



Jersey

## **PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) LAW 2014**

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## **PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) LAW 2014**

**A LAW** to regulate the expenditure of, and donations towards the election expenses of, a candidate in a public election

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<i>Adopted by the States</i>	<i>21st May 2014</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>16th July 2014</i>
<i>Registered by the Royal Court</i>	<i>25th July 2014</i>

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

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### **PART 1**

#### **INTRODUCTORY PROVISIONS**

##### **1 Interpretation**

In this Law, unless the context otherwise requires –

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

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

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

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

“Committee” means the Privileges and Procedures Committee established by Standing Orders of the States of Jersey;

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

“Greffier” means the Judicial Greffier;

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

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

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

“working day” means any day other than Christmas Day, Good Friday, a Sunday or a day observed as a bank holiday pursuant to the Public Holidays and Bank Holidays (Jersey) Law 1951<sup>2</sup>.

## **2 Donations and expenses**

- (1) The Schedule has effect to describe –
  - (a) gifts, loans and the supply of goods or services that are donations, the value attributed to a donation and the circumstances in which a donation is anonymous; and
  - (b) expenses that are to be disregarded as election expenses.
- (2) The States may, by Regulations, amend the Schedule.

## **PART 2**

### CANDIDATE’S ELECTION EXPENSES AND DONATIONS

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

- (1) Expenses are a candidate’s election expenses if they are incurred, at any time before the poll –
  - (a) by the candidate or with the candidate’s express or implied consent; and
  - (b) for the supply or use of goods or the provision of services which are used –
    - (i) to promote or procure the candidate’s election at the election, or
    - (ii) to prejudice the electoral prospects of another candidate in the same election.
- (2) Where a candidate is endorsed by a political party, the candidate shall be deemed, for the purposes of paragraph (1)(a), to have consented to the party incurring expenses on his or her behalf.
- (3) A candidate’s election expenses may be direct expenses or notional expenses.
- (4) Subject to paragraph 8 of the Schedule, a direct expense is the amount of any liability incurred for the supply or use of goods or the provision of services which are used as described in paragraph (1)(b).

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- (5) A notional expense is incurred when goods or services supplied either free of charge or at a discount are used as described in paragraph (1)(b).
  - (6) A notional expense is also a donation and, accordingly –
    - (a) the value of a notional expense is determined in accordance with paragraph 3 of the Schedule; and
    - (b) there shall be disregarded any notional expense that, by virtue of paragraph 5, 6, 7 or 8 of the Schedule, is not a donation.
  - (7) If election expenses are incurred by, or with the express or implied consent of, 2 or more candidates, it shall be presumed, unless the contrary is proved by them, that the expenses relate to goods and services which are of equal benefit to them and, accordingly, that those expenses are to be apportioned equally between them.

#### **4 Restriction on candidate's election expenses**

- (1) A candidate's election expenses shall not exceed, in the aggregate –
  - (a) where the candidate is a candidate for election as Senator, £2,800, or, where the candidate is a candidate for election as Deputy or Connétable, £1,700; and
  - (b) 11 pence for each person entitled to vote in the election by virtue of , as the case requires, Article 2(1), (2) or (3) of the 2002 Law.
- (2) A candidate whose election expenses exceed the limit imposed by paragraph (1) is guilty of an offence and liable to a fine.
- (3) The States may by Regulations amend in paragraph (1) the limit on a candidate's election expenses.

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

- (1) A candidate shall not keep an anonymous donation.
- (2) A candidate who receives an anonymous donation shall, within 10 working days of receiving it, send it to the Treasurer of the States.
- (3) The Treasurer of the States shall make such arrangements as he or she thinks fit for the distribution, to one or more charities established in Jersey, of donations sent to him or her under paragraph (2).
- (4) A candidate who fails to comply with paragraph (2) is guilty of an offence and liable to a fine.

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

- (1) Subject to paragraph (2), a candidate shall, no later than 15 working days after the day the poll is held, deliver to the Greffier a written declaration of –
  - (a) the candidate's election expenses, itemising the amounts expended (whether direct or notional) and the goods and services on which they are expended; and

