

STATES OF JERSEY



REGULATION OF ELECTION EXPENSES: CONSULTATION PAPER

**Presented to the States on 15th January 2007
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

The Privileges and Procedures Committee has recently proposed a number of options concerning the reform of the composition of the States Assembly. As well as working on proposals for changing the composition of the States, the Privileges and Procedures Committee has considered other matters relating to public elections.

This consultation paper sets out the Committee's draft proposals for introducing a limit on the amount candidates seeking election to the States can spend during their campaign.

The Committee would like to know what you think about these proposals. In particular the Committee is keen to know your views on the following points –

- (i) do you support the general principle of introducing a limit on election expenses and, if so, what should that limit be?
- (ii) should it be made illegal for candidates to receive unsolicited assistance during a campaign?
- (iii) should assistance such as a free mailing service be provided to candidates? Should any other help be offered?
- (iv) do you agree that candidates should be required to declare the source of any funding they receive from third parties?

While it will be helpful to know your views on these specific questions, the Committee will, of course, also consider all the points which you wish to make on this subject.

The consultation period will last until Friday 9th March 2007. To give your views you can -

- write to the Privileges and Procedures Committee, c/o States Greffe, Morier House, St. Helier, Jersey JE1 1DD
- e-mail your views to the Committee Clerk, p.horton@gov.je

Once all views have been received and considered, the Committee will lodge a proposition for debate in the States. If the final proposals are supported by members of the States legislation will be drafted for approval so that the new system can be introduced before the next major States' elections which are scheduled for 2008.

Connétable Derek Gray
Chairman
Privileges and Procedures Committee

Executive Summary

- (1) A financial limit should be introduced on the amount candidates in elections to the States can spend during their campaign. The limit should be based on a basic sum (possibly £1,000) to which would be added an amount multiplied by the number of registered electors in the relevant constituency, possibly 10p per elector (Paragraphs 3.1 to 3.3).
- (2) Assistance provided to a candidate free of charge, or at reduced cost, by a person who would normally charge for the service concerned (for example a printer giving a candidate free leaflets) should be assessed at its full value when calculating election expenditure (Paragraph 4.1).
- (3) Expenditure incurred collectively by a group of candidates should be shared equally between the candidates concerned when calculating election expenditure (Paragraph 5.1).
- (4) It should be made illegal for third parties to provide unsolicited assistance to candidates such as taking out advertisements on their behalf (Paragraphs 6.1 and 6.2).
- (5) Candidates should be allowed to post one leaflet in a bulk mailing to every registered elector in their constituency free of charge during the election campaign (Paragraph 7.1).
- (6) Every candidate should be required to submit a return of election expenditure within 10 days of the election date setting out his or her expenditure. Sanctions would be introduced for failure to make a return or for making a false return. The Royal Court would be empowered to disqualify successful candidates from office if it was proved that they had deliberately made a false return or spent in excess of the prescribed sum (Paragraphs 8.1 and 8.2).
- (7) Candidates should be required, as part of their return of expenditure, to signify the source and amount of any funding received from a third party (Paragraph 9.1).

1. Introduction

- 1.1 The Privileges and Procedures Committee has responsibility for all matters relating to public elections and has recently put forward a number of options regarding the future composition of the States Assembly.
- 1.2 In parallel with its work on the actual composition of the States the Committee has given consideration to proposals on other matters relating to public elections. The Committee is keen to encourage more people in Jersey to become interested and engaged in elections but is also keen to ensure that public elections in Jersey are conducted on a “level playing field” basis. The Committee has therefore looked at the issue of the regulation of election expenses.
- 1.3 This paper sets out the Committee’s initial proposals and options for the introduction of a system of regulation of election expenses. Following the period of consultation the Committee plans to bring forward final proposals later in 2007 so that, if approved, appropriate legislation can be in place before the next major States elections scheduled for 2008.

