

STATES OF JERSEY

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DRAFT STATES OF JERSEY (AMENDMENT No. 4) LAW 200

Lodged au Greffe on 6th September 2005
by Senator S. Syvret

STATES GREFFE



Jersey

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REPORT

When examining the issues of election expenditure and campaign funding across a selection of modern, well established democracies, it quickly become clear that a great deal of attention has been given to the subject of election expenditure over the years and that all such countries – virtually without exception – have some form of regulation upon electoral campaign expenditure. It therefore seems strange indeed that Jersey, in the 21st century, should have precisely zero legislation in this field.

It is doubly surprising that the recent changes to government in Jersey have produced no legislation to address this subject. This is a particularly serious failing, given the fact that certain private and corporate business interests have millions of pounds riding upon the outcome of elections in Jersey, and therefore will not hesitate to spend many tens or even hundreds of thousands of pounds – or more – if that’s what it takes, in an effort to ensure that candidates favourably disposed towards their interests are elected.

The interests of ordinary people and candidates who seek to represent them, cannot possibly compete with the massive resources that can be directed at achieving a favourable election outcome in the interest of the rich and powerful. This is not an opinion – it is a statement of fact. The evidence is plain. Respectable democracies have long recognised that high levels of expenditure have a quantifiable effect on the outcomes of elections – big money buys election victories – and for that reason, they have legislation which seeks to achieve a levelling of the playing field so that political parties and ordinary candidates can compete fairly with those who would otherwise have virtually unlimited resources to spend on their campaigns, if they were willing to put themselves in hock to business interests or the rich.

Jersey should, without question, join respectable democracies in having limits upon election expenditure and campaign funding. However, this draft Law does not address those 2 questions. Too little time remains within the life of this Assembly to address the detailed Law needed, and neither do we have a yardstick by which to judge an appropriate level of election expenditure. The purpose of this Law is, instead, to bring a much-needed degree of transparency to election expenditure and campaign funding. If adopted this Law would also provide us with much-needed background data on actual election expenditure by candidates. From this data we would be in a better position to properly assess what might be reasonable limits on election expenditure for inclusion in a future law.

Were the States to adopt this Law, all election candidates would be required to make 2 declarations. The first would require them to declare at a nomination meeting how much they planned, at that stage, to spend on their campaign and from whom they were receiving financial support. The second declaration would need to be completed 60 days after the election, and would be in the form of a final account of the total actually spent on the campaign, and a final list of those from who the candidate received material financial support during the election campaign.

The objective of the first declaration is to achieve a measure of transparency *before* the election at the nomination meeting. This will enable the voting public to see how much a candidate proposes to spend, and more importantly, which individuals or corporate interests may be supporting that candidate. This is particularly relevant information for the voting public. Let us imagine there were 2 companies. Let’s call them the ‘Let’s Develop all of Jersey Corporation’, involved in property speculation and development; and a retail conglomerate called ‘Jersey Retail Monopoly Limited’. Such hypothetical companies could, as I suggested earlier, have many, many millions of pounds riding on the outcome of the election. How much may a property development company lose if a new States were to be elected that, for example, preferred to place a tax upon commercial property development and speculation, rather than the present approach of taxing bread, fruit, milk and medicines? Imagine how much

property speculators might be prepared to spend in order to carry on achieving a States Assembly that won't properly control inward migration, thus keeping demand high for properties? Likewise, landlords would have a very keen interest in such policy outcomes and might regard pouring money into the campaigns of the "right" candidates a good investment. How much of a dent might appear in the profits of a monopolistic retail conglomerate if States policies and Laws were to turn more strongly against them?

At present, when going into an election, the public run the risk of unwittingly ending up electing half-a-dozen Senators for 'ABC Retailers limited' or 15 Deputies in hock to 'Little Boxes Property Development Limited'. If you were an election candidate, just imagine what large amounts of money or corporate backing could achieve for you. The very expensive services of Jersey's numerous firms of spin-doctors could be purchased; clever campaign strategies devised by professionals; professional website designers used; spin-doctors and graphic artists employed to design marvellously impressive glossy brochures; that brochure may be personalised, enveloped and mailed to every registered voter; a professional poster campaign; a variety of expensive advertising in both the print and broadcast media. Recent elections have seen some – if indeed not all – of these type of services used in election campaigns. Election campaigns along these lines cost huge amounts of money. Certainly amounts beyond the reach of the humble candidate – but very easily within the reach of corporate interests who will have big money riding upon the outcome of an election – and who may stop at nothing when it comes to buying their candidates into office.