- (b) the donations that the candidate has received, specifying –
  - (i) in relation to each donation of, or having a value of, more than £120, the name of the donor, the amount or value of the donation, and whether the donation is of –
    - (A) money,
    - (B) a loan of money,
    - (C) goods or the use of goods, or
    - (D) services,
  - (ii) the sum of the anonymous donations received, and sent to the Treasurer of the States, by the candidate.
- (2) The donations made by a donor to the candidate shall, for the purposes of paragraph (1)(b)(i), be aggregated.
- (3) The declaration required by paragraph (1) shall be –
  - (a) made using a form supplied by the Greffier;
  - (b) include a statement by the candidate that, to the best of his or her knowledge, information and belief, the information contained in it is true, complete and correct; and
  - (c) signed by the candidate.
- (4) If, having made a declaration, a candidate becomes aware of any variation in or addition to the information required to be declared, the candidate shall, as soon as possible and, in any event, no later than 10 working days after becoming so aware, deliver to the Greffier a further written declaration of the variation or addition.
- (5) A declaration delivered under paragraph (4) shall include a statement conforming to paragraph (3)(b) and be signed by the candidate.
- (6) A candidate who fails to deliver a declaration, or further declaration, in accordance with this Article is guilty of an offence and liable to a fine.
- (7) A candidate 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.
- (8) The States may by Regulations amend –
  - (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 (4).

## **7 Verification of expenses**

- (1) The Greffier may request, in writing, a candidate to produce invoices, receipts and other proof of the candidate's election expenses.
- (2) A candidate shall comply with a request made under paragraph (1) within 15 working days of it being made.
- (3) A candidate who fails to comply with paragraph (2) is guilty of an offence and liable to a fine.

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**8 Requirement to provide information and documents to candidate**

- (1) A person who incurs or pays a candidate's election expenses shall, as soon as is practicable, provide the candidate with such information and documents as the candidate requires to comply with Articles 6 and 7.
- (2) A person who fails to comply with paragraph (1) is guilty of an offence and liable to a fine.

**PART 3**

**THIRD PARTY'S ELECTION EXPENSES AND DONATIONS**

**9 Meaning of "third party" and "third party's election expenses"**

- (1) A third party, in relation to an election, is –
  - (a) a person, who is not a candidate in the election and who is not acting with the express or implied consent of a candidate in the election, who incurs expenses for the supply or use of goods, or the provision of services; or
  - (b) 2 or more persons acting together, none of whom is a candidate in the election and who are not acting with the express or implied consent of a candidate in the election, who incur expenses for the supply or use of goods, or the provision of services,  
which goods or services are used –
    - (i) to promote or procure the election of any candidate in the election,  
or
    - (ii) to prejudice the electoral prospects of any candidate in the election.
- (2) For the purposes of paragraph (1)(b), 2 or more persons act together –
  - (a) if they are jointly liable for the expenses;
  - (b) if the expenses are incurred with their express or implied consent;  
or
  - (c) if they incur and are liable for the expenses separately, but are either working together or liaising to co-ordinate their respective expenditure, and the expenditure is for shared purposes.
- (3) In this Law, any reference to a third party is a reference to a person described in paragraph (1)(a) or, where 2 or more persons are acting together as described in paragraph (1)(b), all of those persons.
- (4) The expenses to be taken into consideration are those incurred at any time before the poll.
- (5) A third party's election expenses may be direct expenses or notional expenses.
- (6) Subject to paragraphs 7 and 8 of the Schedule, a direct expense is the amount of any liability incurred for the supply or use of goods or the provision of services which are used, in either case, for the purposes of an election campaign.

- (7) A notional expense is incurred when goods or services supplied either free of charge or at a discount are used as described in paragraph (1)(i) or (ii).
- (8) A notional expense is also a donation and, accordingly –
  - (a) the value of a notional expense is determined in accordance with paragraph 3 of the Schedule; and
  - (b) there shall be disregarded any notional expense that, by virtue of paragraph 5, 6, 7 or 8 of the Schedule, is not a donation.

#### **10 Restriction on third party's election expenses**

- (1) A third party's election expenses for an election shall not exceed, in the aggregate, one half of the maximum that would be allowed to a candidate in the election by virtue of Article 4.
- (2) Where a third party campaigns in more than one ordinary election held in a year, the sum of the third party's election expenses, for all of those ordinary elections, shall not exceed one half of the maximum that would be allowed to a candidate in the ordinary election for Senators.
- (3) A third party whose election expenses exceed the limit imposed by paragraph (1) or (2) is guilty of an offence and liable to a fine.
- (4) In this Article "ordinary election" means an ordinary election held pursuant to the States of Jersey Law 2005<sup>3</sup> or the Connétables (Jersey) Law 2008<sup>4</sup>.

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

- (1) A third party shall not keep an anonymous donation.
- (2) A third party who receives an anonymous donation shall, within 10 working days of receiving it, send it to the Treasurer of the States.
- (3) The Treasurer of the States shall make such arrangements as he or she thinks fit for the distribution, to one or more charities established in Jersey, of donations sent to him or her under paragraph (2).
- (4) A third party who fails to comply with paragraph (2) is guilty of an offence and liable to a fine.

