PPC is investigating;
  - (b) the evidence sought is privileged; or
  - (c) the prejudice to the person that would ensue if he or she answered the question so far outweighs the usefulness of the answer to the PPC that it would be unreasonable to require the person to answer.
- (2) Once the person has made the challenge, he or she is not required to answer the question unless the panel described in Regulation 16(1) directs that it must be answered.
- (3) Paragraphs (1) and (2) of Regulation 16 shall apply to a review of a challenge to a question as they apply to a review of a challenge to a summons.
- (4) After it has concluded its investigation the panel described in Regulation 16(1) shall direct–
  - (a) that the question must be answered; or
  - (b) that the question need not be answered.
- (5) The panel shall inform the person who challenged the summons, and the PPC, of its decision and the reasons for it.

## **18 Privileges and immunity of person appearing before or producing documents to the PPC**

- (1) A person asked or required to give evidence or produce documents before the PPC shall be entitled, in respect of such evidence or documents, to legal professional privilege and privilege against self-incrimination.

- (2) An answer given by a person to a question put to that person, an oral or written statement made by a person, or a document produced by a person, in the course of his or her appearance before the PPC, shall not, except in the case of proceedings for an offence under these Regulations, be admissible in evidence against that person in any civil or criminal proceedings.
- (3) Paragraph (2) shall not apply to evidence given or documents produced by that person which he or she knows to be untrue.

**19 Immunity of member of panel acting for the PPC who is not a member of the States**

- (1) This Regulation applies to a person –
  - (a) who is not a member of the States; and
  - (b) who is a member of a panel appointed by the PPC, pursuant to standing orders, to investigate an act.
- (2) No civil or criminal proceedings may be instituted against the person for any words spoken or written –
  - (a) before or within the panel; or
  - (b) in the panel's report to the PPC.

**20 Application of Part 3 to panel acting for the PPC**

Where, pursuant to standing orders, the PPC appoints a panel to investigate an act this Part shall have effect with the modifications necessary –

- (a) to enable the panel to make a request under Regulation 13(1);
- (b) to empower the PPC to issue a summons requiring a person to appear and give evidence before and produce documents to the panel;
- (c) to confer on a person who gives evidence before or produces any document to the panel the same privileges and immunity as a person who gives evidence before or produces any document to the PPC.

## **PART 4**

### **MISCELLANEOUS AND CLOSING**

**21 Personal service**

- (1) For the purposes of these Regulations, personal service of a summons is effected by leaving it with the person to be served.
- (2) In the case of personal service on a body corporate, such service may be effected by leaving the summons with the president or chairman, or the secretary, treasurer or other similar officer of the body corporate or by leaving it at or delivering it to the registered office of the body corporate.

**22 Ordinary service**

- (1) For the purposes of these Regulations, ordinary service of a summons is effected –
  - (a) in the case of service on an individual –
    - (i) by leaving it at the last known address or last known place of business of the person to be served, or

- (ii) by sending it by ordinary post to the last known address or last known place of business of the person to be served;
  - (b) in the case of service on a body corporate –
    - (i) by leaving it at or sending it by ordinary post to the registered or principal office of the body corporate, or
    - (ii) by leaving it at or sending it by ordinary post to the last known place of business of the body corporate.
- (2) Without prejudice to Article 7 of the Interpretation (Jersey) Law 1954<sup>[2]</sup> a document sent by post to an address in Jersey shall, unless the contrary is proved, be deemed to have been served on the 2nd day after the day on which it was posted, days on which there is no collection or delivery excepted.

## **23 Offences**

- (1) A person shall be guilty of an offence if he or she, without reasonable excuse –
  - (a) disobeys any requirement of a summons issued under these Regulations; or
  - (b) when summoned under these Regulations refuses to comply with a requirement to be examined before, or to answer any lawful and relevant question put by, the committee or panel which issued the summons or, as the case may be, on whose behalf the summons was issued under Regulation 11(b) or 20(b).
- (2) A person guilty of an offence under paragraph (1) shall be liable to a fine of level 4 on the standard scale.

## **24 Citation and commencement**

- (1) These Regulations may be cited as the States of Jersey (Powers, Privileges and Immunities) (Scrutiny panels, PAC and PPC) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force 7 days after they are made.

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[1] L.8/2005

[2] chapter 15.360