
STATES OF JERSEY



ELECTION EXPENDITURE AND POLITICAL DONATIONS

**Presented to the States on 25th February 2020
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Privileges and Procedures Committee consultation document

Purpose

1. This paper sets out the options for reform of the law applying to election expenditure and political donations, arising from recent decisions of the States Assembly, and seeks views on them. The Assembly's Privileges and Procedures Committee (PPC) intends to consider the views it receives ahead of bringing forward draft legislation on these matters later in the year.

Background

2. The rules applying to election expenditure and donations are to be found in the [Public Elections \(Expenditure and Donations\) \(Jersey\) Law 2014](#). The law –
 - Defines the term “candidate’s election expenses” (but see paragraph 25 below).
 - Sets limits on expenditure (for a candidate to be a Senator £2,800 plus 11 pence for each person entitled to vote; for a candidate to be a Connétable or a Deputy £1,700 plus 11 pence for each person entitled to vote).
 - Prohibits candidates from keeping anonymous donations.
 - Requires candidates to make a declaration of expenditure to the Judicial Greffier no later than 15 working days after the day of the poll and enables the Greffier to seek invoices, receipts and other proof of expenditure if required. People who incur or pay a candidate’s costs are required to provide relevant information to the candidate so that they can make their declaration in time.
 - Sets out similar rules for ‘third parties’ – people or groups who support or campaign against candidates.
 - Creates various offences in relation to matters such as failure to provide a declaration in time.
3. A number of issues with the law, and how it has been implemented by the Judicial Greffe, were brought to light after the 2018 election, when 3 candidates were charged with offences relating to alleged late or absent declarations. The charges were withdrawn after it was found that up to 45 candidates may have made expenditure declarations in a manner which was not compliant with the law, although there was no evidence of any candidate having exceeded the expenditure limits. This led to calls in the Assembly for the law to be reviewed, as set out in paragraph 4, below. In any case, the law has been in place through 2 general elections (2014 and 2018) so it is sensible for it to be reviewed now, in good time before the 2022 election.

Proposals for change

4. Since the beginning of 2019, the Assembly has agreed 3 propositions on changes to the law relating to election expenditure and political donations. These were as follows –

Public Elections (Expenditure and Donations) (Jersey) Law 2014: proposed review ([P.7/2019](#)) – Deputy J.M. Maçon of St. Saviour

The States requested the Privileges and Procedures Committee to –

- (1) undertake, as part of its current work responding to the report of the election observers, a review of the Public Elections (Expenditure and Donations) (Jersey) Law 2014 and how it had been implemented, focusing in particular on –
 - (a) introducing a process for confirmation to candidates that a declaration of expenditure had been submitted;
 - (b) introducing a validation process, by which candidates had an opportunity to correct any errors in their declaration;
 - (c) ensuring that candidates were reminded of the deadline for submitting their declaration at least 5 working days before the deadline to do so;
 - (d) extending the ‘reasonable steps’ defence in Article 15 of the Law so that it encompassed illness (mental and physical), bereavement, and absence or incapacity due to medical treatment;
 - (e) ensuring that all candidates made a declaration, even if elected unopposed;
 - (f) introducing a means by which political parties could declare their election costs; and
 - (g) assessing the merits of extending the deadline of 15 working days for the submission of expenditure declarations, under Article 6 of the Law; and
- (2) consult on any recommendations arising from this review; and
- (3) bring forward amendments to the Public Elections (Expenditure and Donations) (Jersey) Law 2014 (and other legislation as necessary) to implement any recommendations arising from this review and to amend references within the Law to “election expenses” to “election costs”, in time for such changes to be enacted no later than the end of 2020.

Public Elections (Expenditure and Donations) (Jersey) Law 2014: proposed amendments ([P.6/2019](#)) – Deputy J.H. Young of St. Brelade

The States requested the Privileges and Procedures Committee to bring forward for debate the necessary legislative changes to the Public Elections (Expenditure and Donations) (Jersey) Law 2014 to require the publication of candidates' statutory declarations of election expenses on an appropriate public website after the expiry of the statutory period for such declarations, providing sufficient detail of the expenses declared.

