

Proposals to amend Article 3(3) of the Health and Safety at Work (Jersey) Law, 1989.

1. Introduction

Further to discussion which took place on proposals to amend Article 3(3) of the Health and Safety at Work (Jersey) Law, 1989, the Law Draftsman has been consulted on matters requested by the Minister to be incorporated into the proposed amendment.

The Minister is requested to confirm that he is satisfied that the changes address his request, agree to the report which is to be included as part of the draft amendment, sign the Human Rights compatibility statement and instruct that the amendment be lodged with the States.

2. Requested changes

At the Ministerial meeting which took place on the 13th June 2008, the Minister considered the proposed draft amendment to Article 3(3) of the Health & Safety at Work (Jersey) Law, 1989, which had been prepared by the Law Draftsman.

The Minister agreed to the draft but requested that the Law Draftsman be asked to address two additional issues to that set out in the original brief:

- a) for the written health and safety policy statement required by Article 3(3) to be provided by the employer in a language that an employee will understand, and
- b) the ability for the Minister to change the total of the number of employees used to determine the requirement for an employer to prepare a written health and safety policy. Currently this can only be achieved by Regulation and the Minister requested that the Law Draftsman be asked if this could be accomplished by Order.

The Law Draftsman has incorporated these requested changes into the proposed amendment, which is included at Appendix A, through the inclusion of paragraphs (4) and (5).

3. Report to accompany the draft amendment

The draft amendment is required to include a short introductory report, the proposed wording of which is as follows:

The Health and Safety at Work (Jersey) Law, 1989, is the primary occupational health and safety law in Jersey. Article 3 of the Law sets out the general duty placed on employers to ensure the health, safety and welfare of their employees.

The duty under Article 3 is limited by the phrase "so far as is reasonably practicable". The legal interpretation of this phrase requires an employer to balance the sacrifice, either in money, time or trouble, on the one hand, against the nature of the risk involved on the other hand. This, in effect, requires a risk assessment process to be carried out. However, it is considered that the lack of specific wording in Article 3 setting out a reference to need for this risk assessment process to take place, results in employers being confused and, in certain instances, not meeting the existing legal requirement placed on them.

The proposal to amend the Law to include a requirement for them to carry out an assessment of risks is therefore intended to clarify and assist employers in meeting the existing duty placed on them under Article 3.

An employer with 5 or more employees is required to prepare a written health and safety statement. The amendment confirms that this statement must include the recording of significant risks resulting from the employer's activities and the manner in which they are addressed.

The amendment also sets out proposals to reflect the need for an employer to effectively communicate the written health and safety statement by requiring it to be prepared in a language which can be understood by his employees.

The number of employees which triggers the need for a written health and safety policy statement may currently only be changed by Regulations made by the States. The amendment puts forward a proposal to allow the Minister to make changes to this requirement by Order.

There are no resource implications for the financial or manpower resources of the States.

4. Statement of compatibility with Human Rights

As this proposed amendment is for a change to primary legislation, the Minister is required to sign a statement of compatibility with the Convention on Human Rights. The proposed changes to Article 3 are mainly intended to clarify an existing legal duty and are therefore not considered to affect the status of the Law under the Convention.

In accordance with Article 16 of the Human Rights (Jersey) Law, 2000, the Minister is required to sign a statement of compatibility with the Convention Rights. A prepared statement is included in Appendix B.

The statement will be incorporated into the draft amendment.

5. Recommendations

The Minister is requested to:

- a) agree to the revised wording of the proposed amendment to Article 3 of the Law,
- b) agree to the wording of the report for inclusion in the proposed amendment to be lodged with the States,
- c) sign the Human Rights compatibility statement, and
- c) instruct that the proposed amendment be lodged with the States.

