



Jersey

## COMMISSIONER FOR STANDARDS (JERSEY) LAW 2017

### Arrangement

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## COMMISSIONER FOR STANDARDS (JERSEY) LAW 2017

A **LAW** to establish the office of Commissioner for Standards and to make provision for connected purposes.

*Adopted by the States*

*1st February 2017*

*Sanctioned by Order of Her Majesty in Council*

*12th April 2017*

*Registered by the Royal Court*

*21st April 2017*

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

### PART 1

#### INTERPRETATION

##### 1 Interpretation

In this Law, unless the context otherwise requires –

“code” means any of the following as the case requires –

- (a) the code of conduct for elected members of the States set out in Schedule 3 to the Standing Orders of the States of Jersey<sup>1</sup>; or
- (b) the code of conduct and code of practice for Ministers and Assistant Ministers referred to in Article 18(3A) of the States of Jersey Law 2005<sup>2</sup>;

“Commissioner” means the Commissioner for Standards established under Article 2;

“independently audited States body” has the same meaning as in Article 1 of the Public Finances (Jersey) Law 2005<sup>3</sup>;

“lodge” has the same meaning as in Article 1(1) of the States of Jersey Law 2005;

“PPC” means the Privileges and Procedures Committee established under the Standing Orders of the States of Jersey;

“States’ employee” has the same meaning as in Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>4</sup>;

“States funded body” has the same meaning as in Article 1 of the Public Finances (Jersey) Law 2005.

## **PART 2**

### **APPOINTMENT AND ADMINISTRATION**

#### **2 Office of Commissioner**

There shall be an office of Commissioner for Standards.

#### **3 Appointment of Commissioner**

- (1) The PPC shall appoint a person to the office of Commissioner.
- (2) Before the PCC appoints a person to the office of Commissioner, the PPC must present to the States notice of its intention to make the appointment at least 2 weeks before the appointment is made.
- (3) A person, on being appointed to the office of Commissioner –
  - (a) shall cease to hold any employment as a States’ employee; and
  - (b) shall cease to hold any other office or employment (whether or not for remuneration) with any States funded body or independently audited States body.
- (4) A person, whilst holding the office of Commissioner, shall be disqualified from holding any employment or office described in paragraph (3).
- (5) The PPC may appoint a person to carry out the duties of the office of Commissioner while –
  - (a) the office is vacant; or
  - (b) the holder of the office is unable to perform the functions of the office.
- (6) The PPC must report an appointment under paragraph (5) to the States at the first reasonable opportunity.

#### **4 Terms and conditions of appointment**

- (1) Subject to paragraphs (2), (3) and (4), and any other provision of this Law, a person appointed to the office of Commissioner shall hold the office on such terms and conditions as are agreed between the person and the PPC.
- (2) A person shall be appointed to the office of Commissioner for a fixed term of up to 5 years.

- (3) The appointment may be extended for one or more fixed terms provided that the total length of the appointment, including the initial appointment under paragraph (2), does not exceed 9 years.
- (4) A person cannot be appointed to the office of Commissioner more than once.

## **5 Revocation of appointment**

- (1) The States may revoke the appointment of a person to the office of Commissioner –
  - (a) on a proposition lodged by the PPC; or
  - (b) on a proposition signed by at least 11 members of the States in addition to the member of the States lodging the proposition.
- (2) The States shall debate the proposition in camera.
- (3) The proposition must allege one of the following grounds for revocation, namely, that the person holding the office of Commissioner –
  - (a) has not carried out the duties of the office in a competent manner;
  - (b) is incapacitated either mentally or physically from carrying out the duties of the office;
  - (c) has neglected to carry out all or any of the duties of the office;
  - (d) has failed to comply with any term or condition of his or her appointment;
  - (e) has indulged in dishonourable conduct;
  - (f) has, without the approval of the PPC, taken leave of absence not provided for by his or her terms and conditions of appointment; or
  - (g) has been convicted of an offence and, by virtue of the conviction, has shown himself or herself not to be a fit and proper person to continue to hold office.
- (4) The report accompanying the proposition must set out details of the evidence to be relied upon to support the allegation.
- (5) The proposition cannot be lodged unless the person holding the office of Commissioner –
  - (a) has been given a copy of the report mentioned in paragraph (4); and
  - (b) has been given such reasonable opportunity as the circumstances allow to prepare a written statement in respect of the evidence mentioned in the report.
- (6) Any statement prepared in accordance with paragraph (5)(b) must accompany the proposition when it is lodged.
- (7) When the proposition has been lodged the PPC may suspend the Commissioner from office if the proposition is one to which paragraph (1)(a) refers.
- (8) If the proposition –

- (a) is withdrawn;
  - (b) is not approved by the States after debate; or
  - (c) is not debated by the States within 3 months of being lodged,
- the Commissioner must be restored to office without loss of remuneration or any other benefits.