If big money backing and sponsorship is playing a role in an election – if it is behind certain candidates – the public have a right to know.

That right to know, of course extends to candidates who have the backing of political parties, professional associations and unions. Jersey now has, apparently, 2 political parties, the JDA and a further party. We also have the emergence of a crypto-party in the form of Elect Jersey 2005. This latter organisation, though denying it is a party, has a stated aim of supporting election candidates. The public has a right to know if candidates are being given financial support by organisations, and to know who those organisations are. It is to be hoped that no respectable organisation would have a problem with such transparency.

When developing this draft Law it became apparent that the objective of transparently identifying wealthy backers could be easily subverted through the mechanism of anonymous donations. For this reason the draft Law places a total maximum limit of £100 that may be kept by a candidate. Any anonymous donations a candidate receives over that total, must be forwarded to the Treasurer of the States for distribution to charities in Jersey.

The declarations also require all candidates to list the commercial and professional services they may use. This will include printers, advertising media, professional campaign managers, advertising agencies and firms of spin-doctors. Most services purchased will be fairly standard and un-remarkable, but if candidates are employing, for example, spin doctors and professional advertising agencies, the use of such professional services may have a bearing on the outcome of the election. The public have a right to know if certain candidates are being supported by what may be, in essence, a professional campaign of the type that only the rich or those supported by the rich could possibly afford.

The second declaration is needed, because it is feasible that a candidate, may in good faith, declare his or her proposed expenditure and sponsors at the nomination meeting, but then receive further support they had not been expecting, during the course of the campaign. Such additional support should be declared. It will also be difficult for candidates to predict with complete accuracy, the cost of their campaign, before it has run its course. Thus, in the interests of transparency an accurate and complete declaration must be submitted to the States Greffe no later than 60 days after the election.

Both declarations would be held by the States Greffe for public inspection.

Work on preparing this Law began some time ago. However, in exploring the many complex issues it quickly became a lengthy task. I have received extensive help from the Law Draftsman and her Department and I would like to record my thanks to her. Laws in other jurisdiction were considered, and the draft Law went through numerous permutations. For example, dealing with the subject of anonymous donations took some time. This Law does not offer a perfect solution to the whole sphere of election expenditure and campaign funding. For example, it may be argued that extremely wealthy individuals who become candidates in an election – and there have been many in that category – won't have to declare sponsors or financial backers, because they have none – because they don't need them. However, the Law would still require them to declare their expenditure, and as already stated, this Law is an important first step on the path of limiting election and campaign expenditure.

It will be apparent that this Law deals with only elections for Senator and Deputy. The reason for this is that

Connétables are elected under a different Law. It follows naturally that similar provisions should be introduced in respect of the election of Connétables with an amendment to the relevant Law.

Financial and manpower statement

The declarations would need to be gathered by the person presiding at a nomination meeting and forwarded to the States Greffe. The States Greffe would need to keep the declarations in a folder, available for public inspection, in much the same way as the present declarations of States members business interests are kept for inspection. Therefore no significant financial or manpower issues arise.

Example of how goods supplied at less than market value would be dealt with under the Law

A candidate purchases 500 campaign rosettes. The market price for them is £1 each, so the purchase price would normally be £500, but the supplier sells them to the candidate at a discount of 50%.

The candidate's declaration relating to the transaction would be –

- (a) donation of £250 by the supplier (representing the value of the 50% discount);
- (b) election expense of £500, being a direct election expense of £250 (the amount paid by the candidate for the rosettes) plus a notional election expense of £250 (the amount of the discount).

Explanatory Note

Article 1 defines the principal Law.

Article 2 inserts a new Article 9A in the principal Law. The new Article gives effect to a new Schedule 1A, itself inserted in the principal Law by *Article 3*.

Schedule 1A establishes a scheme for the declaration of donations and election expenses and imposes certain restrictions on election expenses. It applies to all candidates for election as a Senator or Deputy, whether or not they are elected.

Paragraph 1 contains definitions and construction provisions necessary for the operation of the Schedule.

A “donation” may be a gift of money that the candidate uses, or intends to use, to pay his or her election expenses. It may also be a supply of goods or provision of services either free of charge or at a discount to the rate at which they are available for supply or provision to the public in general, if the goods or services are used for the candidate’s election.