2. Background

- 2.1 There is currently no limit whatsoever on the amount that a candidate can spend when seeking election to the States of Jersey. There is also no restriction on candidates receiving help or sponsorship from third parties. After the 2005 elections the Committee asked members of the States for an informal indication of the amounts that they had spent on their most recent election campaign and the amount spent varied considerably (see Appendix 1 for a summary of the amounts spent). Some candidates had spent only a few hundred pounds on their campaigns whereas others had spent several thousands of pounds.
- 2.2 In an Island-wide election it is necessary to spend a considerable sum of money if, for example, an expensively produced leaflet is mailed to every elector. It would be beyond the reach of many potential candidates to spend the sums required to do this and, irrespective of their policies, candidates with limited means may therefore be at a significant disadvantage in the electoral process (although it is fair to point out that no scientific research has ever been undertaken in Jersey to see if there is a correlation between the amount spent in a campaign and electoral success).
- 2.3 It is commonplace in many jurisdictions to place some restriction on the amount that candidates can spend during an election campaign. In Guernsey a relatively simple system has been in place for a number of years and during the last general election in 2004 candidates for the office of People’s Deputy in Guernsey could spend no more than £1,200 on their campaign. Further details on the Guernsey system are given in Appendix 2.
- 2.4 In bringing forward these proposals PPC wishes to stress that it has no desire to do anything that would prevent candidates from obtaining help from friends, family and other supporters to assist during an election campaign. There is, of course, a long tradition in Jersey of voluntary support for candidates in distributing leaflets, making and erecting posters and assisting candidates in other ways. As can be seen below nothing in these proposals would stop this happening in the future unless the support provided was of a nature that would usually be undertaken on a professional basis by the person concerned. PPC is also keen to ensure that any system brought in is relatively simple so that it can be implemented and overseen at minimal cost and without undue bureaucracy.

3. Imposing a financial limit

- 3.1 PPC believes that if a system is to be worthwhile it must impose an actual monetary limit rather than simply require a return of expenditure without any limit being in place.
- 3.2 PPC favours a system which is common in many jurisdictions where a basic monetary amount is allowed to every candidate with an additional sum related to the number of electors in the particular constituency. The Committee favours this system as there are certain fixed expenses, for example the design of leaflets

or a website, that are broadly common to every candidate irrespective of the size of the constituency whereas other expenses, for example the printing and mailing of leaflets, will be relative to the number of electors.

3.3 Appendix 3 sets out various options based on different basic sums and different sums per registered elector. PPC favours the initial introduction of a basic sum of £1,000 per candidate with an additional sum of 10p per registered elector. If this sum had been permitted in the 2005 Senatorial elections candidates would have been able to spend up to a total of £6,442 in that election. Candidates for the position of Deputy of St. Mary in the last Deputies elections would have been able to spend up to £1,143 under this system. The States would be able to increase the amounts by Regulation to take account of inflation.

3.4 PPC believes that the limitation should apply to all expenditure related to the election. Although the Guernsey legislation prevents candidates from incurring expenditure before they are nominated the Committee does not believe this is necessarily practical as candidates may wish to incur expenditure before the formal nomination meeting, for example to buy rosettes or print election literature. This would be permissible but any such expenditure would have to be accounted for within the overall limit allowed.

4. Assessing the value of goods and services provided to candidates

4.1 As mentioned above it is, of course, traditional in Jersey for considerable amounts of voluntary help to be given to candidates by friends and relations. PPC has no wish to catch the majority of this assistance within the scope of any regulation of election expenses but there are occasions when candidates receive services free of charge, or at reduced cost, that the person concerned would normally charge for in the course of their business. For example a printer may be willing to assist a candidate by printing free leaflets or a designer may be prepared to design a website for a candidate. In order to ensure a level playing field PPC believes that any such services should be assessed at the full rate that the provider would normally charge for the services. Candidates would therefore need to obtain a formal estimate of the real cost of the service provided to them free of charge or at reduced cost.

5. Expenses incurred by a collective group of candidates

5.1 As part of its work on election matters PPC is already considering the issue of the registration of political parties. Even in the absence of any system of formal party registration there may be some election expenses that are incurred collectively by a group of candidates. Candidates who share a common political outlook may decide to share an advertisement or print leaflets in a common format. PPC believes that the expenditure in these circumstances should simply be divided between the candidates concerned and the relevant share of expenditure would be counted as part of the overall limit allowed to the individual candidate concerned. If party registration is introduced expenditure incurred by the party on behalf of candidates would need to be divided between the candidates standing for that party.