## **6 Vacancy in office**

- (1) The office of Commissioner becomes vacant if the term of appointment of the person holding the office expires.
- (2) It also becomes vacant if the person holding the office –
  - (a) dies;
  - (b) gives the PPC written notice of resignation from the appointment;
  - (c) is nominated for election to the States;
  - (d) is appointed to any paid office or other place of profit under the Crown;
  - (e) becomes a paid officer in the service of any parish;
  - (f) is compulsorily detained or subject to guardianship under the Mental Health (Jersey) Law 1969<sup>5</sup>;
  - (g) has a curator of his or her person or property appointed;
  - (h) has an attorney appointed without whom he or she may not act in matters movable or immovable;
  - (i) becomes bankrupt or makes a composition or arrangement with his or her creditors;
  - (j) is convicted of an offence involving corruption; or
  - (k) whether in Jersey or elsewhere, is convicted of any offence and ordered to be imprisoned.
- (3) The office of Commissioner also becomes vacant if the States, acting in accordance with Article 5, revoke the appointment of the person holding the office.

## **7 Resources**

The States must ensure that the Commissioner is provided with such administrative and other support, including staff, services and accommodation, as the Commissioner may reasonably require for the purpose of discharging the functions of the Commissioner under this Law.

## **8 Limitation of civil liability**

- (1) This Article applies to –
  - (a) a person who is or has been the Commissioner; and
  - (b) a person who is or has been or is acting or has acted as, an officer or agent of the Commissioner.

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- (2) A person to whom this Article applies is not liable in damages for any act done in the discharge, or purported discharge, of the functions of the Commissioner under this Law or any other enactment.
  - (3) Paragraph (2) does not apply –
    - (a) if it is shown that the act was done in bad faith; or
    - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>6</sup>.

### **PART 3**

#### **POWERS AND DUTIES**

#### **9 Commissioner's functions relating to investigations, complaints and other matters concerning a code**

- (1) The functions of the Commissioner are –
  - (a) to investigate a complaint to the Commissioner that, at a relevant time, a breach of a code as in force at that time occurred;
  - (b) to initiate an investigation if the Commissioner believes that, at a relevant time, a breach of a code as in force at that time may have occurred;
  - (c) to report to the PPC on the outcome of any investigation referred to in paragraph (1)(a) or (b);
  - (d) on the Commissioner's own initiative or, if requested by the PPC, to give advice on any matter relating to standards of conduct of elected members of the States or standards of conduct and practice of Ministers and Assistant Ministers, including proposals to change a code;
  - (e) if requested by the Chief Minister, to give advice on any matter relating to standards of conduct and practice of Ministers and Assistant Ministers, including proposals to change the code referred to in paragraph (b) of the definition "code".
- (2) In paragraph (1)(a) and (b), "relevant time" means any time that is not earlier than the date that is 12 months before the date that this Article comes into force.
- (3) The Commissioner shall not accept any complaint which –
  - (a) is made anonymously;
  - (b) in the Commissioner's opinion, is frivolous, vexatious or unsubstantiated; or
  - (c) is from a person who is not a member of the States regarding words spoken by, or actions of, an elected member during a meeting of the States.

- (4) On receipt of a complaint described in paragraph (1)(a), the Commissioner must decide whether there are grounds to investigate and shall either –
  - (a) notify the complainant that no such grounds exist; or
  - (b) undertake an investigation.
- (5) The Commissioner shall determine the procedure and timing of any investigation.
- (6) In making a report to the PPC under paragraph (1)(c), the Commissioner shall state his or her conclusions and recommend what action, if any, should be taken.
- (7) The Commissioner's conclusions and recommendations are not binding on the PPC.

## **10 Independence**

- (1) The Commissioner must not be directed on how any function of the office of Commissioner is to be carried out, including, in particular, whether or not to undertake an investigation referred to in Article 9(1)(a) or (b).
- (2) The Commissioner may seek legal advice from the Attorney General on any subject relevant to the functions of the office of the Commissioner and the Attorney General may provide that advice.

## **11 Statement of manner in which functions are to be discharged**

- (1) The Commissioner shall make and publish a statement of the manner in which he or she proposes to discharge his or her functions under this Law and any other enactment.
- (2) The Commissioner shall keep under review and revise, as needed, the statement made and published under paragraph (1).
- (3) The Commissioner must, at the same time a statement or revision is made, provide a copy of the statement or revision, as the case may be, to the PPC.
- (4) The PPC must, as soon as reasonably practicable, lay the statement, and any revision of it, before the States.

## **12 Duty to prepare annual report**

- (1) The Commissioner must, each year –
  - (a) make a report in respect of the activities of the office of Commissioner for the previous year; and
  - (b) at the same time as the report is made provide a copy of it to the PPC.
- (2) The PPC must, as soon as reasonably practicable, lay the report before the States.

