



Jersey

## DRAFT LEGISLATION (JERSEY) LAW 202-

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Jersey

## DRAFT LEGISLATION (JERSEY) LAW 202-

A LAW to consolidate and supplement provisions about the making, commencement and repeal of legislation, to provide for the publication, consolidation and revision of legislation, to establish the Legislative Drafting Office and for connected purposes.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

### PART 1

#### OPENING PROVISIONS

##### 1 Interpretation

In this Law, unless the context otherwise requires –

“as-enacted legislation” has the meaning given in Article 12(2);

“consolidated legislation” has the meaning given in Article 12(3) and (4);

“current drafting practice” means the legislative drafting practice for the time being adopted by the Legislative Drafting Office;

“Jersey legislation” means any Law or Jersey subordinate legislation;

“Jersey subordinate legislation” means –

- (a) subordinate legislation made under a Law or under any UK extended legislation; or
- (b) triennial Regulations;

“Law” means Jersey legislation that is made in accordance with the process set out in Article 2(1);

“legislation” means Jersey legislation and UK extended legislation;

“Legislative Drafter” means any person employed or contracted to draft legislation for the Legislative Drafting Office, and includes the Principal Legislative Drafter and any trainee Legislative Drafter;

“Legislative Drafting Office” means the Office referred to in Article 19(1);

“official version” is construed in accordance with Article 17;

“Principal Legislative Drafter” means the senior officer of the Legislative Drafting office, as referred to in Article 19(3);

“publish”, in relation to legislation, means continue to make available on a website designed to provide access to the legislation free of charge;

“repeal” includes delete, rescind and revoke;

“revised” in relation to any Jersey legislation, means any legislation certified as such in accordance with Article 15(8);

“standing orders” means standing orders prepared and adopted under Article 48 of the States of Jersey Law 2005;

“States’ employee” has the meaning given in Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005;

“subordinate legislation” means any Regulations, Order or other instrument (other than standing orders) having legislative effect in Jersey that is made under –

- (a) any Jersey legislation; or
- (b) any UK extended legislation;

“triennial Regulations” means Regulations made under an Order in Council date 14th April 1884;

“UK Act” means any Act of the Parliament of the United Kingdom (irrespective of whether or not it applies to the whole of the United Kingdom);

“UK extended legislation” means any provision of a UK Act, or subordinate legislation made under a UK Act, that has been registered in the Royal Court.

## PART 2

### MAKING, AMENDING AND REPEALING LEGISLATION

#### 2 Making of Jersey Legislation

- (1) A Law is made –
  - (a) by the proposition containing the Law being adopted by the States Assembly;
  - (b) by being sanctioned by order of Her Majesty in Council; and
  - (c) by being registered in the Royal Court.
- (2) Jersey subordinate legislation is made –

- (a) in the case of Regulations (including Triennial Regulations) or an Act that is Jersey legislation, by the proposition containing them being adopted by the States Assembly; or
  - (b) in the case of any other Jersey subordinate legislation, by being signed by a person authorised to sign it by the person or body responsible for making the legislation.
- (3) Jersey legislation has been made once it has been registered, adopted or signed as the case may be.

### **3 Commencement of Jersey legislation**

- (1) If Jersey legislation is silent as to the commencement of any of its provisions, that provision comes into force on the day after the day it is made.
- (2) If any Jersey legislation is expressed to come into force on a particular day, it is treated as coming into force at the beginning of that day, unless a contrary intention appears.
- (3) If a Law, Regulations made under a Law or any provision of the Law or Regulations may be brought into force by an Act of the States or an Order of a Minister on a day specified in the Act or Order, the power may be exercised to appoint different days, times or events for different provisions of the Law or Regulations to commence.
- (4) If any Jersey legislation amends any other legislation or provision that has not come into force –
  - (a) the amendment of the uncommenced legislation does not commence that legislation or provision; and
  - (b) the amendment made by the amending legislation commences when the provision amended commences unless express provision is made otherwise.
- (5) Nothing in this Article affects the commencement of any Jersey legislation that had commenced before the commencement of this Law.