Public Elections: Declaration of donations exceeding the current threshold for declaration in law ([P.120/2019](#)) – Connétable of St. Martin

The States were of the opinion that –

- (a) subject to public consultation to make it a legal requirement for donations received by election candidates and third parties in elections which exceed the current threshold for declaration in the law (£120) to be declared and made publicly available (including online) within 2 days of receipt;
- (b) subject to public consultation in relation to donations to political parties of, or worth, £120 and above –
 - (i) the name of the donor and the value of such donations must be declared to the Judicial Greffier within one week of receipt;
 - (ii) the Greffier should maintain a register, published online and available otherwise for public inspection, showing all of the information declared in respect of each donation to each party; and
 - (iii) anonymous donations should be treated in the same way as anonymous donations are currently treated under the Public Elections (Expenditure and Donations) (Jersey) Law 2014;
- (c) to request the Privileges and Procedures Committee to incorporate these matters in its forthcoming consultation on election expenditure and, subject to the outcome of the consultation, to bring forward for approval the changes to legislation necessary to give effect to this proposition.

This consultation document sets out PPC's thinking on how to implement these propositions and seeks views on the best way forward.

Issues for consultation

Online publication

5. PPC agrees that election expenditure information should be published online, to enable the Public to see quickly and easily how much candidates are spending on elections and what the money is spent on. The Committee's view is that the information could be added to the vote.je website, which is already well-regarded as the central resource for information about elections in Jersey. The website is administered by the States Greffe and it would be for that department and the Judicial Greffe (which receives returns of election expenditure from candidates) to devise a system for keeping vote.je up to date.
6. At present, the law provides for the Judicial Greffier to make candidates' declarations of expenditure available for inspection at the Greffe. Should this system be replicated online, with the declarations made available electronically, showing, for example, which businesses candidates have bought goods and services from? An alternative would be only to publish information by category (e.g. advertising, transport, public meetings), as is done in the UK. This would enable the information provided by candidates to be easily comparable, without necessarily disclosing exactly where the money was spent. A third option would be to publish the summary by category as well as the original declarations. **We seek views on this matter.**

Introducing a process for confirmation to candidates that a declaration of expenditure has been submitted

7. The Judicial Greffier has confirmed to us that he has now introduced an e-mail confirmation to candidates that a declaration of expenditure has been submitted. **Would it be advantageous to include this requirement in the law?**

Introducing a validation process, by which candidates have an opportunity to correct errors in their declarations

8. The [Public Elections \(Expenditure and Donations\) \(Jersey\) Law 2014](#) provides for a candidate to give notice of a "variation in or addition to" the information they have provided in an expenditure declaration, within 10 days of that declaration being made. The Judicial Greffier has suggested to us that this meets the request in [P.7/2019](#) for there to be a process whereby candidates may correct errors. Our research has shown that some jurisdictions provide more time for errors to be corrected – for example, 30 days is allowed in Canada. **Does the existing law provide sufficient opportunity for candidates to correct errors in their declarations of expenditure?**

Ensuring that candidates are reminded of the deadline for submitting their declaration at least 5 working days before the deadline to do so

9. Candidates are informed of the deadline for the submission of expenditure declarations in the letter they receive from the Judicial Greffier when they are nominated and, of course, the law is published online at jerseylaw.je. **Should the law require the Judicial Greffier to contact candidates at least 5 working days**

before the deadline for the submission of expenditure declarations to remind them of the deadline?

Extending the ‘reasonable steps’ defence in Article 15 of the Law so that it encompasses illness (mental and physical), bereavement and absence or incapacity due to medical treatment

10. Article 15(2) of the Public Elections (Expenditure and Donations) (Jersey) Law 2014 provides that, for various offences under the law, a person can defend themselves by demonstrating that they had “a reasonable excuse for the commission of the offence”. This is perhaps most relevant to the offence under Article 6(6) of the Law of not delivering an expenditure declaration to the Judicial Greffier in accordance with the legal requirements. In relation to offences of exceeding statutory limits, Article 15(1) provides that it shall be a defence to show that a person took “all reasonable steps” to avoid commission of the offence.
11. Deputy Maçon’s proposition suggested that factors which might constitute a defence from the commission of offences under the law, such as illness or bereavement, should be included in the legislation, rather than left to the discretion of the Court. **Would it be advantageous to add such factors to the primary legislation and, if so, which factors should be included?**

Requiring candidates who stand unopposed to make an expenditure return

12. At present, candidates who run unopposed are not required to submit a declaration of expenditure. PPC agrees that this should change and all candidates should submit a declaration of expenditure. However, there is an issue to consider in terms of when the election period begins. An unopposed candidate may incur no expenditure after nomination, because they are not opposed, but may have spent money in advance of nomination in order to show they intend to stand and to generate support.
13. The Committee’s analysis has shown that there are different definitions of the election period in different jurisdictions but the law in Jersey is unclear on this point. Article 3(1) of the Public Elections (Expenditure and Donations) (Jersey) Law 2014 simply refers to a candidate’s expenses being incurred “at any time before the poll”. **Should the period of the election, for the purposes of election expenditure, be defined in law? If so, what should it be?**