6. Unsolicited assistance provided to candidates

6.1 It is possible that a candidate may receive unsolicited support, for example through an advertisement placed in the local media by a third party urging electors to support the candidate concerned. If a candidate received significant assistance of this nature it could clearly undermine the whole reason for having a limitation on election expenditure by the candidate himself or herself. In addition it might be possible for a candidate to circumvent the restrictions on expenditure by claiming that particular advertisements or election material were unsolicited and provided without the candidate's involvement.

6.2 PPC believes that third parties should therefore be prevented by law from providing unsolicited assistance to candidates. If a third party wished to provide assistance he or she would need to obtain consent from the candidate and any expenditure incurred would then become part of the candidate's own return of election expenditure within the prescribed limit.

7. Free mailing service for candidates

7.1 PPC believes that, if a level playing field is to be created, some assistance should be provided equally to

all candidates. The Committee therefore proposes that a free mailing should be available to candidates, outside the expenditure limit imposed, so that standard size leaflets prepared by every candidate are distributed in one bulk mailing to every elector in the relevant constituency. This would not only ensure that the views of candidates were distributed on a fair basis to electors, but would also, hopefully, increase interest in the electoral process and encourage higher turnouts at elections.

8. Making a return of expenditure

- 8.1 Although it is likely that any system will be largely self-policing it is nevertheless clearly necessary for any system to provide that candidates must make a return after the election setting out the total expenditure that they incurred. PPC does not believe that the returns should systematically be subject to detailed verification but there would clearly need to be appropriate sanctions for making a fraudulent return or incurring expenditure in excess of the prescribed amount. The Committee considers that the Royal Court should be given discretion to disqualify a successful candidate from office if the Court found that a successful candidate had knowingly made a deliberate attempt to circumvent the restrictions.
- 8.2 PPC proposes that the return of expenditure should be made within 10 working days of the election date. This will hopefully give candidates sufficient time to receive invoices in relation to expenditure incurred before the election. There would need to be sanctions in the legislation in relation to any failure to provide a return within the specified period.

9. Disclosing the source of funding and assistance

- 9.1 Although the proposals on limiting election expenses will go some considerable way to allay any concerns that candidates may receive substantial financial backing from third parties PPC believes that it is nevertheless appropriate to require candidates, when submitting their return of expenditure, to give full details of any financial backing, or other assistance, received from third parties. Candidates would therefore need to disclose the source of the expenditure incurred as well as the amount.

2006 QUESTIONNAIRE TO STATES MEMBERS ON ELECTION EXPENSES

In 2006 States Members were questioned by PPC regarding the amount they spent on their last election campaign. Members completed the questionnaire on an entirely voluntary basis and provided a rough estimate of their expenses. Outlined below are details of the average amount spent by Members.

SENATORS

A total of 9 Senators completed the questionnaire.

The lowest amount spent by Senators was between £500 and £1,000.

The highest amount spent by Senators was between £5,000 and £10,000.

The average amount spent by Senators was £3,583.34.

CONNÉTABLES

A total of 6 Connétables completed the questionnaire.

The lowest amount spent by Connétables was between £0 and £500.

The highest amount spent by Connétables was between £2,000 and £3,000.

The average amount spent by Connétables was £1,033.34.

DEPUTIES

A total of 21 Deputies completed the questionnaire.

The lowest amount spent by Deputies was between £0 and £500.

The highest amount spent by Deputies was between £3,000 and £4,000.

The average amount spent by Deputies was £1,188.06.

REGULATION OF ELECTION EXPENSES IN GUERNSEY



SOUTH-EAST ELECTORAL DISTRICT

Mon Réve,
Rue du Tertre,
St. Andrew,
Guernsey,
GY6 2SF

March, 2004

Dear Sir or Madam

Election Expenses

I write to remind you of the provisions of the Reform (Guernsey) Law, 1948, as amended, regulating the amount which a candidate in an election may expend.

