

## **The Official Record – 16th July 2007**

### **Draft Unlawful Entertainments (Jersey) Regulations**

#### **The Deputy Greffier of the States:**

Draft Unlawful Public Entertainments (Jersey) Regulations, these States in pursuance of the Order in Council dated 20th March 1771 have made the following regulations.

#### **5.1 Senator W. Kinnard (The Minister for Home Affairs):**

The present Unlawful Public Entertainments (Jersey) Regulations 2004 are due to expire on 20th March 2007. These are triennial regulations and new regulations are now required to replace them. Triennial regulations were first introduced in this area in the 1990s to strengthen the Bailiff's existing control over public entertainment which derives from the late 18th century when it was feared that too much interest in public entertainment on the part of local citizens might encourage idleness or worse, public misbehaviour. Poincarré wrote in the 17th century to the effect that it properly fell to the Bailiff to ensure the orderly and lawful conduct of places to which the public had resort for drinking and entertainment. These customary powers were reflected in the Bailiff's Oath under the Code of Law 1771 which required that he shall ensure that no cause shall be kept that shall cause to be kept the peace. Neither the 1771 Code nor the Act of the States of 1778 laid down the powers of the Bailiff over public entertainment. These powers were intrinsic to the office itself. However, Orders in Council have provided a suitable authority and law on which to bring forward regulations replacing such customary powers. While all this background may seem arcane to some I have been asked by Senator Le Hérissier, by way of written questions, why these regulations today are being made pursuant to the Order in Council. These draft regulations are a replacement for those made in 2004 and make minor changes to them. I am advised therefore that it is appropriate that the 2007 regulations should be made pursuant to the same 1771 Order in Council. The regulations are really a straight re-enactment of previous regulations with the exception of 2 minor changes at Regulations 2 and 6. Turning now briefly to identify those changes, Regulation 2 of the draft regulations creates a new offence of contravening or failing to comply with the conditions subject to which a permit is granted. It would become an offence therefore to fail to take reasonable steps to ensure that conditions upon which permission has been granted were adhered to. For example, events can take place as long as the audience numbers are fixed or the noise levels adhered to or other conditions meant. Although this is implicit in the current process the changes make clear an offence which will have been agreed in advance following consultation with the Panel which advises the Bailiff. Regulation 6 introduces a standard provision as to the liability of an individual where an offence under the regulations is committed by a body corporate or a limited liability partnership. In modern times when the regulations were introduced, as I have said, in the 1990s specifically to deal with instances of unauthorised public entertainment raids taking place in fields and on headlands in the Island when concerns about safety and public order or disturbance made it necessary to be more precise about the requirement for permission and the penalties for acting without that permission. The regulations which relate to public entertainment in general have been in force since that time and it is now necessary for the States to agree to renew the regulations for a further three years. An entertainment requiring Bailiff's permission to take place. The regulations have never included the definition of public entertainment and it was again agreed following discussions with relevant parties that no definition of a public entertainment should be included in these draft regulations. This is because of the difficulty of drawing precise boundaries and the fact that existing regulations have been effectively administered since their first introduction in 1992. It remains an offence at customary law to organise public entertainment without the permission of the Bailiff and all major public entertainment events are passed before the Entertainment Panel chaired by the Bailiff's Chief Officer as a matter of routine. Event plans and assessments are submitted in advance and the Panel provides support advice and offers recommendations regarding the safe and appropriate operation of the event before the permit is issued. In practice, therefore, an intending to stage an event generally finds it difficult to do so without publicising that event and if permission has not been sought he or she is likely to be challenged by either the Parish or the Bailiff's Chamber. If an event proceeds without permission it would be very difficult in those circumstances for it to be claimed that there was no awareness of the requirement to obtain permission. From time to time the exercise of the Bailiff's powers has come under review. Discussion in the recent past of whether control of entertainment should continue to lie with the Bailiff was undertaken by a Legislation Committee Working Party headed by Deputy Le Hérissier. My understanding is that an alternative means of licensing is likely to be both more costly and entail substantial law drafting. For those reasons, I believe, there has been no pressing imperative to change the status quo and thus renewal of the regulations continues to be the means by which the powers to regulate public entertainment continues to be achieved. The draft regulations were

consultation to the Bailiff with feedback also received from Economic Development and Education, and Culture, who have expressed no concerns regarding the proposed amendments to the regulations made recommendations regarding procedural improvements and these observations will be passed to the Bailiff's office. Sir, I propose the principles of the regulations.

### **The Deputy Bailiff:**

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles?