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**PART 4****POWERS AND ENFORCEMENT****13 Power to summons people to appear and to provide records**

- (1) The Commissioner may, in the exercise of his or her functions, do all or any of the following –
  - (a) summons a person to appear before the Commissioner or to produce a specified record, or to do both;
  - (b) require a person to answer questions;
  - (c) require a person who has access to a record to provide the information contained in it to the Commissioner in a legible and comprehensible form.
- (2) The power under paragraph (1)(a) to require a record to be produced includes a power –
  - (a) if the record is produced, to retain the record or to take copies of it or extracts from the information it contains; and
  - (b) if the record is not produced, to require the person to whom the requirement was directed to state, to the best of his or her knowledge and belief, where it is.
- (3) If records are retained, a list of the records must be supplied to the person from whom they were obtained.
- (4) A record retained under paragraph (2)(a) –
  - (a) may be retained for one year; but
  - (b) if within that year proceedings to which the record is relevant are commenced against any person, may be retained until the conclusion of those proceedings.
- (5) If –
  - (a) the Commissioner has retained a record under paragraph (2)(a); and
  - (b) a person reasonably requires the record for his or her business,the Commissioner must provide the person with a copy of it as soon as reasonably practicable.
- (6) In this Part “record” means any written document or information, whether or not in electronic form.

**14 Offence: failure to appear, to answer questions or to provide information**

- (1) A person shall be guilty of an offence if, when summonsed or required to do so by the Commissioner acting in accordance with Article 13, the person fails or refuses –
  - (a) to appear before the Commissioner;
  - (b) to produce a specified record;

- (c) to answer truthfully or at all any question;
  - (d) to provide information contained in a record in a legible and comprehensible form; or
  - (e) to state, to the best of his or her knowledge and belief, where a record is.
- (2) A person guilty of an offence under paragraph (1) shall be liable to a fine of level 4 on the standard scale.
- (3) It shall be a defence for a person charged with an offence under paragraph (1) for the person to show that there was a reasonable excuse for the failure or refusal.

### **15 Offence: providing false record or information**

- (1) A person shall be guilty of an offence if, when required to produce a record under this Law or knowing that a record may be required to be produced under this Law, the person, with intent to deceive –
- (a) destroys the record or in any other way renders it unintelligible or useless, or difficult or impossible to retrieve; or
  - (b) alters it in any way to make the information it contains false or misleading in a material way.
- (2) A person shall be guilty of an offence if, when required to provide information under this Law, the person knowingly provides information that is false, misleading or incomplete in a material way.
- (3) A person guilty of an offence under paragraph (1) shall be liable to imprisonment for a term of 5 years and to a fine.
- (4) A person guilty of an offence under paragraph (2) shall be liable to imprisonment for a term of 2 years and to a fine.

### **16 Offence: obstruction**

- (1) A person shall be guilty of an offence if he or she hinders or obstructs a person in the exercise by that person of a function under this Law.
- (2) A person guilty of an offence under paragraph (1) shall be liable to imprisonment for a term of 6 months and to a fine of level 4 on the standard scale.

## **PART 5**

### **MISCELLANEOUS AND CLOSING**

### **17 Privilege, protection and self-incrimination**

- (1) Nothing in this Law requires a person to produce a record or to provide information that the person would, in an action in the Royal Court, be entitled to refuse to produce or provide on the grounds of legal professional privilege.

- (2) However, a lawyer must disclose the name and address of a client if required to do so by a person acting in accordance with this Law.
- (3) Where a person provides, in compliance with a request made in accordance with this Law, a record or other information in respect of another person the provision of that record or information shall not be regarded as a breach of any duty owed by the first person to the second person or to any other person.
- (4) An answer given by a person to a question put to the person in exercise of a power conferred by this Law may be used in evidence against the person.
- (5) However, in criminal proceedings in which the person is charged with an offence, other than an offence under Article 15 –
  - (a) no evidence relating to the answer may be adduced; and
  - (b) no question relating to it may be asked,by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

## **18 Amendment of other enactments**

- (1) The States may, by Regulations, amend any enactment in consequence of any provision of this enactment.
- (2) Regulations under paragraph (1) may contain such provision as appears to the States to be necessary, incidental or supplemental for the purpose of those Regulations.

## **19 Commencement**

This Law may be cited as the Commissioner for Standards (Jersey) Law 2017 and shall come into force on such day or days as the States may by Act appoint.

**DR. M. EGAN**

*Greffier of the States*

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- 1 *chapter 16.800.15*
  - 2 *chapter 16.800*
  - 3 *chapter 24.900*
  - 4 *chapter 16.325*
  - 5 *chapter 20.650*
  - 6 *chapter 15.350*