The relevant sections of the Law and Ordinance made under Article 44 (1) thereof are attached.

Whilst the precise interpretation of these provisions is a matter upon which you are entitled to take your own advice and indeed ultimately is for the interpretation of the Royal Court, I am advised that the import of the provisions is as follows:-

1. Apart from the amounts prescribed in the Elections Ordinance, 2004, which currently provides a sum of £1,200.00 in respect of an election for the office of People's Deputy, no money may be expended other than in the period specified in the Ordinance, namely during the period commencing on the day on which the candidate delivers his nomination form to the President of the States and ending on the date of the election. This means that you may not incur expenditure prior to this period or thereafter.
2. The restriction applies not only to moneys expended on behalf of the candidate on his own account but also moneys spent by third parties promoting his candidature.

Please let me have a return, with supporting vouchers showing full particulars of all moneys or money's worth, expended by you or on your behalf, in respect of the election, no later than the fourteenth day after the date when the election takes place, that is Wednesday, 5th May, 2004. The return must contain a declaration in writing, signed by you stating that the particulars are correct to the best of your knowledge and belief

Yours faithfully,

J. R. Domaille,
Returning Officer.

The relevant sections of the Reform (Guernsey) Law, 1948 as amended are as follows:-

"Expenditure by Candidates

44. (1) Save as hereinafter provided no candidate in any election shall in respect of such election expend any sum of money or give any value in money's worth otherwise than in accordance with such provisions as shall, from time to time, be prescribed by Ordinance:

Save that nothing contained in this Article or in any Ordinance made hereunder, shall be deemed to affect the right of any candidate to purchase copies of the appropriate section of the Electoral Roll in accordance with Article 36 of this Law, and any moneys expended in such purchase may be expended in addition to the maximum permissible amounts so prescribed.

(2) Any candidate who contravenes, whether by himself or by his servant or agent, any of the provisions of this Article or of any Ordinance made thereunder, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding level five on the uniform scale* and in addition to such fine shall, if a successful candidate ... forfeit his seat:

PROVIDED ALWAYS that if it is shown to the satisfaction of the Court that such contravention arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith, the Royal Court may make an order relieving the candidate from the consequences of such contravention.

Return of Expenditure by Candidates

45. (1) Every candidate at any election shall during the fourteen days next following the date of such election submit to the Returning Officer a return showing full particulars of all moneys or money's worth expended or given by him in respect of such election, and shall submit therewith vouchers supporting such disbursements and a declaration in writing signed by him that the particulars shown in such return are to the best of his knowledge and belief correct.

(2) Any candidate who supplies any particulars which he knows or ought to have known to be false, or otherwise contravenes the requirements of paragraph (1) of this Article shall be guilty of an offence and, subject to the like proviso as is made to paragraph (2) of the last preceding Article, shall be liable on conviction to a fine not exceeding level 5 on the uniform scale*.

Expenditure by Persons other than Candidates

45A. (1) Except as authorised under the provisions of Article 44 of this Law, a person shall not expend any sum of money or give any value in money's worth with a view to promoting or procuring the election of a candidate in any election:

Provided that nothing in this Article shall be taken to restrict the publication in a newspaper or in a broadcast by radio or television of a statement presenting the views of a candidate.

(2) Any person who contravenes the provisions of this Article shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the uniform scale⁴⁴.

The Ordinance made in conformity of Article 44 (1) above is The Elections Ordinance, 2004 and it provides:

5. A candidate in an election for the office of People's Deputy may, during the period commencing on the day on which he delivers his nomination form to the President of the States and ending on the date of the election, expend money or give value in money's worth in respect of that election up to a maximum of £1,200.

⁴⁴ Level 5 on the uniform scale is currently £5,000.