#### **5.1.1 Deputy J.A. Martin:**

Just a small question for the Minister. She draws our attention to a small change under 2(a). Is this an enabling law, in a way, for it to be easier to make -- if one of the Bailiff's conditions were for the owner to pay for policing of an event I can see this could be a condition and I think that is a separate debate. I want reassurance that this could not happen under this new 2(a) because if it does mean anything it could not support it, Sir.

#### **5.1.2 Senator S. Syvret:**

I understand the need to renew these regulations now so the Assembly has little chance other than to deal with them with the relevant amendments. But I do make a plea to the Minister for the future that we really need to be thinking about getting away from the whole notion of the Bailiff, or his subordinate, licensing entertainment or deciding, with the advice of his Panel, what should or should not be permitted to take place. It really is obsolescent, paternalistic, frankly probably not an appropriate involvement of a member of the judiciary who is supposed to be neutral on all matters. Really if there are issues such as public decency, potential risks, policing issues and so on, then they are relevant laws in those fields and the relevant law enforcement agencies ought to be able to deal with it. I think the time has come really to get the judiciary out of this kind of executive role.

#### **5.1.3 Deputy S.C. Ferguson:**

I am a bit concerned about this because the amendment to the regulations gives a much stronger role to the Bailiff's Panel. Previously it has been more advisory than stipulating things and I query that. Following on from Senator Syvret, we have the Bailiff's Panel. Well, the Panel are specialists in their own fields, perhaps. You know, you have a fire officer, the chief ambulance officer, an inspector from the health and safety and so on. Yes, okay, they are specialists in their own field but they are not event specialists. Running an event is quite different to running an ambulance. There are differences. It is not wrong to allow people with no experience in running an event to dictate the conditions. Not something that I understand that all the people involved in organising events in the Island consider, just particularly talking about one event. As I say, there are a number of people. I would ask the Minister to look to the structure of the Bailiff's Panel and perhaps discuss ways in which this should include, perhaps a couple of events organisers or somebody involved in this type of business so that you get a more informed view about what is an acceptable risk in this sort of organisation. Unfortunately, if you do not have that experience in organising an event then your perception of risk and acceptable risk is quite different to those who are experienced in organising these things.

#### **5.1.4 Senator P.F.C. Ozouf:**

I have sympathy with the Minister's position. I fully understand the difficulty that she finds herself in with these regulations, as somewhat uncomfortable as they are. She did say in her opening remarks that Economic Development had been consulted on them. Is she aware that Economic Development has offered to have a member of Economic Development staff on the Bailiff's Panel so that they may advise on the issues concerning the issues that Deputy Ferguson raised about events organisers? Does she not support my call for a member of Economic Development to be part of that balanced team? It appears that it

only regulators that are part of that team and having personal experience of dealing with the Bailiff think that there are issues that need to be improved upon the way in which decision making is not necessarily the accountability of them but certainly the balance in which they make their decisions: people organising events do find the Bailiff's Panel quite difficult for, I think, unfortunate reasons, and that some of those difficulties would be assisted if they would be in agreement that there would be someone from Economic Development or Culture to be part of the Panel.

#### **5.1.5 Senator J.L. Perchard:**

Under 3(3) of the regulations, Sir, it states the proceeds from any confiscation would be transferred credited to the consolidated fund. Would the Minister welcome some clarity and transparency with respect to this transfer, and similarly the proceeds of crime confiscation funds and the drug trafficking confiscation funds, being transferred but the transfer being recorded as an addendum to the States' annual accounts, the use of those funds being associated with that record being made clear and transparent in the accounts of the States?

#### **5.1.6 The Deputy of St. Martin:**

Just a couple of points. One is following up a little bit from what Senator Ozouf was talking about a couple of weeks ago. On page 4 of the report it does mention that: "Draft regulations have been sent for consultation to the Bailiff whose comments have been included within the report. Feedback was also received from Economic Development, Education, Sports and Culture and expressed no concerns regarding the proposed amendments to regulations but have made recommendations regarding procedural improvements." The Minister in summing up could give us a little enlargement of what those procedural improvements were. The second one, is raising a -- a little of the issues have been raised again probably by Deputy F. I was that I get a little bit confused about when we have regulations which do not seem to be compatible with human rights and laws that are. I note that particularly with some of the areas that we have here a role of the Bailiff, et cetera, giving permission whether, in fact, that is compliant with convention or not, why is it not necessary to be shown in this particular regulation, that what is being proposed is convention compliant.