### **4 Exercise of statutory powers before commencement of Jersey legislation**

- (1) This Article applies to any Jersey legislation that confers power to –
  - (a) make any subordinate legislation;
  - (b) establish any entity;
  - (c) make any appointment;
  - (d) give any notice or document;
  - (e) prescribe any form; or
  - (f) do any other thing for the purposes of the legislation.
- (2) The power in question may, unless the contrary intention appears, be exercised at any time after the making of the legislation, whether or not the legislation is in force.

- (3) However, no subordinate legislation made under this power may be brought into force before the provision conferring the power comes into force.

## **5 Effect of repeal and expiry**

- (1) This Article applies where any Jersey legislation repeals any other Jersey legislation or a provision of that legislation.
- (2) Unless the contrary intention appears, the repeal does not affect –
  - (a) the validity, invalidity, effect or consequences of anything done or suffered under the repealed legislation (including any saving, transitional or validating provision);
  - (b) any existing right, interest, title, immunity, privilege, obligation or liability acquired, accrued or incurred under that legislation;
  - (c) any amendment of legislation made by the repealed legislation;
  - (d) the previous operation of the repealed legislation or anything done or permitted under that legislation;
  - (e) any investigation, legal proceeding or remedy that relates to anything set out in sub-paragraph (b);
  - (f) any penalty, forfeiture or punishment incurred in respect of any offence committed before the repeal of the legislation or breach of it that occurred before its repeal.
- (3) Any investigation, legal proceeding or remedy mentioned in paragraph (2) that relates to an existing right may be instituted, continued or enforced, and any penalty, forfeiture or punishment mentioned in that paragraph may be imposed as if the legislation had not been repealed.
- (4) Unless the contrary intention appears the repeal of a repealing enactment does not revive –
  - (a) any legislation repealed;
  - (b) any rule of law that has been abolished;
  - (c) any other thing not in force or existing at the time at which the repeal takes effect.
- (5) In this Article a reference to any legislation being repealed includes a reference to its having expired.

## **6 Effect of repeal and re-enactment**

If any legislation (whenever made) repeals any Jersey legislation and re-enacts any of its provisions, with or without modification, references in any other legislation to the provisions so repealed, unless the contrary intention appears, are construed as references to the provisions so re-enacted.

## **7 Amendment of subordinate legislation by Jersey Law**

Unless the contrary intention is expressed, no amendment of any Jersey subordinate legislation by a Law limits any further amendment or repeal of that subordinate legislation.

## **8 Power to amend Law consequential on another Law lodged but not made before its registration**

- (1) The States may by Regulations make amendments to any Law incidental to, supplemental to, or consequential upon, the making of another Law if the relevant periods of those two Laws overlap to any extent.
- (2) In paragraph (1) –
  - “lodged” means lodged in accordance with standing orders;
  - “relevant period” in relation to a Law means the period beginning on the day it was lodged and ending on the day it was made.

## **9 Powers to make subordinate legislation**

- (1) Where any Jersey legislation (whenever made) confers a power to make other legislation, unless the contrary intention appears, the power may be exercised from time to time and includes a power to repeal, amend or replace the legislation made that is exercisable in the same way and subject to the same conditions.
- (2) Where any Jersey legislation made after 28th March 2003 confers a power to make other legislation, the power may, unless the contrary intention appears, be exercised –
  - (a) to apply generally to all cases or be limited in its application to, or make different provision for different cases of classes of case; or
  - (b) to apply generally or be limited in its application by reference to stated conditions, exceptions or factors.
- (3) The power in paragraph (2) includes the power to make legislation about any one or more cases and for the purposes of that paragraph a “class” includes a single case.
- (4) The power in paragraph (2) enables a provision that repeals any legislation to be brought into force only to the extent of repealing some of its provisions.
- (5) The power to make any legislation under this Article also authorises the making of provision incidental to, supplemental to, or consequential upon that legislation.