“Election expenses” are the sum of “direct election expenses” and “notional election expenses”. “Direct election expenses” are expenses paid or incurred by any person to buy, hire or obtain the provision of goods or services which are used for the candidate’s election. “Notional election expenses” are the value attributable to a donation of goods or services given either free of charge or at a discount. They represent the expenses that the candidate would have incurred had the donation not been made.

Paragraph 1(2) has 2 effects. Firstly, if a person makes a donation through the medium of a 3rd party, it is that person, rather than the 3rd party, who is the donor for the purposes of the Schedule. Secondly, a promise to make a donation is subject to the same requirements for declaration as if the donation had been made.

Paragraph 1(3) ensures that if one donor makes several donations to a candidate, the donations are aggregated and treated as if they were a single donation.

Paragraph 2 provides the detail of what constitutes both –

- (a) a donation of a supply of goods or a provision of services by a donor and
- (b) a notional election expense of the candidate.

The supply or provision must be at a discount to the market value or a preferential rate and the goods or services must be used in the candidate’s election. Paragraph 2(4) explains how the donation/notional election expense is to be valued. If the goods or services are supplied free of charge, then their value is the whole of their open market value or the commercial rate for their use. If the goods or services are supplied at a discount, then their value is the difference between the discounted value or rate and the open market value or commercial rate.

Paragraph 2(5) provides that, if goods or services are only partly used for the candidate’s election, the value attributable to them is apportioned accordingly.

Paragraph 2(6) provides that if a volunteer helps the candidate, in the volunteer’s own time and free of charge, the services provided by the volunteer are neither a donation nor a notional election expense. However there is an exception to this rule if the volunteer is providing services of a kind that he or she would provide in the course of his or her business or employment. For example, if a website designer volunteers to build a website for the candidate, the value of the service provided is a donation and a notional election expense.

Paragraph 3 prohibits any person paying or incurring election expenses, or receiving donations, without the written authority of the candidate. Non-compliance is an offence under paragraph 8. The prohibitor enables a candidate to keep a record of what is being done on his or her behalf and which must be declared.

Paragraph 4 prohibits a candidate keeping more than £100 in total of anonymous donations. A donation is anonymous if the candidate cannot ascertain the donor’s identity. Once a candidate has received

anonymous donations in an amount or having a value totalling £100, he or she must send any further anonymous donations to the Treasurer of the States. The Treasurer is charged with distributing all such donations sent to him or her amongst local charities.

Paragraph 5 requires a candidate for election as a Senator or Deputy to make a written declaration, at the time of his or her nomination, which will be read out at the nomination meeting and then sent to the Greffier of the States. The declaration must state –

- the name and address of each person who has made a donation in an amount or value of more than £100 to the candidate
- the aggregate of the donations in an amount or value of £100 or less made to the candidate by identifiable donors
- the amount or value of each anonymous donation that the candidate has kept
- the amount or value of each anonymous donation sent to the Treasurer of the States
- the candidate's actual election expenses to date and, to the best of the candidate's knowledge, his or her proposed election expenses, specifying for each expense the supplier, the cost and a description of the goods or services.

The form and content of the declaration can be prescribed in standing orders.

Paragraph 6 requires the candidate to make a second declaration, within 60 days after the election whether or not the candidate is elected. The information to be provided is the same as that required under paragraph 5 except that the candidate must now specify all his or her actual election expenses. The declaration must be sent to the Greffier of the States.

If this draft Law were adopted by the States, it would not be in force before the commencement of the campaigns for election in autumn 2005. Nevertheless, paragraph 6(1) contains provisions that would apply to candidates in that election. It requires candidates to make and send to the Greffier of the States a declaration of their donations and election expenses within 60 days following the day this Law comes into force. However, candidates are only required to declare donations received and election expenses incurred after this draft Law is adopted by the States, being the point in time when candidates will be on notice that the provisions of the draft Law will be enacted. Further, because it is not expected that the amending Law would be in force before the election is concluded, and accordingly the restriction in paragraph 3 on a third party incurring expenses and receiving donations on behalf of the candidate would not apply during the forthcoming election, candidates would not be required to declare election expenses incurred and donations received by a third party of which the candidate was not aware.

It may be the case that an amount of election expenses changes or that a donation is received after the second declaration has been made. In either case, the candidate must make a further declaration, within 14 days, specifying the change or addition to the information previously provided.