#### **5.1.7 Deputy R.G. Le Hérisier:**

Just a brief word to support what Senator Kinnard said, in fact, and it will interest Senator Syvret if he looks at R.C.26 of 2002, because there the working group did come out against the Bailiff's role in public entertainment. The real problem occurred once the working group had reported, Sir, that it was extremely difficult and we were likely to enter another bureaucratic nightmare in terms of creating what almost -- a bit communistic, a Public Entertainments Authority, where somebody would preside the great and the good. Certainly not the politicians. Of course the arguments for not having a judiciary are as compelling as the arguments for not having politicians. They would deal with the moral aspects of public entertainment and they would deal with the public safety one, Sir. It is probably, in a totally pragmatic sense, the proposal collapsed because of the sheer bureaucracy and the sheer need to define every aspect of public entertainment and so for that reason you removed it from the customary area, as Senator Kinnard said. So, for that reason, the proposal collapsed. It just was not seen as possible to set up this vast bureaucracy with this vast law which would have to define what public entertainment was and was trying to define the grounds upon which discretion was exercised in that field. So, I am afraid, Sir, we were in a bit of a conundrum in this regard and I can understand why the Senator has ended up having to propose something unsatisfactory for fear that it might be something in many respects even more unsatisfactory. All very unfortunate, but that is where it ended.

#### **5.1.8 Connétable M.K. Jackson of St. Brelade:**

Just a couple of brief points, Sir. One is that I am concerned about the over bureaucracy of this, as I have mentioned by previous speakers, and I also agree with the Minister for Economic Development in that we need to be a bit pro-active in the leading of event-led tourism and would not wish for it to be squandered by an over-bureaucratic Committee. Secondly, Sir, I am surprised that in the report there are no mentions of

parishes and Honorary Police being involved. The Minister did mention in her speech the parish would have liked to have seen this written in this report because the Honorary Police, as Members do play quite a large function in these events.

#### **5.1.9 Connétable J.Le S. Gallichan of Trinity:**

I would just like to follow the former Connétable but just also bring it out that I have sat on many Panels. They are to my idea, helpful when it comes to something like Jersey Live which happens in Jersey which is a major policing event and, of course, the only problem that I find sometimes with the Bailiff is when the organisers come with set dates they decide before we sit on what day the festival is going to be held. Even though we might bring up concerns about it, it seems to be an immovable feast and sometimes question how much power the Bailiff's Panel has. I think that if there are concerns or and for the safety of people on the egress of these events -- we fully support Jersey Live, do no wrong, Sir. The Parish fully support it but when 10,000 people leave an event at about 11.00 p.m. it is a major policing event and it is a major problem if problems occur. So far the event is very well organised and we have had very few problems but it does become the problem to the smaller parishes who have an old system which are meant to be policing their own Parish. We do have major draws now. Each Connétable will also, I am sure, say exactly what I am saying, the amount of event-led tourism in the Island at the moment is giving cause to the States Police for the policing and more and more the Honorary Police are being asked to help other parishes. We do this as much as we can but there is a limit to how many officers are called. We have the Battle of Flowers, Air Display, the Marathon, Jersey Live, which are wonderful for tourism but the policing must be taken into consideration. I have a great deal of concern about this draft, I think it is quite fair to say it is a very hard one to bring for the Minister. I fully support it but I would just say that on major events the Bailiff should still have the power.

#### **The Deputy Bailiff:**

I call upon the Minister to reply.

#### **5.1.10 Senator W. Kinnard:**

First of all, Deputy Martin raised the issue of charging for policing events. This is an entirely new proposition. This proposition is not about policing per se, it is purely about the mechanism that is used to grant permission. So a lot of the comments, I think, are really, in a sense, matters for another day. In terms of the charging for policing events, there is no particular rush to bring that piece of legislation as agreement has already been reached with Jersey Live for 2007 for that event to take place, so I would say that that is out with this proposition. It is not really relevant in this particular perspective. Senator Kinnard raised the issue about the Bailiff and whether the Bailiff should have executive powers and certain powers and I am grateful to Deputy Le Hérissier who was the chairman of the working party that looked into this which and I think he gave an excellent response in explaining that what might be needed to replace the Bailiff's Panel could turn out to be a bureaucratic nightmare and would take up quite a lot of resources that can perhaps be better utilised elsewhere at the moment. But, having said that, it is open to any Member of this House to bring a proposition, whether it is Deputy Ferguson or Senator Syvret or anyone else, to obviously change that position if they saw fit once having done the research. But I would recommend that they read the report of the Legislation Committee Working Party of the day on this matter before they jump to any particular conclusions on that matter. Deputy Ferguson did raise the issue about perhaps those that have more of an interest in events taking place in the Island should be members of the Bailiff's Panel. It is not for me to say who should or should not be a member of the Bailiff's Panel but I certainly think that a wider representation from that perspective would certainly do no harm, and one of the things that I mentioned in my speech was that I would be passing on the comments about proposals for changes and recommendations that have been made by Economic Development to the Bailiff's Panel. In the conclusion of this debate, and indeed that is the case, and I am aware of the offer made by Economic Development to put someone forward, and certainly it is a matter I will be taking up with the Bailiff. Senator Perchard talked about that anything that is confiscated would go to the consolidated fund and whether there should be absolute transparency about that. Clearly, that is an issue, I think, more than can be better answered by the Treasury Minister. Clearly, I am keen on transparency wherever it can be applied.