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

- (1) Subject to paragraph (2), a third party shall, no later than 15 working days after the day the poll is held, deliver to the Greffier a written declaration of –
  - (a) the third party's election expenses, itemising the amounts expended (whether direct or notional) and the goods and services on which they are expended; and
  - (b) the donations that the third party has received, specifying –



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- (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 is of –
      - (A) money,
      - (B) a loan of money,
      - (C) goods or the use of goods, or
      - (D) services,
    - (ii) the sum of the anonymous donations received, and sent to the Treasurer of the States, by the third party.
  - (2) Paragraph (1) shall not apply to a third party whose election expenses for the election are less than £600.
  - (3) The donations made by a donor to the third party shall, for the purposes of paragraph (1)(b)(i), be aggregated.
  - (4) The declaration required by paragraph (1) shall be –
    - (a) made using a form supplied by the Greffier;
    - (b) include a statement by the third party that, to the best of the third party's knowledge, information and belief, the information contained in it is true, complete and correct; and
    - (c) signed by the third party.
  - (5) If, having made a declaration, a third party becomes aware of any variation in or addition to the information required to be declared, the third party shall, as soon as possible and, in any event, no later than 10 working days after becoming so aware, deliver to the Greffier a further written declaration of the variation or addition.
  - (6) A declaration delivered under paragraph (5) shall include a statement conforming to paragraph (4)(b) and be signed by the third party.
  - (7) If a third party is 2 or more persons acting together, any declaration required by this Article shall be made jointly by those persons and signed by each of them.
  - (8) A third party 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) A third party 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.
  - (10) The States may by Regulations amend –
    - (a) the period of time expressed in paragraph (1);
    - (b) the monetary amount in paragraph (1)(b)(i);
    - (c) the monetary amount in paragraph (2);
    - (d) the period of time expressed in paragraph (5).

**13 Verification of expenses**

- (1) The Greffier may request, in writing, a third party to produce invoices, receipts and other proof of the third party's election expenses.
- (2) A third party shall comply with a request made under paragraph (1) within 15 working days of it being made.
- (3) A third party who fails to comply with paragraph (2) is guilty of an offence and liable to a fine.

**PART 4****GENERAL AND CLOSING PROVISIONS****14 Offences: general**

- (1) The limitation in Article 68 of the 2002 Law on the institution of a criminal prosecution under that Law applies also to the institution of a criminal prosecution under this Law.
- (2) The Greffier shall pass any declaration made or documents produced under this Law to the Attorney General where it appears to the Greffier that an offence against any provision of this Law may have been committed.
- (3) Where an offence under this Law committed by a body corporate, a limited liability partnership or a separate limited partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

**15 Offences: defences**

- (1) It shall be a defence for a person charged with an offence against Article 4(2) or 10(3) to prove that he or she took all reasonable steps to avoid the commission of the offence.
- (2) It shall be a defence for a person charged with an offence against Article 5(4), 6(6), 7(3), 8(2), 11(4), 12(8) or 13(3) to prove that he or she has a reasonable excuse for the commission of the offence.

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**16 Greffier to make declarations available for inspection**

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

**17 Arrangements for publication of election material**

- (1) The Committee shall make arrangements for election material provided to it by a candidate to be published in Jersey.
- (2) The election material shall include information summarizing the candidate's background and manifesto (whether or not it contains other information).
- (3) The Committee shall not be obliged to publish election material provided to it by a candidate after the closing date specified by the Committee for the provision of such material.
- (4) The Committee shall not be obliged to publish election material provided to it by a candidate if –
  - (a) the material is provided in a format other than a format specified by the Committee; or
  - (b) the material exceeds a length or size specified by the Committee.
- (5) The arrangements made under this Article shall be available to each candidate in an election on equal terms.
- (6) No person other than the author of election material published pursuant to paragraph (1) shall incur any civil or criminal liability by virtue of the publication.

**18 Consequences of conviction of successful candidate in election**

- (1) This Article applies to a candidate elected in an election and convicted of an offence under Article 4(2), 5(4), 6(6) or (7) or 7(3) connected with his or her election expenses for the election.
- (2) Upon the proceedings for the offence being concluded, the convicted candidate shall be disqualified for taking the office to which he or she has been elected or, if he or she has already taken the office, shall cease to hold the office.
- (3) Paragraph (2) does not prevent the convicted candidate standing as a candidate in the election held to fill the vacancy in office caused by that paragraph.
- (4) Proceedings for an offence are concluded upon –
  - (a) the convicted candidate's conviction being confirmed by a court without any further right of appeal; or
  - (b) the expiry of any time allowed for the convicted candidate to appeal, without an appeal being made.