Colin Myers
Director of Health and Safety

Appendix A

Appendix B

Appendix A



Jersey

HEALTH AND SAFETY AT WORK (AMENDMENT No. 4) (JERSEY) LAW 200-

Report

Explanatory Note

This draft Law amends the Health and Safety at Work (Jersey) Law 1989. Under that Law, every employer is required to ensure, so far as is reasonably practicable, the health, safety and welfare at work of his or her employees. It falls to the employer, in the discharge of that duty, to assess what is reasonably practicable by weighing the likelihood and consequences of any harm to employees against the measures that would be required to eliminate or reduce the risk of that harm occurring. The amendment made by Article 1(a) of this draft Law makes it clear that the duty includes that assessment.

An employer of 5 or more employees is already required to maintain a written statement of his or her health and safety policy. The amendment made by Article 1(b) of this draft Law makes 3 changes to, or relating to, that requirement.

Firstly, it extends the requirement so that the employer must also maintain a written statement of his or her assessment of significant risks, and what the employer has done to eliminate or reduce them, and bring the statement to the attention and notice of employees.

Secondly, it requires that the statement is in a language that the employer's employees understand. So, if an employer has an employee whose first language is not English, but whose knowledge of English is sufficient that the employee would understand the statement in English, the requirement is satisfied if the statement is provided in English. But, if the employee's knowledge of English is so limited that the employee would not understand the statement in English, the employer must provide the statement in a language in which the employee will understand it.

Thirdly, it enables the Minister for Social Security to amend, by Order, the number of employees by reference to which the requirement to maintain a written statement is imposed.



If this Law is adopted, employers will have 3 months from the day that the Law is registered in the Royal Court in which to revise their statements so as to comply with the new requirement.





Jersey

HEALTH AND SAFETY AT WORK (AMENDMENT No. 4) (JERSEY) LAW 200-

A LAW to amend further the Health and Safety at Work (Jersey) Law 1989

<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>

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

1 Article 3 of the Health and Safety at Work (Jersey) Law 1989 amended

In Article 3 of the Health and Safety at Work (Jersey) Law 1989 –

- (a) in paragraph (2), before sub-paragraph (a) there shall be inserted the following sub-paragraph –
 - “(aa) the identification and assessment of risks to health and safety to which the employer’s employees are exposed at work;”;
- (b) for paragraph (3) there shall be substituted the following paragraphs –
 - “(3) It shall be the duty of every employer employing 5 or more employees –
 - (a) to prepare and, as often as may be appropriate, revise a written statement of –
 - (i) the employer’s general policy with respect to the health and safety of the employer’s employees,
 - (ii) the organization of responsibilities with respect to that policy,
 - (iii) the arrangements in force and measures taken by the employer to implement that policy;

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- (b) without prejudice to the generality of sub-paragraph (a)(iii), to prepare and, as often as may be appropriate, revise a written statement of –
 - (i) the significant risks identified by the employer under paragraph (2)(aa) and the employer's assessment of them,
 - (ii) any arrangements in force and any measures taken by the employer to eliminate or reduce the significant risks to health and safety identified; and
 - (c) to bring the statements and any revisions of them to the notice of the employer's employees.
- (4) The statements required by paragraph (3) and any revisions of them shall be prepared in a language, or if necessary in more than one language, in which they will be understood by each of the employer's employees.
 - (5) The Minister may, by Order, amend the number of employees mentioned in paragraph (3)."

2 Citation and commencement

- (1) This Law may be cited as the Health and Safety at Work (Amendment No. 4) (Jersey) Law 200-.
- (2) This Law, apart from Article 1(b), shall come into force 7 days after it is registered.
- (3) Article 1(b) shall come into force 3 months after this Law is registered.

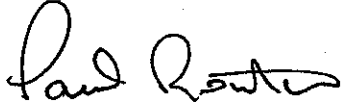
Appendix B

Health and Safety at Work (Amendment No. 4)(Jersey)Law 200-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Social Security has made the following statement:

In the view of the Minister for Social Security the provisions of the Health and Safety at Work (Amendment No.4) (Jersey) Law 200- are compatible with the Convention Rights.



Senator Paul Routier

Minister for Social Security

28th October 2008