

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

1. Introduction

On the 20th January 2009, the Minister for Social Security decided to withdraw Projet 170/2008, draft Health and Safety at Work (Amendment No. 4)(Jersey) Law, 200-, in order to seek confirmation that the amendment was human rights compliant.

Confirmation has subsequently been received from the Law Officers' Department that the proposed amendment is human rights compliant. The Minister is therefore requested to sign the statement of compatibility with human rights, and instruct that the draft amendment be lodged au Greffe.

2. Background

The draft Health and Safety at Work (Amendment No.4) (Jersey) Law, 200-, see Appendix A, was agreed by Senator Paul Routier, former Minister for Social Security, and lodged au Greffe on the 4th November 2008.

In order to be satisfied that the amendment was in accordance with the requirements of the Human Rights (Jersey) Law, 2000, Deputy Ian Gorst, the new Minister for Social Security decided, on the 20th January 2009, to withdraw the amendment pending confirmation that the proposals were human rights compliant.

The Law Officers' Department has now provided confirmation that the proposed amendment is human rights compliant. A memorandum setting out this advice is included in Appendix B.

5. Recommendations

The Minister is requested to:

- a) sign the Human Rights compatibility statement, which is included in Appendix C, and
- c) instruct that the proposed amendment be lodged au Greffe.

Colin Myers
Director of Health and Safety

3rd March 2009

Appendix A

STATES OF JERSEY



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

Lodged au Greffe on 4th November 2008
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT 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 Draft Health and Safety at Work (Amendment No. 4) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F. Routier**

REPORT

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 implications for the financial or manpower resources of the States arising from this draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 31st October 2008 the Minister for Social Security made the following statement before Second Reading of this Projet in the States Assembly –

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

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

DRAFT 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

Adopted by the States [date to be inserted]
Sanctioned by Order of Her Majesty in Council [date to be inserted]
Registered by the Royal Court [date to be inserted]

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 1989¹ –

- (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;

- (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.

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Appendix B

Law Officers' Department Memorandum

Morier House St. Helier JERSEY JE1 1DD



SSD25
28 JAN 2009

To: Colin Myers
Director of Health and
Safety

From: Richard Whitehead
Principal Legal Adviser

cc Guillaume Staal
Assistant Legal Adviser

Date 23rd January, 2009

Our Ref: RWW/GCS HSSLEGA-024

**Draft / Health and Safety at Work (Amendment No 4)(Jersey) Law 200-; Projet
170/2008**

I refer to your emails to the Attorney General of 19th and 21st January, which were forwarded to me. I have reviewed the draft Law and I am satisfied that no human rights compatibility issues arise from it. The Minister for Social Security may therefore properly be advised to provide a statement of compatibility pursuant to Article 16 of the Human Rights (Jersey) Law 2000.

This communication may contain legal advice which is confidential and/or privileged. It should not be forwarded or copied to anyone else without the prior permission of the author.

Appendix C

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.

Deputy Ian Gorst

Date

Minister for Social Security