Paragraph 7 requires the Greffier of the States to keep all declarations and make them available for inspection by the public.

Paragraph 8 creates offences. A person who pays or incurs election expenses or receives donations without the written authority of the candidate commits an offence. A candidate who does not forward anonymous donations to the Treasurer of the States when required to do so commits an offence. A candidate who fails, without reasonable excuse, to make a declaration, or knowingly makes a false declaration, commits an offence. In each case the penalty is a fine up to level 4 on the standard scale (£5,000). This is the same as the penalty for making a false declaration of qualification for election and of past convictions under Article 9 of the principal Law.

Article 4 provides for the citation of the Law and for it to come into force 7 days after it is registered in the Royal Court.



Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 4) LAW 200

A LAW to amend further the States of Jersey Law 2005

Adopted by the States [date to be inserted]

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

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law, “principal Law” means the States of Jersey Law 2005.^[1]

2 Article 9A inserted

After Article 9 of the principal Law there shall be inserted the following Article –

“9A Expenses of and donations to candidate for election as Senator or Deputy

Schedule 1A shall have effect regarding the expenses of and donations to a candidate for election as a Senator or Deputy.”.

3 Schedule 1A inserted

After Schedule 1 of the principal Law there shall be inserted the following Schedule –

“SCHEDULE 1A

(Article 9A)

EXPENSES OF, AND DONATIONS TO, CANDIDATE FOR ELECTION AS SENATOR OR DEPUTY

1 Interpretation

(1) In this Schedule –

“amending Law” means the States of Jersey (Amendment No. 4) Law 200;

“anonymous donation” means a donation for which the candidate is unable to ascertain

the identity of the donor;

“candidate” means a candidate for election as a Senator or Deputy;

“direct election expense” means, in relation to a candidate, any expense paid or incurred, whether before, during or after an election, in respect of –

- (a) the acquisition or use of goods; or
- (b) the provision by any person of goods or services,

which is or are used for the purposes of the candidate’s election;

“donation”, in relation to a candidate, means –

- (a) a gift of money that the candidate intends to use, or uses, to pay direct election expenses; or
- (b) a supply of goods or provision of services to which paragraph 2 applies;

“election expenses” means direct election expenses and notional election expenses;

“notional election expense”, in relation to a candidate, shall be construed in accordance with paragraph 2;

“services” includes the provision of a loan of money.

- (2) In this Schedule, any reference to any thing being given, supplied or provided includes –
 - (a) a reference to its being, given, supplied or provided directly or indirectly through any third person; and
 - (b) a reference to a promise’s being made to give, supply or provide it at some future date (whether or not the promise is legally binding, and whether or not that future date is before or after the election concerned).
- (3) Where a person (other than an anonymous donor) gives more than one donation to a candidate, this Schedule shall apply to the aggregate amount or value of those donations as if they were a single donation.

2 Goods and services provided free or on preferential terms

- (1) Subject to sub-paragraph (6), this paragraph applies where –
 - (a) goods are supplied free of charge or at a discount to their open market value; or
 - (b) goods or services are provided free of charge or at a discount to the commercial rate for their use,and the goods or services are made use of in such circumstances that, if expenses were or are paid or incurred in respect of the use, they would be or are direct election expenses of the candidate.
- (2) The supply or provision of the goods or services is a donation by the supplier.
- (3) The use of the goods or services for the purposes of the candidate’s election is a notional election expense of the candidate.
- (4) Subject to sub-paragraph (5), the value of the donation or notional election expense is–
 - (a) in the case of goods supplied to the candidate free of charge, their open market value;
 - (b) in the case of goods or services provided for the use of a candidate free of charge, the commercial rate for their use;
 - (c) in the case of goods supplied to the candidate at a discount, the difference between their open market value and the discounted price;
 - (d) in the case of goods or services provided to the candidate the difference between

the commercial rate for their use and the rate at which they are provided.

- (5) Where the goods or services are only partly used for the purposes of the candidate's election campaign, the value of the donation or notional election expense is the proportion of the amount determined in accordance with sub-paragraph (4) as is reasonably attributable to such use of the goods or services.
- (6) This paragraph does not apply to the provision, by any individual, of his or her own services where the individual provides those services voluntarily, in his or her own time and free of charge (unless the services are of a kind ordinarily provided by the individual in the course of his or her business or employment).

3 Restriction on payment of or incurring election expenses or receiving donations

No-one, apart from the candidate, shall pay or incur election expenses, or receive donations, without the written authority of the candidate.