## **10 Power to incorporate technical documents by reference**

- (1) Unless the contrary intention appears, the power to make subordinate legislation includes the power to incorporate by reference any technical document (other than legislation from any jurisdiction) that is accessible to the public without charge as it is in force –
  - (a) at a particular time; or
  - (b) from time to time.
- (2) In paragraph (1) “technical document” means a document that is concerned with the practices, procedures, processes or requirements for use of a technical product and which is aimed at a person with particular knowledge or experience in that technical field.

**11 States power to annul subordinate legislation not made by the States**

- (1) Subordinate legislation to which this Article applies must be laid before the States as soon as practicable after it is made and if the States [, no later than [2?] sittings after the date on which it is laid,] resolve that it be annulled, it ceases to have effect.
- (2) However –
  - (a) paragraph (1) may be displaced by any contrary provision in the Law empowering the subordinate legislation; and
  - (b) the annulment does not affect anything previously done under the subordinate legislation before it is annulled or limit the power of the body empowered to make the legislation to make further legislation.
- (3) This Article applies to any Jersey subordinate legislation that is not made by the States other than legislation providing purely for the commencement of any legislation or any legislation that has become spent.

**PART 3****CONSOLIDATION, REVISION AND PUBLICATION OF LEGISLATION****12 Types of legislation under this Part**

- (1) This Part applies in respect of –
  - (a) as-enacted legislation; and
  - (b) consolidated legislation.
- (2) As-enacted legislation is legislation containing the text of the legislation as originally made and includes that legislation in the form it appears when prepared for publication under this Part.
- (3) Consolidated legislation is legislation that includes within it any other modifications necessary to show the legislation as it was in force on the date to which the legislation is stated to be consolidated.
- (4) Revised legislation is also consolidated legislation.

**13 Consolidated legislation**

- (1) When any Jersey legislation (other than legislation having the effect only to amend other legislation) is commenced, amended or revised after the commencement of this Part, the Principal Legislative Drafter must, as soon as practicable, prepare a consolidated version of the legislation.
- (2) Consolidated legislation must include a statement that it is consolidated legislation compiled under the authority of this Law.



**14 Changes that may be made by Principal Legislative Drafter in preparing consolidated legislation**

- (1) In preparing consolidated legislation, the Principal Legislative Drafter may, if considered appropriate, make the following changes –
  - (a) the removal of commencement information;
  - (b) the removal of provisions that amend or repeal other legislation (or its provisions);
  - (c) the correction of –
    - (i) typographical and clerical errors,
    - (ii) errors in grammar, spelling and punctuation,
    - (iii) errors in numbering, cross-referencing, and alphabetical ordering,
    - (iv) errors in, or arising out of, an amendment by other legislation to the legislation being consolidated, and
    - (v) any other errors of a similar nature;
  - (d) changes in punctuation and the relocation of conjunctives or disjunctives to enable the addition or removal of any provision that is or was part of a list of provisions.
- (2) However, none of these changes have effect to the extent of changing the meaning of any provision.
- (3) The Principal Legislative Drafter may make formatting and presentational changes to the legislation so that the consolidated legislation is consistent with current drafting practice.
- (4) Nothing in this Article limits the authority to make changes in preparing consolidated legislation in reliance on the application of any other legislation.
- (5) Changes authorised by this Article that are made in preparing consolidated legislation, other than formatting and presentational changes or minor editorial changes, must be set out in an endnote or other suitable place.

**15 Changes that may be made by the Law Revision Board in revising legislation**

- (1) The Law Revision Board established under the Law Revision (Jersey) Law 2003 is continued.
- (2) The Board consists of –
  - (a) 2 members of the States, appointed by the States;
  - (b) the Attorney General;
  - (c) the Greffier of the States; and
  - (d) the Principal Legislative Drafter.
- (3) The Law Revision Board –
  - (a) may regulate its own procedure;
  - (b) may transact its business electronically.