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**19 Repeal**

There are repealed –

- (a) the Public Elections (Expenditure and Donations) (Jersey) Regulations 2011<sup>5</sup>; or
- (b) if those Regulations have, before the commencement of this Law, expired or been revoked and, in either case, replaced by further triennial Regulations regulating the expenditure of, and donations towards, the election expenses of a candidate in a public elections, those further triennial Regulations.

**20 Citation and commencement**

- (1) This Law may be cited as the Public Elections (Expenditure and Donations) (Jersey) Law 2014.
- (2) If this Law is registered on or before 15th August 2014, it shall come into force 7 days after it is registered.
- (3) If this Law is registered after 15th August 2014, it shall come into force on such day as the States by Act appoint.

**M.N. DE LA HAYE**

*Greffier of the States*

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**SCHEDULE**

(Article 2)

**DONATIONS AND EXPENSES**

**1 Money**

- (1) A gift of money is a donation if –
  - (a) it is made at any time before the poll (including before the nomination meeting), and the giver signifies, either expressly or by implication, that the money is intended for use to pay the recipient's election expenses; or
  - (b) it is made after the nomination meeting and before the poll, and is either made anonymously or the giver does not signify the intended use of the money.
- (2) A loan of money is a donation if –
  - (a) it is made either at no cost to the recipient or on terms by which the cost to the recipient is below the commercial rate for the loan; and
  - (b) it is made –
    - (i) at any time before the poll, and the lender signifies, either expressly or by implication, that the loan is intended for use to pay the recipient's election expenses, or
    - (ii) after the nomination meeting and before the poll, and is either made anonymously or the lender does not signify the intended use of the loan.
- (3) A gift or loan of money is made at the time when the money is given to the recipient or, if earlier, the time when the giver or lender informs the recipient of his or her intention to make the gift or loan.

**2 Goods and services**

- (1) A supply of goods (including a supply by way of loan or rental) or a supply of services is a donation if –
  - (a) it is made free of charge or at a discount to the open market value of or rate for the supply of the goods or services; and
  - (b) it is made –
    - (i) at any time before the poll, and the person making the supply signifies, either expressly or by implication, that the goods or services are intended for use –
      - (A) where the recipient is a candidate, for the purposes described in Article 3(1)(b), or

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- (B) where the recipient is a third party, for the purposes described in Article 9(1)(i) or (ii),
    - (ii) after the nomination meeting and before the poll, and is either made anonymously or the person making the supply does not signify the intended use of the goods or services.
  - (2) A supply of goods or services is made at the time when the goods or services are provided to the recipient.

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

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

### **4 Anonymous donations**

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

### **5 Exception for services provided by the Committee**

Where –

- (a) the Committee provides services for the dissemination of information about or on behalf of candidates in a public election; and
- (b) those services are provided on the same terms to each of those candidates, the provision of those services is not a donation.

### **6 Exceptions relating to services of an individual provided without charge**

- (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.



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- (2) Subject to sub-paragraph (3), the exception in sub-paragraph (1) does not extend to any goods used by or supplied by the individual in the course of the provision of the individual's own services.
  - (3) Where, in the course of the provision of the individual's own services, an individual uses his or her own goods, the use of the goods and any expenditure incurred by the individual that is incidental to the use of the goods, is not a donation.

## **7 Exception for newspapers and broadcasts**

- (1) Subject to sub-paragraph (2), the publication of any matter relating to the public election –
  - (a) in a newspaper or periodical circulating in Jersey;
  - (b) in a programme broadcast by a television or radio service provider; or
  - (c) on a website as part of the news service of a television or radio service provider or news agency,is not a donation or a third party's election 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 download from a website, the reference in sub-paragraph (1)(b) to the broadcast programme includes the programme as it may be accessed from a website.

## **8 Exception for re-used goods**

Where –

- (a) goods were supplied for use by a candidate or third party in an election (the "previous election");
- (b) the goods are used by the candidate or third party in a later election (the "subsequent election"); and
- (c) either –
  - (i) any direct and notional expenses for their supply were taken into account in determining, for the purposes of this Law or any Regulations that it replaced, the amount of the candidate's or third party's election expenses in relation to the previous election, or
  - (ii) the previous election preceded the ordinary elections in 2008,

any direct and notional expenses for the supply of the goods are neither a donation nor an election expense in relation to the subsequent election.





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- <sup>1</sup> *chapter 16.600*  
<sup>2</sup> *chapter 15.560*  
<sup>3</sup> *chapter 16.800*  
<sup>4</sup> *chapter 16.250*  
<sup>5</sup> *R&O.66/2011 (chapter 16.580)*