



PRIVILEGES AND PROCEDURES COMMITTEE

Draft Legislation (Jersey) Law Consultation Paper

Purpose

The primary purpose of the draft Legislation (Jersey) Law is to enable Jersey's legislation website to match leading jurisdictions by displaying all our legislation as it is currently in force in a form that enables its citation in court as the official version.

The draft Law also contains a number of provisions about legislation that are currently contained in various separate pieces of legislation that are better brought together in one place for convenience, along with new provisions about the functions of the Legislative Drafting Office. This paper considers all of the suggested new provisions and seeks views on them. A summary of the questions on which we are seeking views also appears at the end of this paper, before the Appendix.

Driver for new Law

Currently, official legislation is made available through the production of an annual revised edition update under the Law Revision (Jersey) Law 2003 (the "Law Revision Law"). When the revised edition was brought in it was a huge leap forward for Jersey since before that time there was no database of legislation. Though some legislation was published electronically none of it was updated, so the amendment had to be read alongside the legislation being amended. Since most legislation is now accessed on line, the www.jerseylaw.je website hosted by the Jersey Legal Information Board (JLIB) displays the law updated by the revised edition to 1st January in any year. The drawback is that normally this is published only in April or May. This means that the published edition is at best several months out of date and at worst 16 months out of date. Practitioners were therefore still required to make their own consolidations since the date of the last revised edition, which were necessarily unofficial, so that it was never possible to access or download any legislation from the website and be sure it represented current law.

In 2016 JLIB agreed to promote a move away from this practice to a system of keeping the statute book continuously up to date. Initially unofficial consolidations of legislation were produced and published on the website on an ad hoc basis, but in 2018 it was agreed with JLIB that the Legislative Drafting Office would enable the entire website to display current law in an easily accessible form by producing consolidations whenever the law changed. New legislation would be required to make these consolidations "official", so they could be relied on in court. However, to ensure that this legislation would clearly meet the needs of users, steps were taken initially to produce a consolidated version of the statute book on an unofficial basis. This version has been available on the [jerseylaw](http://www.jerseylaw.je) website since May 2019 and is now the 'landing page' when anyone clicks on the legislation section of the site. It means that the new regime can be tested and monitored to ensure it is working properly before it becomes official.

The new provisions about consolidation of legislation are in Part 3 of the draft Law. This Part also re-enacts certain provisions of the Law Revision Law that will continue to be valuable in the future. Because of its central importance Part 3 is considered first in this paper.

Part 2 of the draft Law contains provisions chiefly about the making, amending and repealing of legislation. Most of the proposed Part 2 provisions are currently scattered over several statutes and would be consolidated in one place under the new Law.

Part 4 of the draft Law contains some suggestions about how the Legislative Drafting Office and the functions of the Principal Legislative Drafter might be put into legislation. The Legislative Drafting Office is the new name that has been adopted informally in place of the Law Draftsman's Office and the Principal Legislative Drafter is the change of title of the Law Draftsman. The new titles reflect the policy of gender neutrality.

In exploring what provisions might need to be drafted it was convenient to produce a draft Law as the vehicle for considering legislation from other jurisdictions that might be similar to what could be enacted in Jersey and refining them to what we thought might be Jersey's needs. Most of this legislation is highly technical.

Possible changes that could be part of the Legislation Law

a) Part 3: new provisions regarding publication, consolidation and revision of legislation

Apart from provisions that have been moved from the Law Revision Law, the provisions in Part 3 of the draft Law are all new.

Draft Article 12 would explain what is meant by "as-enacted legislation" and "consolidated legislation".

Draft Article 13 would create an obligation on the Principal Legislative Drafter to produce consolidated versions of any Jersey legislation (other than legislation that only amends other legislation) when it is commenced, amended or revised. A consolidated version of legislation is one in which all current provisions of, or amendments to it, are incorporated within the text.

