

STATES OF JERSEY



DRAFT UNLAWFUL PUBLIC ENTERTAINMENTS (JERSEY) REGULATIONS 201-

Lodged au Greffe on 8th April 2013
by the Minister for Home Affairs

STATES GREFFE



Jersey

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REPORT

The Unlawful Public Entertainments (Jersey) Regulations 2010 are triennial Regulations, which are due to expire on 21st July 2013. These Regulations make it an offence to hold a public entertainment without the permission of the Bailiff. These Regulations were initially introduced in July 1992 in order to bolster the Bailiff's control of public entertainment, which is a customary power, reflected in his oath under the Code of Laws of 1771, "vous garderez et ferez garder la paix".

In 2000 it was proposed that the triennial Regulations should be replaced with a permanent Law. However, the Attorney General of the day expressed the view that the legislation ought to define what is meant by 'public entertainment'. There were great difficulties in determining a strictly legal interpretation of 'public entertainment', and the Regulations have been administered effectively since 1992. Consequently, the Regulations were re-enacted in 2001, 2004, 2007 and most recently in 2010, still without a definition of 'public entertainment'.

When the Regulations came to the States in 2007, States members queried whether it remained appropriate for the Bailiff to be responsible for the control of entertainment and whether the Regulations were Human Rights compliant. In relation to the second point, there is no requirement for a Human Rights compliance statement to be attached to draft Regulations, as they are not a *projet de loi*. However, our advice at the time was that there was nothing in the Regulations that was not Human Rights compliant.

In respect of the appropriateness of the Bailiff to be responsible for the control of entertainment, this was the subject of a review by the then Legislation Committee, following the adoption of P.168/2000, which was brought to the States by the late Senator C.G.P. Lakeman, and which charged the Committee –

- (a) to investigate the current powers exercised by the Bailiff in controlling Public Entertainment;
- (b) to consider, in consultation with the Bailiff and other interested parties, the desirability to alter the current position, including providing by statute for a Committee or Committees of the States, or some other person, to exercise any or part of such power; and
- (c) to report to the States with the recommendations.

The first conclusion of the Legislation Committee working party, chaired by Deputy R.G. Le Hérisser of St. Saviour, was that it was no longer appropriate for the Bailiff to exercise the executive function of controlling public entertainment. However, it

later emerged that an alternative means of licensing entertainment would be costly and entail substantial law drafting, for which time was not available.

It is 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 Public Entertainments Panel, which is chaired by the Bailiff's Chief Officer and comprises representatives from the States of Jersey Police, the Ambulance Service, the Fire and Rescue Service, Health and Safety and Health Promotion. 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.

The Regulations were last brought back to the States in 2010. During the debate on 20th July 2010, States Members were largely in agreement that the current administration of entertainment by the Bailiff's Panel works well and that there was no need to change the system. However, Deputy M. Tadier of St. Brelade raised the issue of people's right under Article 11 of the Human Rights Law to "Freedom of assembly and association" and queried whether somebody who organised a demonstration, without first obtaining the permission of the Bailiff under the Regulations, would be criminalised.

Following the States debate, advice was sought on 2 issues –

- (a) whether or not people wishing to demonstrate would need to obtain permission from the Bailiff; and
- (b) whether any further work has been carried out to reach a satisfactory definition of 'public entertainment' within a Jersey context.

Advice was subsequently received that demonstrations were not what was contemplated when the Regulations were originally drafted. No licence is required pursuant to the Regulations for a demonstration. However, there may be some confusion because Bailiffs have always claimed a customary power to control any events and entertainment in the Royal Square. Therefore, the permission of the Bailiff would be required to demonstrate in the Royal Square, but it would not be pursuant to these Regulations.

In relation to reaching a definition of 'public entertainment' within a Jersey context, the Minister was advised that no further work had been carried out in this respect. It would be open to any person who is in doubt as to whether or not what they are proposing is 'public entertainment' to seek guidance from the Bailiff's Chambers.

Mindful that even if it were felt desirable to implement the Working Party's recommendations, it was unlikely that this could be achieved before the current Regulations expire in July 2013, so it was decided that it was preferable to renew them on a triennial basis rather than allow them to lapse.

