

STATES OF JERSEY



DRAFT UNLAWFUL PUBLIC ENTERTAINMENTS (JERSEY) REGULATIONS 201-

Lodged au Greffe on 7th June 2010
by the Minister for Home Affairs

STATES GREFFE



Jersey

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REPORT

The Unlawful Public Entertainments (Jersey) Regulations 2007 are triennial Regulations, which were originally introduced in the 1990s in order to bolster the Bailiff's control of public entertainment which is a customary power derived from a late 18th Century Act of the States. The new Regulations replace the current Unlawful Public Entertainments (Jersey) Regulations 2007, which are due to expire on 21st July 2010.

The new Regulations differ in the following respects:

The Regulation 'Aiders and abettors, etc.' is no longer required and has been removed from within the new Regulations; this results from the enactment of the Criminal Offences (Jersey) Law 2009.

No definition of a 'public entertainment' has ever been included because of –

- (a) difficulties in drawing precise boundaries in determining a strictly legal interpretation, and
- (b) the effective administration of the Regulations since their first introduction in 1992.

In practice, a person intending to stage an event generally finds it difficult to do so without publicising that event. If permission has not been sought, he/she is likely to be challenged by either the Parish or the Bailiff's Chambers. If that person then proceeds without permission, it would be difficult in those circumstances for it to be claimed that he/she was unaware of the requirement to obtain permission. From a practical point of view, therefore, it is unnecessary to become involved in what would be a cumbersome task in trying to develop precise definitions to cover every possible type of event.

It should be noted that it is an offence at customary law to organise public entertainment without the permission of the Bailiff.

All major public entertainment events are routinely passed before a committee of interested parties (the Public Entertainment Panel), chaired by the Bailiff's Chief Officer and comprising representatives of – States of Jersey Police, Ambulance Service, Fire and Rescue Service, Health Protection and Health and Safety. Event Plans and full Risk Assessments are submitted in advance, and the Panel provides

support, advice and offers recommendations regarding the safe and appropriate operation of the event, before a permit may be issued.

Issues raised by the States in 2007

When the Regulations were placed before the States in July 2007, States members queried whether –

- (i) it remained appropriate for the Bailiff to be responsible for control of entertainment;
- (ii) the Regulations were Human Rights compliant.

On the question of the role of the Bailiff in relation to the control of entertainment, a review was initiated by the Legislation Committee Working Party, chaired by Deputy R.G. Le Hérisier of St. Saviour (R.C.26/2002). The first conclusion of the Working Party was: *“It is no longer appropriate for the Bailiff to exercise the executive function of controlling public entertainment”*. However, it subsequently emerged that an alternative means of licensing entertainment would be relatively costly and entail substantial law drafting. Therefore, the conclusion was not taken forward. During the July 2007 debate, Deputy Le Hérisier stated: *“It was just not seen as possible to set up this vast bureaucracy with this vast law which was trying to define what public entertainment was and was trying to define the grounds upon which discretion could be exercised in that field.”*

On the second matter of Human Rights compliance, there is no requirement for a Human Rights statement to be attached to the draft Regulations, as they are not a ‘projet de loi’. However, the former Solicitor General was able to inform members that she saw nothing in the Regulations that was not Human Rights compliant.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these Draft Regulations.

Explanatory Note

These Regulations would replace the Unlawful Public Entertainments (Jersey) Regulations 2007 upon their expiry.

Regulation 1 re-enacts the offence of holding a public entertainment without the permission of the Bailiff.

Regulation 2 re-enacts the offence of contravening a condition subject to which permission is given. By virtue of the Interpretation (Jersey) Law 1954, “contravene” includes a failure to comply. The offence takes account of the possibility that a contravention may occur due to circumstances that the organizer of the event cannot control. Accordingly, for the offence to be proved, it must be shown that the organizer or person concerned, in providing the event, did not take all reasonable precautions to avoid the contravention.

Regulation 3 re-enacts the power for a court to forfeit property used in connection with the commission of an offence or shown to be the proceeds of the offence.

Regulation 4 re-enacts the power for a police officer to seize any property that may be liable to forfeiture. It also re-enacts the offence of obstructing a police officer in the exercise of the power of seizure.

Regulation 5 is the standard provision as to the liability of individuals where the offence is committed by a body corporate or limited liability partnership.

Regulation 6 re-enacts the statement that the Regulations do not alter any customary law offence.

Regulation 7 provides for the citation, commencement and duration of the Regulations.



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Arrangement

Regulation

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of the Order in Council dated 14th April 1884¹, have made the following Regulations –

1 Organizing an unlawful public entertainment an offence

- (1) A person who organizes or is otherwise concerned in providing an unlawful public entertainment shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.
- (2) For the purposes of paragraph (1), a public entertainment is unlawful if it is held without the permission of the Bailiff.
- (3) The Bailiff may grant permission for the provision of a public entertainment subject to such conditions as the Bailiff thinks fit.

2 Contravention of condition of permission an offence

An organizer of, or a person otherwise concerned in providing, a public entertainment shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if –

- (a) any condition of the Bailiff's permission for the entertainment is contravened; and
- (b) the organizer of, or person otherwise concerned in providing, the entertainment did not take all reasonable precautions to avoid the contravention.

3 Forfeiture on conviction

- (1) Subject to paragraph (2), the court by or before which a person is convicted of an offence against Regulation 1 or 2 may, in addition to any other penalty which it imposes, order the forfeiture of anything which is shown to the satisfaction of the court –

- (a) to have been used in the course of committing the offence or in connection with its commission; or
 - (b) to be the proceeds of that offence or to have been obtained by that person as a result of the commission of the offence.
- (2) A court shall not order property to be forfeited under this Regulation where a person claiming to be the owner of, or otherwise interested in, the property applies to be heard by the court, unless an opportunity has been given to that person to show cause why the order should not be made.
- (3) Property which is ordered to be forfeited under this Regulation may be dealt with or disposed of in such manner as the court may order, and any proceeds realized by such disposal shall be paid to the Treasurer of the States to be credited to the consolidated fund.

4 Police powers of seizure

- (1) If a police officer reasonably believes that an offence against Regulation 1 or 2 has been committed, that officer may seize and detain anything which appears to the officer would, upon a conviction for the offence, be liable to forfeiture under Regulation 3.
- (2) Nothing in this Regulation shall prejudice any power to seize or detain anything which is exercisable apart from this Regulation.
- (3) A person who intentionally obstructs or resists a police officer in the exercise of that officer's powers under this Regulation shall be guilty of an offence and liable to a fine of level 2 on the standard scale.

5 Offences by body corporate, etc.

- (1) Where an offence committed by a limited liability partnership or body corporate against these Regulations is proved to have been committed with the consent or connivance of or, in the case of an offence against Regulation 2, 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 the offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

6 Saving of customary law

Nothing in these Regulations shall be taken as abolishing, modifying or prejudicing any offence against the customary law.

7 Citation, commencement and duration

- (1) These Regulations may be cited as the Unlawful Public Entertainments (Jersey) Regulations 2010.
- (2) These Regulations shall come into force on 21st July 2010 and shall remain in force for 3 years from that date.

¹

chapter 16.700