Island of Guernsey

Ordinance of the States

VI
2004

| | |
|------------------------------|---------------------|
| Made | 12th February, 2004 |
| Coming into operation | 12th February, 2004 |
| Laid before the States | 25th February, 2004 |

The Elections
Ordinance, 2004

The Elections Ordinance, 2004

THE STATES LEGISLATION COMMITTEE, in pursuance of the Resolution of the States of 29th October 2003^a, and in exercise of the powers conferred on the States by Articles 25(3), 29(3), 34(1)(b), 39(2) and 44(1) of the Reform (Guernsey) Law, 1948 (the Reform Law), as amended^b, and on the Committee by Article 66(3) of the Reform Law, hereby orders:

Date of People's Deputies' Election:

1. The date for the General Election of People's Deputies to be held in April 2004 shall be Wednesday 21st April, 2004.

New Electoral Roll

2. The Electoral Roll in existence on 23.59 hours on 29th February, 2004 shall, at that time, cease to be valid, and shall be replaced by a new Electoral Roll compiled in accordance with the provisions of the Reform Law.

Closure of entries to Electoral Roll

3. In relation to the General Election referred to in section 1, the Electoral Roll shall be closed on 1st February, 2004, and no entry to it shall be made or amended during the period beginning on that date and ending on the date of the election.

^a Article XXIV of Bill of Law No. XXI of 2003.

^b Orders in Council Vol. XII, p.288; Vol. XIV, p. 407; Vol. XV, p. 279; Vol. XVI, p. 178; Vol. XVII, p. 215; Vol. XIX, pp.82 and 140; Vol. XXII, p. 122; Vol. XXIII, p. 476; Vol. XXVI, p. 255; Vol. XXX, p. 56; Vol. XXXI, p. 16; Vol. XXXII, p. 164; Vol. XXXIII, p. 47; No. V of 1993; No. II of 1986; No. III of 1988; No. X of 1998.

Hours of Polling in St Peter Port

4. At every election for the office of People's Deputy held in the Electoral Districts of St Peter Port South and St Peter Port North every polling station shall open at 08.00 hours and be kept open until 20.00 hours.

Electoral expenditure: People's Deputies:

5. A candidate in an election for the office of People's Deputy may, during the period commencing on the day on which he delivers his nomination form to the President of the States and ending on the date of the election, expend money or give value in money's worth in respect of that election up to a maximum of £1,200.

POSSIBLE LIMITS FOR ELECTION EXPENSES IN JERSEY

Based on 2005 Electoral Register at time of Senators/Deputies' elections

| CONSTITUENCY | BASIC AMOUNT | AMOUNT PER ELECTOR | ELECTORS 2005 | TOTAL ALLOWED |
|-----------------------------------|---------------|--------------------|---------------|---------------|
| Senatorial (Island wide) | £1,000 | £0.07 | 54,417 | £4,809 |
| Senatorial (Island wide) | £1,000 | £0.10 | 54,417 | £6,442 |
| Senatorial (Island wide) | £1,000 | £0.15 | 54,417 | £9,163 |
| Senatorial (Island wide) | £2,000 | £0.07 | 54,417 | £5,809 |
| Senatorial (Island wide) | £2,000 | £0.10 | 54,417 | £7,442 |
| Senatorial (Island wide) | £2,000 | £0.15 | 54,417 | £10,163 |
| Deputy of St Mary | £1,000 | £0.07 | 1,130 | £1,079 |
| Deputy of St Mary | £1,000 | £0.10 | 1,130 | £1,113 |
| Deputy of St Mary | £1,000 | £0.15 | 1,130 | £1,170 |
| Deputy of St Mary | £2,000 | £0.07 | 1,130 | £2,079 |
| Deputy of St Mary | £2,000 | £0.10 | 1,130 | £2,113 |
| Deputy of St Mary | £2,000 | £0.15 | 1,130 | £2,170 |
| Deputy of St Helier No 3/4 | £1,000 | £0.07 | 7,586 | £1,531 |
| Deputy of St Helier No 3/4 | £1,000 | £0.10 | 7,586 | £1,759 |
| Deputy of St Helier No 3/4 | £1,000 | £0.15 | 7,586 | £2,138 |
| Deputy of St Helier No 3/4 | £2,000 | £0.07 | 7,586 | £2,531 |
| Deputy of St Helier No 3/4 | £2,000 | £0.10 | 7,586 | £2,759 |
| Deputy of St Helier No 3/4 | £2,000 | £0.15 | 7,586 | £3,138 |