



Law Officers' Department

Statement by the Attorney General

Last year a referral was made to me by the Judicial Greffier arising from the Elections that took place on 16 May 2018, suggesting that offences may have been committed contrary to the provisions of the Public Elections (Expenditure and Donations) (Jersey) Law 2014.

The allegations related to a possible breach of Article 6 of the Law which, *inter alia*, places a duty upon each individual candidate for election, “no later than fifteen working days after the day the poll is held”, to deliver to the Judicial Greffier a written declaration of their election expenses. The declaration must be made “using a form supplied by the Greffier”; include a statement by the candidate that to the best of his or her knowledge information and belief, the information contained in it is true complete and correct; and must be “signed by the candidate”.

Under Article 6(6) of the Law, a candidate who fails to deliver a declaration in accordance with the Article is guilty of an offence and liable to a fine. Further, Article 18 of the Law provides that the convicted candidate shall be disqualified for taking the office for which he or she has been elected or, if he or she has already taken the office, shall cease to hold the office. It is a defence for a candidate to prove that he or she had a ‘reasonable excuse’ for non-compliance.

This Law was adopted by the States as recently as 2014 on a proposition brought by the Privileges and Procedures Committee. The Report to the Law explained to members of the States in clear terms the contents of Article 6 and Article 18. In respect of Article 18 the Report said

“This Article introduces a new provision which was not possible under the Triennial Regulations. It provides that, if a person who has been successful in an election is convicted under this Law, that person will, once all appeal routes have been exhausted, lose their seat, with a by-election being called. The person is not prevented from standing again, thereby allowing the public to take a view on the seriousness of the offence for which the candidate was disqualified. The provision will hopefully provide a significant deterrent and ensure that no candidate is tempted to break the system of regulation deliberately.”

When the draft Law was debated in 2014, Deputy Maçon, the Chairman of the Privileges and Procedures Committee said to the Assembly:

“Article 18 contains important new provision about the consequences of conviction. This provision could not be included in the Triennial Regulations but is included in this draft law. As can be seen, a person who has been elected but who is convicted of an offence of breaching this law will be disqualified from office. P.P.C. considered whether a discretion should be given to the courts to judge the seriousness of the offence but concluded this would not be appropriate and would put the court in a difficult position as it would be given the power to determine whether or not a person should remain a States Member which could be seen as drawing the court into the political arena. On balance, P.P.C. concluded that it would be better to make the disqualification automatic but to include the provisions in Article 18(3), that a person disqualified can stand again in the subsequent election. This would allow the electorate to judge the seriousness of the offence committed”.

When my Department received the referral from the Judicial Greffier last year, we were notified that the Judicial Greffier had granted an extra-statutory concession on 14 June 2018 to the three individuals subsequently charged extending the period for compliance with the Law and purporting to give until 18 June 2018 for delivery of the declaration (the statutory period had in fact ended on 7 June 2018). However, the referral did not indicate that there may have been a breach of the Law by other candidates.

Having received the documents (provided to the Attorney General under Article 14(2) of the Law) from the Judicial Greffier, the three cases were referred by my Department to the States of Jersey Police for investigation. That investigation was completed, and after a careful review of the evidence and equally careful examination of the relevant public interest considerations, three candidates were charged.

On Monday of this week, my Department became aware of the fact that the three candidates charged did not, contrary to our understanding, stand alone in having breached the provisions of Article 6.

The fifteen working day deadline set out in Article 6(1) of the Law expired on the 7 June 2018 (although some of the paperwork from the Judicial Greffe incorrectly suggested 6 June 2018). There is no power under the Law for the Greffier or any other party to extend that deadline. A

total of approximately twenty-eight candidates for election failed to comply with the deadline, thirteen of whom were subsequently elected.

Most, although not all, of those candidates did file their return within the extended deadline of 18 June 2018 set by the Judicial Greffier on 14 June 2014, but nonetheless those late returns were filed in breach of Article 6.

Furthermore, there is a strong argument that an additional seventeen candidates (five of whom were elected) delivered a declaration within the deadline that is not compliant with Article 6. This was not drawn to their attention at the time, but on examining the papers in relation to their candidacies (received by my Department for the first time yesterday) the provisions of Article 6 appear to have been contravened in those instances too.

Accordingly, one way or another it is possible that up to forty-five candidates, eighteen of whom were elected, have committed an election offence under Article 6. Those elected unopposed did not need to comply with Article 6. Of those candidates who won a contested election, seventeen persons succeeded in complying with the Law.

It is to be noted, and I emphasise, that in none of these cases is there any evidence of a breach of the spending limits imposed by the Law.

In these circumstances, and bearing in mind the consequences to good government of investigating and prosecuting these alleged offences, it is not in my view in the public interest to proceed against all these individuals. The States and Government of Jersey would be significantly impaired at an important time for the Island.

This has led me to re-evaluate the position of the three persons who have been charged. It is proper to observe that those three individuals could be distinguished from the other candidates in that (on the prosecution case) in one case there was a failure to ever file a return and in the other two cases the declarations under Article 6 were returned to the Greffier after (in one case several months after) the other candidates. Nonetheless I have reconsidered the public interest and overall fairness of proceeding to trial in these three cases.

After some consideration I have come to the clear conclusion that it would not be appropriate to proceed to trial in those cases. It would not be right to single out these three individuals in circumstances where so many candidates appear to have failed to comply with the provisions of Article 6.

Assuming that Article 6 remains in its current form (Article 6(8) allows the States by regulation to amend the fifteen working day period) then I understand that the new Judicial Greffier is unlikely to grant an extra-statutory period of grace in the future and I anticipate that the policy of the Attorney General of the day will be that prosecutions for breach of Article 6 will be in the public interest albeit save in the most exceptional cases.

I will be writing to current members of the States in respect of their obligations under Article 6.

16 January 2019