Following his agreement during the States debate on 20th July 2010 to liaise with the Education and Home Affairs Scrutiny Panel and Deputy Tadier, the Minister wrote to both the Panel and the Deputy in November 2012 with the information that he had received. He also invited the Scrutiny Panel to review the triennial Regulations and to consider whether it is desirable to move forward with implementing the Working Party recommendations. The Panel has informally advised the Minister that it does intend to review this subject, but agreed that the work could proceed in tandem with the renewal of the triennial Regulations.

These current, draft Regulations differ from those approved by the States in 2010 in that they have not re-enacted the provisions that were contained in Regulations 3 and 4 of the 2010 Regulations. Regulation 3 of the 2010 Regulations gave the court a power

of forfeiture and Regulation 4 gave the police power to seize items that can be forfeit. The rationale for not re-enacting Regulation 3 is that there are powers within other pieces of legislation, for example the Criminal Justice (Forfeiture Orders) (Jersey) Law 2001, which applies to both the Magistrate's Court and Royal Court and which gives the court the necessary power of forfeiture. In relation to Regulation 4, it is felt that the police do not need to be given a specific power to seize items in order to stop a noisy entertainment from continuing, for example, as they already have the necessary powers to prevent a crime from occurring, or continuing, and this includes a power of arrest.

Also, in Regulation 3(1), there is a new reference to 'separate limited partnership'. This is new, resulting from the Separate Limited Partnerships (Jersey) Law 2011, which came into force after the current Regulations were enacted. In the same way as a limited liability partnership, a separate limited partnership has a legal personality and can commit offences.

As detailed above, there is no requirement for a Human Rights compliance statement to be attached to draft Regulations, as they are not a *projet de loi*. However, nothing new has arisen since our previous advice that there was nothing in the Regulations that was not Human Rights compliant.

Financial and manpower implications

There are no additional financial or manpower implications arising from these draft Regulations.

Explanatory Note

These triennial Regulations replace the Unlawful Public Entertainments (Jersey) Regulations 2010 (“the 2010 Regulations”) on their expiry.

Regulation 1 re-enacts the offence of holding a public entertainment without the permission of the Bailiff (with a penalty of imprisonment for up to 6 months, an unlimited fine, or both).

Regulation 2 re-enacts the offence of contravening a condition subject to which permission is given (with a penalty of imprisonment for up to 6 months, an unlimited fine, or both). A contravention (which includes a failure to comply) may occur due to circumstances that the organizer of the event cannot control. So 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.

These Regulations do not re-enact the court’s power of forfeiture currently contained in Regulation 3 of the 2010 Regulations, nor the related power in the current Regulation 4 for the police to seize items that can be forfeited under Regulation 3. Other legislation now provides a general regime for forfeiture powers, including the Proceeds of Crime (Jersey) Law 1999, the Criminal Justice (Forfeiture Orders) (Jersey) Law 2001 and the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008. Some of those powers are reserved or appropriate only for more serious offences, but the Criminal Justice (Forfeiture Orders) (Jersey) Law 2001 does apply to the offences contained in Regulations 1 and 2, to give the court the power to forfeit items used to commit those offences. The removal of the current Regulation 4 does not affect other powers that the police have under other law to seize items or to take steps to halt an unlawful public entertainment.

Regulation 3 re-enacts the standard provision (in Regulation 5 of the 2010 Regulations) as to the liability of individuals where the offence is committed by a body corporate or limited liability partnership. It now extends also to the new separate limited partnerships (under the Separate Limited Partnerships (Jersey) Law 2011). Like a limited liability partnership, a separate limited partnership needs specific provision because it is a legal person without being a body corporate.

Regulation 4 re-enacts the statement (in Regulation 6 of the 2010 Regulations) that the Regulations do not alter any customary law offence.

Regulation 5 names the Regulations, brings them into force on 21st July 2013 (when the current triennials expire), and provides for them to expire after 3 years (as triennials).



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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 Offences by body corporate, etc.

- (1) Where an offence committed by a limited liability partnership, a separate limited partnership or a 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.

4 Saving of customary law

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

5 Citation, commencement and duration

- (1) These Regulations may be cited as the Unlawful Public Entertainments (Jersey) Regulations 201-.
- (2) These Regulations shall come into force on 21st July 2013 and shall remain in force for 3 years from that date.

¹ *chapter 16.700*