Introducing a means by which political parties can declare their election costs

14. Reform Jersey in 2014 and 2018 declared their election expenditure by means of a party declaration rather than by showing expenditure by candidate. This was permitted by the Judicial Greffe but is not in line with the legal requirement, which is for each candidate to submit a separate declaration.
15. There is a risk that moving away from individual declarations will cause unwelcome distortions in the system for regulating election expenditure. A party could stand a large number of candidates and focus all of its expenditure on a small number of them, but this would not be apparent if declarations were made on a party rather than an individual basis.

16. **Should the current requirement in law for each candidate to make a declaration of expenditure be upheld or should declarations be permitted on a party basis?**
17. In other jurisdictions, with party politics, it is common for expenditure by parties to be declared in addition to expenditure by candidates. For example, while candidates may principally spend money on leaflets and posters in their locality, parties spend money on digital marketing and other forms of ‘national’ advertising. **Is there a case in Jersey for parties to make a separate declaration of their expenditure (over and above expenditure by individual candidates) during elections.**

Assessing the merits of extending the deadline of 15 working days for the submission of expenditure declarations

18. The Committee’s research has shown that jurisdictions differ greatly in terms of how much time candidates are allowed to submit expenditure declarations. Fifteen working days is at the lower end of the scale but not necessarily unreasonable, being in line with Australia. **Should the deadline for making expenditure declarations be extended and, if so, by how much?**

Donations

19. A candidate’s expenditure declaration after an election must include donations of over £120, showing who made the donation, the amount and whether the donation took the form of money, a loan, or goods and services. Anonymous donations must be given to the Treasurer of the States and the expenditure declaration should include the total of any such donations. The same rules apply to ‘third parties’, people or groups who are not candidates but who seek to promote or “prejudice the electoral prospects” of a candidate or candidates.
20. The Connétable of St. Martin has argued that such donations should be published “within 2 days of receipt”. This would require candidates and third parties to declare donations to the Judicial Greffier more swiftly than the law currently requires and for the information to be published online. PPC’s view is that this could be done on the vote.je website, subject to a robust working arrangement between the Judicial and States Greffes. In the Committee’s view it would be sensible to provide candidates and third parties with at least 2 working days to make the declaration and a further 2 working days for the information to be published. **Would such an arrangement be (a) desirable and (b) workable?**
21. An issue raised during debate on this proposition was how these new arrangements might take account of donations made after the election, but before the deadline for submitting the expenditure return. Given that the purpose of the proposition was to increase transparency of election funding, it would be unhelpful if a candidate could delay the receipt of a donation until after the election. For these new arrangements to be effective, all donations to a candidate must be received no later than 5 working days before polling day, so that accurate and complete information about donations to every candidate can be publicly available on polling day. In addition, the law should provide for any donation received after that date to be sent to the Treasurer of the States. **Is this the right way of dealing with the problem of donations close to or after election day? Are there better ways of dealing with this matter?**

22. In addition, it was suggested during the debate on [P.120/2019](#), that publication of donation information during an election campaign could encourage some people with deep pockets to make donations maliciously to discredit a candidate. **Is it necessary to make clear in the law that a donation should be declared only if it is received by a candidate and not returned or given to the Treasurer of the States within a specified period of time?**
23. Under the terms of the [Political Parties \(Registration\) \(Jersey\) Law 2008](#), political parties are required to file accounts with the Judicial Greffier. There is no requirement for those accounts to be publicly available and no other legal requirements in relation to the funding of political parties.
24. The Connétable of St. Martin has proposed that donations worth £120 and above (which would, presumably, include money, loans and the provision of goods and services) should be declared to the Judicial Greffier within one week of receipt; that the Judicial Greffier should maintain an online register of such donations; and that the law should treat anonymous donations to parties in the same way as it treats anonymous donations to candidates – i.e. they must be sent to the Treasurer of the States, but the total sum of such donations should be declared. **Views are sought on whether it would be desirable to introduce such requirements and, if so, how they might be implemented in practice?**
25. An issue raised during the debate on [P.120/2019](#) was whether the parties to which this matter relates should be those registered in the Royal Court under the [Political Parties \(Registration\) \(Jersey\) Law 2008](#) or whether the definition of party should be extended to include political associations or other loose political groupings which may emerge. This question also affects the declaration of election expenditure by parties, discussed in paragraphs 14 to 17. We note that the Commonwealth Parliamentary Association (CPA) election observation mission also recommended that the legal status of a political party should be clearly defined in law. **We seek views on this.**