as to how it should appear in the accounts, I am afraid I do not feel I am absolutely qualified to answer perhaps that is a question that could be put to the Treasury Minister on another occasion. The Deputy of St. Martin talked about what were the procedural improvements, and again these are matters not covered by the regulations today. They are matters that I will be passing on to the Bailiff's office but they are matters to do with organisers being made more aware of the need for permits, ensuring that the public is aware of events taking place in their parishes and, obviously, the involvement of someone from Economic Development as a representative of the Panel. Those were the procedural improvements that were recommended which will be put forward to the Bailiff's office and that really was about it. The other points were really points of detail in the report that were made by Education, Sport and Culture and their concerns were taken on board in the re-writing of the draft report. The Deputy of St. Martin also asked why bringing regulations forward there does not have to be a statement about convention rights. I think, that is something I should ask the Solicitor General if she could answer. I cannot remember the exact reasons and wherefores as to why -- I think regulations do not have to. I think it is because they are substantive law but I am sure the Solicitor General will give a much more eloquent explanation. Deputy Hérissier, as I say, I was very grateful to him for his explanation, and the Constables were concerned over bureaucracy. Again, I think this will be assisted, if there are concerns about that, if the proposal for a member from Economic Development on the Panel was taken forward. Again, the issues are not about policing here today, we are just talking about the regulations which is the mechanism for giving permission. They are designed, the amendments that have been made, to give the Bailiff's recommendations greater power and I think that is something that some of the Connétables will be looking for because it is important that if events can be allowed to take place with certain restrictions those restrictions are adhered to for the benefit of the public. One of the ways in which we are seeing you like, bolster the Bailiff's powers is to make that absolutely clear within the regulations. They are a moment, if you like, assumed or taken for granted. But I think it is important that they are now in the face of the regulations so everybody is clear as to what their responsibilities are. So that is to maintain the principles of the regulations.

**The Deputy Bailiff:**

Do Members wish to hear from the Solicitor General briefly on the point on human rights?

**The Deputy of St. Martin:**

If I could on convention compliant, please.

**Miss. S.C. Nicolle Q.C., The Solicitor General:**

The question was why it is that a law has a human rights compatibility statement and regulations these do not. The answer is that Article 16 of the Human Rights (Jersey) Law 2000 says that a Minister lodges 'au Greffe' a projet de loi must, before the second reading of the projet, make a statement to the effect that in his view the provisions of the projet are compatible with the convention rights, or alternatively make a statement to the effect that although the Minister is unable to make a statement of compatibility nevertheless wishes the States to continue with the projet, and the statement must be in writing. A projet de loi is a proposition for a law and that is why when a proposition for a law is presented it must have a human rights statement. But Article 16 refers only to projets de loi, it does not refer to triennial regulations which is what these are. But if it is any comfort to Members I have to say I cannot see anything about regulations which is not human rights compliant.

**The Deputy Bailiff:**

All those in favour of adopting the principles of the regulations kindly show. Those against. The regulations are adopted. Minister, do you wish to propose the regulations?

**Senator W. Kinnard:**

Yes, thank you, Sir. Regulations 1, 3, 4 and 5 are re-enactments of previous regulations covering offence, powers of forfeiture and seizure of the proceeds of the offence and the standard provision in relation to aiders and abettors. Regulation 2 creates the offence of contravening or failing to comply with a condition subject to which a permit is granted. As previously outlined, Regulation 6 adds a standard provision in relation to bodies corporate and limited liability partnerships and the regulations, Sir, will come into force from 21st July. Sir, I propose the regulations.

**The Deputy Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on any of the regulations? All those in favour of adopting all the regulations kindly show. Those against. The regulations are adopted. Do you propose them in third reading?

**Senator W. Kinnard:**

I do, Sir.

**The Deputy Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on third reading? All those in favour of the regulations in third reading kindly show. Those against. The regulations are adopted in third reading although I do beg your pardon, should I have referred this to the Scrutiny Panel? I am afraid I omitted to ask whether your Scrutiny Panel wishes to have this referred to them. Do you have any further comments?

**Deputy D.W. Mezbourian:**

No, thank you, Sir.

**The Deputy Bailiff:**

That is a relief. **[Laughter]**