- (4) The Principal Legislative Drafter may prepare in draft a revision of any Jersey legislation in accordance with any of the powers set out in Schedule 1.
- (5) The powers in Article 14 may also be used for the preparation of the revision.
- (6) Any revision prepared under this Article must be consistent with current drafting practice.
- (7) The Principal Legislative Drafter must submit the draft revision to the other members of the Law Revision Board accompanied by a statement setting out the changes made (other than editorial changes) and the power relied on as authority for the change.
- (8) The Law Revision Board may certify the draft revision as revised legislation only if it is satisfied that the changes made are within the powers set out in Article 14 or Schedule 1.
- (9) The Minutes or other record of the transactions of the business of the Law Revision Board must be laid before the States within 2 months of the business being transacted.
- (10) The States may by Regulations amend Schedule 1.

## **16 Publication of legislation**

- (1) The Principal Legislative Drafter must ensure that the following are published –
  - (a) all as-enacted legislation made after the commencement of this Part; and
  - (b) all consolidated legislation.
- (2) As-enacted legislation must be published as soon as practicable after it is made, and consolidated legislation must be published as soon as practicable after it is consolidated.

## **17 Official versions of legislation**

- (1) All as-enacted legislation is an official version of the legislation.
- (2) Any consolidated legislation is an official version of legislation if it contains a statement that it is an official version of the legislation issued under the authority of this Law and –
  - (a) it is an electronic version of legislation displayed on a website under the authority of the Principal Legislative Drafter (or any printed or downloaded version of that legislation without any alteration to its text or format); or
  - (b) it is a printed version of legislation issued by or on behalf of the Principal Legislative Drafter.
- (3) An official version of as-enacted legislation is taken to set out correctly the text of the legislation.
- (4) An official version of consolidated legislation, unless the contrary is shown, is taken to set out correctly, as at the date at which it is stated to

be consolidated, the legislation as enacted and including any current amendments to it, or revisions of it under Article 15.

- (5) An official version of legislation is admissible in evidence in any proceedings and a court or person acting judicially must take judicial notice of any official version of legislation.
- (6) The States may, by Regulations, amend paragraph (2) to vary the requirements for legislation to be an official version.

## **18 Statute Law Revision Regulations**

- (1) The States may by Regulations amend any Jersey legislation using the powers set out in paragraph (2), Article 14 or Schedule 1.
- (2) The power is to make such amendments as are necessary or desirable to –
  - (a) clarify any ambiguity in the legislation; or
  - (b) reconcile inconsistencies between its provisions or between its provisions and provisions of any other Jersey legislation.
- (3) Where a proposition is lodged in respect of Regulations to be made under this Article no amendment may be lodged that, in the opinion of the Bailiff, would alter the effect of any legislation unless it is within the scope of paragraphs (1) or (2).
- (4) Subject to this Article, the Regulations may make any provision that could be made by a Law.

## **PART 4**

### **LEGISLATIVE DRAFTING OFFICE**

## **19 Legislative Drafting Office**

- (1) The Law Draftsman's Office is continued as the Legislative Drafting Office.
- (2) The primary function of the Legislative Drafting Office is to produce high-quality legislation that can be easily understood and is readily accessible to all persons.
- (3) The senior officer of the Legislative Drafting Office is the Principal Legislative Drafter.
- (4) The Principal Legislative Drafter is responsible to the Greffier of the States for carrying out the functions set out in Article 20 on behalf of the Legislative Drafting Office.
- (5) However, the Principal Legislative Drafter is not responsible to the Greffier of the States for any matter relating to current drafting practice.
- (6) A person must not be appointed or employed as a Legislative Drafter without having completed the academic stages necessary to become eligible to practise law in a Commonwealth country or the Republic of Ireland.