Systematic scrutiny of expenditure declarations

26. The CPA election observers made the following remarks about campaign finance in Jersey:

The Public Elections Expenditure and Donations (Jersey) Law 2014 regulates campaign finances. It stipulates, among other, expenses (direct and notional), campaign ceilings and donations that can be received by candidates (money, loans, goods and services). Anonymous donations are forbidden. Candidates and third parties have to report their campaign donations and expenses to the Judicial Greffier within 15 working days after election day, **but the law is notably silent when it comes to the rights and obligations of political parties. Parties are not required to provide any specific financial report in an election year apart from their regular annual statement of accounts.** Some candidates running for Senator and some running for Deputy in urban centres considered the campaign ceilings set too low. The Judicial Greffier issued guidance for candidates detailing in particular how to report their expenses and donations. **However, there is no provision for the Greffier to undertake a systematic scrutiny of candidates' financial declarations. It is also his responsibility to make the submitted declarations public.**

As set out in the [Standing Orders of the States of Jersey](#), Part 8, Register of interests and code of conduct, S.O.153: all elected members must provide the Greffier with their declaration of interests within 30 days after taking their oath of office, detailing their employment, shareholding, sponsorship, gift hospitality and benefits, overseas visits, land and miscellaneous using a standard format. They are responsible for notifying the Greffier in case of changes or addition. The declarations of interest of the outgoing States Assembly members are available online, which enhances transparency of political office. **Complaints can be made to the Privileges and Procedures Committee of the States Assembly, however there is no provision for systematic investigation.**

RECOMMENDATION 13. Consideration should be given to provide for and undertake a systematic scrutiny of all financial declarations submitted by candidates and political parties and make public the result of such scrutiny, in order to enhance transparency of campaign finances as stated in Article 7.3 of the UN Convention against Corruption.

Should there be systematic, published scrutiny of all financial declarations submitted by candidates and parties and, if so, how should his work in practice?

Other matters

27. The Committee invites any other comments on the law applying to election expenditure and political donations, including on matters not referred to in the propositions adopted by the Assembly but which ought to be reviewed at this point.

“Election expenses”

28. The Committee shares Deputy Maçon’s view that the phrase “election expenses” is unhelpful, because it may suggest to some people that candidates are reimbursed for their election expenditure. They are not. There is no States funding of election expenditure. The Committee will propose amendments to the law to replace the phrase “election expenses” with “election costs”.

Next steps

29. Consultation on the points set out in this paper is open until **Thursday 9 April 2020**. The Committee’s intention is to decide how to proceed and to issue law drafting instructions by the end of July 2020, so that legislation can be considered by the Assembly by the end of Q1 2021. It is essential that any changes to election law are agreed by May 2021, so that there is certainty about the rules applying to the 2022 election

30. Responses should be sent to Karen Slack, Clerk to the Privileges and Procedures Committee, at k.slack@gov.je or Morier House, Halkett Place, St. Helier, JE1 1DD.

Summary

The matters on which we are seeking views are:

- What information from expenditure declarations should be published online?
- Whether the law should require the Judicial Greffier to confirm receipt of an expenditure declaration and to remind candidates of the deadline for submitting such a declaration?
- Whether the existing law permitting candidates to vary or add to their expenditure declarations is sufficient and whether more time should be allowed for such changes to be made?
- Whether factors which might be considered ‘reasonable steps’ or ‘reasonable excuses’ as defences against commission of offences under the Public Elections (Expenditure and Donations) (Jersey) Law 2014 should be specified in the law and, if so, which factors should be so specified?
- Should the period of the election, for the purposes of election expenditure, be defined in law? If so, what should it be?
- Whether parties should be enabled to submit collective expenditure declarations on behalf of all of their candidates; whether parties should make separate declarations of expenditure other than expenditure incurred by candidates; and whether the definition of party should be broadened in law.
- Whether more time should be allowed for candidates to make expenditure declarations.
- The desirability of new legislation on (a) the declaration and online publication of donations to candidates within a short period of receipt and (b) the declaration and online publication of donations to political parties.
- Whether systematic, published scrutiny of expenditure declarations by candidates and parties should be introduced.
- Any other matters relevant to these topics on which PPC may wish to consider bringing forward changes to the law.

Privileges and Procedures Committee

February 2020