

STATES OF JERSEY



DRAFT JERSEY COLLEGE FOR GIRLS (REMOVAL OF COVENANTS FROM FORMER SITE) (JERSEY) LAW 200-

**Lodged au Greffe on 23rd May 2006
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

**DRAFT JERSEY COLLEGE FOR GIRLS
(REMOVAL OF COVENANTS FROM FORMER
SITE) (JERSEY) LAW 200-**

European Convention on Human Rights

The Assistant Minister for Treasury and Resources has made the following statement –

In the view of the Assistant Minister for Treasury and Resources the provisions of the Draft Jersey College for Girls (Removal of Covenants from Former Site) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy J.A.N. Le Fondré of St. Lawrence**

REPORT

1. The Jersey Ladies College, as the Jersey College for Girls was originally known, was built by a company called the Jersey Ladies' College Limited. The company ran the college as a school for many years, but eventually went into liquidation. On 15th September 1928, the liquidators of the Jersey Ladies' College Company Limited sold the college, together with all lands, buildings and appurtenances, the good will of the college, and the furniture and equipment to a company called The Schools Trust (Jersey) Limited. The contract of sale by the Jersey Ladies' College Company Limited to The Schools Trust (Jersey) Limited set out 4 clauses to which the sale was subject. The first was that the establishment should continue to be a secondary school for young girls, should not be commercially exploited and should be administered according to the evangelical principles of the Anglican Church. The second was that the religious instruction given in the school should be in accordance with those principles and having regard to the religious convictions of the parents and the pupils, and that no objection was to be made to the admission of a pupil on account of her religious beliefs. The third condition required the acquiring company to honour all outstanding contracts of employment and the like, and the fourth related to the issue of debenture bonds; they are of no relevance.

2. The Schools Trust (Jersey) Limited ran the school for just under a decade, but eventually found itself in the position of not being able to continue to run the school without raising the fees of the pupils beyond the means of a large proportion of the parents. The company therefore agreed to sell the property to the Public, the purpose of the sale being that the States would take over the responsibility for the administration of the school.

3. Some doubts were entertained as to whether The Schools Trust (Jersey) Limited was entitled to sell the property to the Public free of the first and second covenants referred to above, and on 29th June 1935, the company made a representation to the Royal Court asking the Court declare that those clauses were only binding upon the company and that it was free to sell the property to the Public free of any such covenants or restrictions. The Court considered the matter, and on 26th August 1935, ruled that the obligation to give religious instruction contained in the clause in question was not restricted to the company but applied equally to successor or transferees, so that the liquidators could not lawfully sell, transfer or otherwise dispose of the property free from the restrictions regarding religious instruction.

4. In order to resolve the problem, the States passed the *Loi (1936) autorisant la Vente des Immeubles appartenant à la Société à Responsabilité Limitée dit "Schools Trust (Jersey) Limited" aux Etats de cette Ile*, which provided that immediately after the promulgation of the Law it should be lawful for the company to sell, transfer or otherwise dispose of the Jersey College for Girls in perpetuity free from the convention or restriction of 15th September 1928, regarding the religious principles under which the school would be administered.

5. The decision of the Royal Court in The Schools Trust (Jersey) Limited case has been the subject of some criticism, and some legal practitioners think that it was wrongly decided, inasmuch as the general principle relating to covenants affecting immovable property is that, save in the case where a *fidéicommiss* (trust) has been validly created, a covenant affecting land can only be created in favour of (a) a person,

in which case it comes to an end with the death of the person, or (b) in favour of other land.

6. In the case of the Jersey College for Girls, the vendor of the site to The Schools Trust (Jersey) Limited no longer existed at the date of the proposed sale by The Schools Trust (Jersey) Limited, and there was no retained land in the vicinity in favour of which the covenant could be said to operate. Be that as it may, the Royal Court decided as it did and until that decision is overturned by a Court of competent jurisdiction it should be regarded as the law.

7. Although the position is arguable, it is better to put it beyond doubt by a Law than to leave it for argument. The States are therefore asked to pass a Law which will have the effect of enabling the site to be used, and to be sold, free of any requirement to run it as a non-commercial secondary school for girls.

There are no manpower implications but financially, without the removal of the covenant, there remains the potential of the site being decreased in value.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 22nd May 2006 the Assistant Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Assistant Minister for Treasury and Resources the provisions of the Draft Jersey College for Girls (Removal of Covenants from Former Site) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

The purpose of this draft Law is to enable the site of the former Jersey College for Girls premises at Rouge Bouillon, St. Helier, to be used, and to be sold, free of any requirement which may exist to operate it as a secondary school for girls and free of any prohibition of its use for commercial purposes.



Jersey

DRAFT JERSEY COLLEGE FOR GIRLS (REMOVAL OF COVENANTS FROM FORMER SITE) (JERSEY) LAW 200-

A LAW to remove covenants from the former site of the Jersey College for Girls and for connected purposes

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 Interpretation

In this Law, “former site of the Jersey College for Girls” means the houses, buildings, land and appurtenances acquired by the Public of the Island from The Schools Trust (Jersey) Limited by contract passed before the Royal Court on 1st February 1936.

2 Removal of covenants regarding use

Notwithstanding anything to the contrary contained in any contract passed before the Royal Court, it shall be lawful for the Public of the Island –

- (a) to use the former site of the Jersey College for Girls for purposes, including commercial purposes, other than the conduct of a school; and
- (b) to sell, transfer or otherwise dispose of the former site of the Jersey College for Girls free of any obligation to conduct a school on it and free of any restriction prohibiting its use for commercial purposes.

3 Registration of Law in Public Registry

- (1) The Royal Court shall, when it orders the registration of this Law, also order the registration of a copy of this Law, signed by the Greffier of the States, in the Public Registry of Contracts.
- (2) The registration of a copy of this Law in the Public Registry of Contracts shall have like effect as a contract passed before the Royal Court.
- (3) No fees shall be payable under the Stamp Duties and Fees (Jersey) Law 1998¹ in relation to the registration of a copy of this Law as required by paragraph (1).

4 Citation and commencement

This Law may be cited as the Jersey College for Girls (Removal of Covenants from Former Site) (Jersey) Law 200- and shall come into force 7 days after it is registered.

¹ *chapter 24.960*