- (7) The Principal Legislative Drafter and other staff of the Legislative Drafting Office, other than staff employed on a consultancy basis, are States' employees.
- (8) For clarity, the staff of the Legislative Drafting Office are not officers of the States Greffe appointed under Article 41(6) of the States of Jersey Law 2005.

## **20 Functions of Principal Legislative Drafter**

The functions of the Principal Legislative Drafter are –

- (a) to be responsible for the drafting of all Jersey legislation to be presented to the States and any amendments to it;
- (b) to be responsible for the drafting of all other Jersey subordinate legislation;
- (c) to prepare consolidated legislation in accordance with Articles 13 and 14;
- (d) to prepare legislation for certification as revised legislation in accordance with Article 15;
- (e) to arrange for the publication of legislation as required by Article 16;
- (f) to publish current drafting practice;
- (g) to advise the Greffier of the States on the drafting of standing orders;
- (h) to take such steps as the Principal Legislative Drafter considers appropriate to promote access to Jersey legislation, including ensuring that it is clearly and logically organised, easy to understand, certain in its effect and as far as practicable conforms with current drafting practice; and
- (i) to perform such other functions relating or ancillary to the preparation of legislation as the Principal Legislative Drafter considers appropriate or as directed by the Greffier of the States.

## **21 Delegation of functions, responsibilities, duties, or powers**

The Principal Legislative Drafter –

- (a) may from time to time, either generally or particularly, delegate to any States employee working in the Legislative Drafting Office any of the Principal Legislative Drafter's functions; and
- (b) must ensure that an appropriate delegation is at all times in place under this Article to enable a person to act in place of the Principal Legislative Drafter during any absence or incapacity or during any vacancy in the office of Principal Legislative Drafter.

## **22 Amendment of this Part by Regulations**

The States may by Regulations amend this Part to make any other provision in respect of the Principal Legislative Drafter or the Legislative Drafting Office.

**PART 5**

## CLOSING PROVISIONS

**23 Consequential and minor amendments**

Schedule 2 contains consequential and minor amendments to Jersey legislation.

**24 Repeals**

The Laws listed in Schedule 3 are repealed.

**25 Citation and commencement**

This Law may be cited as the Legislation (Jersey) Law 202- and comes into force on such day or days as the States may by Act appoint.

## SCHEDULE 1

(Article 15)

### POWERS TO REVISE JERSEY LEGISLATION

In the preparation of revised legislation, the Principal Legislative Drafter has the power to –

- (a) amend the citation provision, long title, words of enactment or preamble of any legislation;
- (b) consolidate or split any legislation or relocate a provision into different legislation where the provision more properly belongs;
- (c) rearrange the provisions of any legislation or any list in a provision of any legislation;
- (d) add a table of contents or destinations to any legislation;
- (e) add a heading to a provision of any legislation that does not have one and alter any heading to a provision or part of any legislation;
- (f) omit any map, picture, drawing, diagram or other object;
- (g) change any reference to a person, office, body, place or thing to reflect a change of name, transfer of function or provision for construction of the reference;
- (h) make such adaptations and amendments as may appear necessary or proper as a consequence of constitutional or other changes in Jersey or any other place or territory or in or to any body or organisation outside Jersey;
- (i) change any words to make them gender neutral;
- (j) change expressions of date, money, number, time and units of measurement;
- (k) omit any obsolete or redundant words or provisions;
- (l) alter any words to secure uniformity of expression in any legislation;
- (m) shorten any phrase or sentence;
- (n) change the wording for the better application of plain language principles;
- (o) substitute for a reference to any legislation or provision of any legislation that has been re-enacted or replaced, whether with or without modifications, a reference to the legislation or provision re-enacting or replacing it; and
- (p) to do all other things which appear to the Principal Legislative Drafter to be necessary to render revised legislation consistent with current drafting practice.