4 Anonymous donations that may not be kept or used

- (1) A candidate may only keep anonymous donations in an amount or having a value, in the aggregate, of £100 or less.
- (2) A candidate who receives an anonymous donation that he or she may not keep shall, within 14 days of receiving it, send it to the Treasurer of the States.
- (3) The Treasurer of the States shall make arrangements for the distribution of donations sent to him or her under this paragraph to one or more charities established in Jersey.
- (4) In the case of an anonymous donation of a supply of goods, the Treasurer is not required to make arrangements under sub-paragraph (3) if distribution is not practicable.
- (5) In the case of an anonymous donation of a provision of services which the candidate would, apart from this sub-paragraph, be required to send to the Treasurer of the States, the candidate shall, instead, not use the services.

5 Requirement for declaration at time of nomination

- (1) A candidate shall, at the time of his or her nomination, be required to make a declaration, in writing –
 - (a) in the case of donations given by donors whose identity can be ascertained, of –
 - (i) each donation in an amount or having a value in excess of £100, specifying in each case the amount or value of the donation and the name and address of the donor, and
 - (ii) the aggregate of other donations;
 - (b) in the case of anonymous donations, of –
 - (i) the amount or value of each donation the candidate has kept, and
 - (ii) the amount or value of each donation sent to the Treasurer of the States under paragraph 4; and
 - (c) of the candidate's election expenses including, to the best of the candidate's knowledge and intention, his or her future election expenses, specifying for each expense –
 - (i) the name of the supplier or provider,
 - (ii) the amount of the election expense, and
 - (iii) a description of the goods supplied or services provided.

- (2) The person presiding at a nomination meeting convened under Article 20 of the Public Elections (Jersey) Law 2002 shall –
 - (a) read out to the meeting the declaration made under sub-paragraph (1) by a candidate; and
 - (b) forward the declaration to the Greffier of the States.
- (3) The form and content of the declaration may be prescribed.

6 Requirement for declaration following election

- (1) A candidate (whether or not elected) in an election for which the poll is taken after the amending Law is adopted by the States but before it comes into force shall, within the period of 60 days following the day the amending Law comes into force, comply with sub-paragraph (3) save that the candidate shall not be required to declare –
 - (a) donations received or election expenses paid or incurred before the amending Law is adopted by the States; or
 - (b) election expenses paid or incurred by another person of which the candidate is not aware.
- (2) A candidate (whether or not elected) in an election for which the poll is taken after the amending Law comes into force shall, within the period of 60 days following the taking of the poll, comply with sub-paragraph (3).
- (3) The candidate shall make and forward to the Greffier of the States a declaration in writing –
 - (a) in the case of donations given by donors whose identity can be ascertained, of –
 - (i) each donation in an amount or having a value in excess of £100, specifying in each case the amount or value of the donation and the name and address of the donor, and
 - (ii) the aggregate of other donations;
 - (b) in the case of anonymous donations, of –
 - (i) the amount or value of each donation the candidate has kept, and
 - (ii) the amount or value of each donation sent to the Treasurer of the States under paragraph 4; and
 - (c) of the candidate's election expenses, specifying for each expense –
 - (i) the name of the supplier or provider,
 - (ii) the amount of the election expense, and
 - (iii) a description of the goods supplied or services provided.
- (4) If, having made a declaration pursuant to paragraph (1) or (2), a candidate becomes aware of any variation in or addition to the information required to be declared the candidate shall, within 14 days of becoming so aware, make and forward to the Greffier of the States a further declaration stating the variation or addition.
- (5) The form and content of a declaration may be prescribed.

7 Declarations to be available for inspection

The Greffier of the States shall keep all declarations forwarded to him or her under this Schedule and make them available for inspection by the public.

8 Offence

- (1) A person who contravenes paragraph 3 shall be guilty of an offence.
- (2) A candidate who –
 - (a) fails to comply with a requirement under paragraph 4; or
 - (b) when required to make a declaration under this Schedule –
 - (i) fails without reasonable excuse to do so, or
 - (ii) knowingly makes a false declaration,shall be guilty of an offence.
- (3) The penalty for an offence under this paragraph is a fine of level 4 on the standard scale.”.

4 Citation and commencement

This Law may be cited as the States of Jersey (Amendment No. 4) Law 200 and shall come into force 7 days after it is registered.

[1] L.8/2005.