## SCHEDULE 2

(Article 23)

### PART 1 - CONSEQUENTIAL AMENDMENTS

#### 1 Intellectual Property (Unregistered Rights) (Jersey) Law 2011

For Article 186 of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 there is substituted –

##### **“186 Copyright in Jersey legislation**

- (1) The States Assembly is entitled to copyright in any Jersey legislation.
- (2) Copyright under this Article subsists for the period of 50 years from the date –
  - (a) in the case of as-enacted legislation, on which it was passed; and
  - (b) in the case of consolidated legislation, on which it was last consolidated.
- (3) No other copyright, or right in the nature of copyright, subsists in any Jersey legislation.
- (4) This Article does not derogate from the duty to publish legislation under Article 16 of the Legislation (Jersey) Law 202-.
- (5) Except as provided in paragraphs (1) to (4), this Part applies in relation to copyright under this Article as it applies to States Assembly copyright and, accordingly, references in this Part (except Article 182) to States Assembly copyright include copyright under this Article.
- (6) Words and phrases that are defined in the Legislation (Jersey) Law 202- have the same respective meanings in this Article as they do in that Law.”.

#### 2 Interpretation (Jersey) Law 1954

Articles 1(2), (5) and (6), 6, 11(3) and (4), 16 and 17 of the Interpretation (Jersey) Law 1954 are deleted.

#### 3 Official Publications (Jersey) Law 1960

Article 3 of the Official Publications (Jersey) Law 1960 is deleted.

#### 4 Jersey Legal Information Board (Incorporation) Law 2004

In the Jersey Legal Information Board (Incorporation) Law 2004, in the preamble and in Article 3(1) for “Law Draftsman” there is substituted “Principal Legislative Drafter”.

## PART 2 - MINOR AMENDMENTS

### 5 Advocates and Solicitors (Jersey) Law 1997

In Article 4A of the Advocates and Solicitors (Jersey) Law 1997 –

- (a) after paragraph (4) there is inserted –
  - “(4A) A period of employment in the Legislative Drafting Office (within the meaning of Article 19(1) of the Legislation (Jersey) Law 202-) may nevertheless be treated as a period of employment in a relevant office.”;
- (b) in paragraph (5) after “outside Jersey” there is inserted “or in the Legislative Drafting Office as the case may be”.

### 6 Interpretation (Jersey) Law 1954

In the Interpretation (Jersey) Law 1954, after Article 11 there is inserted –

#### “11A Power to appoint to an office includes related powers

- (1) If any Jersey legislation confers power to appoint a person to an office, unless the contrary is expressed the power includes power –
  - (a) to determine the terms and conditions of appointment;
  - (b) to remove or suspend a person from the office;
  - (c) to reappoint or reinstate a person to the office;
  - (d) in the circumstances set out in paragraph (2), to appoint a person to the office in place of the last holder of the office.
- (2) The circumstances for the purposes of paragraph (1)(d) are where –
  - (a) the office is vacant;
  - (b) the person holding the office has been removed or suspended from office;
  - (c) the person holding the office is absent temporarily or permanently; or
  - (d) the person holding the office is incapacitated temporarily or permanently in a way that affects the person’s performance.”.

### 7 States of Jersey Law 2005

In Articles 37(1)(a) and 38(1) of the States of Jersey Law 2005 there is deleted “enactment or other”.



### **SCHEDULE 3**

(Article 24)

#### **LAWS REPEALED**

Loi (1797) sur la taxation des rentes

Loi (1848) touchant la taxation de rentes

Loi (1878) sur les séparations de biens

Loi (1928) sur la Voirie (Emprunts paroissiaux)

Subordinate Legislation (Jersey) Law 1960

Legislation (Amending Power) (Jersey) Law 1999

Christmas Bonus (Amendment No. 2) (Jersey) Law 2002

Law Revision (Jersey) Law 2003