Draft Article 14 would set out the editorial changes that can be made by the Principal Legislative Drafter in preparing consolidated legislation. The changes are the removal of commencement information, the removal of provisions that amend other enactments and the correction of obvious typographical, grammatical, spelling and punctuation errors along with those relating to numbering, cross-referencing, alphabetical ordering and arising out of amendments made by other legislation to the legislation being consolidated. There is also power to adjust the punctuation and the use of "and" or "or" purely when an entry is added to a list and to make formatting and presentational changes.

Draft Article 14 represents the view of the Legislative Drafting Office as to what alterations in consolidated legislation can be made editorially. There is a balance to be struck in enabling minor corrections to be made administratively and the need for proper checks and balances when it comes to altering the text of legislation outside of the normal legislative process. The recommendation is to act with caution. It is fundamental that none of these changes may change the legal effect of legislation as enshrined in draft Article 14(2). The changes that can be made under Article 14 are therefore confined to correcting errors and editing the punctuation and the position of the "and" or "or" when a new provision is added to a list of provisions. The insertion of amendments required by the duty to prepare consolidations under Article 13 are of course permitted and there is included a specific power, derived from an existing one in the Law Revision Law, to remove spent information as

to commencement of the legislation and also provisions that amend other enactments, as these provisions will have had their effect and become spent.

Draft Article 15 would continue the Law Revision Board that was established under the Law Revision Law. It would also provide for the business of the Board to be transacted electronically. In addition, it would provide for the Principal Legislative Drafter to prepare a draft of legislation that is to be revised using the powers set out in Schedule 1. These powers are reproduced from the Law Revision Law. The Board may certify the draft as revised legislation only if it is satisfied that the changes are within the powers set out in Article 14 or Schedule 1. 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

Under the draft Law the Law Revision Board continues in its current form except for the removal of the power to appoint a law revision manager. The Legislative Drafting Office now has a Legislation Editor to whom a number of functions of the Principal Legislative Drafter relating to the preparation of legislation and management of the legislation database will be delegated, and preparation and management of law revisions is part of that role. It should be noted that the suggested new powers under the draft Law are intended work differently from the way those currently in the Law Revision Law have been used. The existing powers allow for production of a complete revised edition as well as updates to it. The new powers, because of the new consolidation powers allowing for continuous updating, are more likely to be used on an ad hoc basis to revise individual pieces of legislation, though it could be used for a wholesale revision if desired. Though the bulk of the changes made to date by the Law Revision Board could be effected using the powers available for preparing consolidations, there will continue to be occasions in which the wider suite of powers currently available could be useful. In particular, they will save the need to make amendments to legislation in respect of provisions that need revising short of actually changing the law, such as where institutions have a change of name.

Draft Article 16 requires the Principal Legislative Drafter to publish all as-enacted legislation as soon as practicable after it is made and all consolidated legislation as soon as practicable after it is consolidated.

We think this requirement obviates the need for a separate notice in the online Jersey Gazette. The jerseylaw site is an obvious place to look for legislation changes and the changes are made very quickly, with an option for people to subscribe to email updates.

Draft Article 17 would make all as-enacted legislation an official version of the legislation and any consolidated legislation an official version if it contains a statement that it is an official version of the legislation issued under the authority of the draft Law. An official version also has to be either an electronic version of legislation displayed on a website under the authority of the Principal Legislative Drafter (or an unaltered printed or downloaded version of it) or a printed version issued by or on behalf of the Principal Legislative Drafter. An official version is taken to set out the legislation in its current form unless, in the case of consolidated legislation, the contrary is shown. Official versions are admissible in evidence in any proceedings and courts must take judicial notice of them as accurately representing the Law.

The purpose of draft Article 17 is to make all legislation passed in its original form and the most recent consolidation automatically official. They can then be cited in court as representing the legislation as it was on the day it was passed, or the consolidated date, as the case may be.

At the JLIB meeting in May 2019, it was suggested that translations of French legislation might be made official versions of legislation under this Law. Having considered this matter the Legislative Drafting Office did not recommend this. The English translations, though very valuable, were neither co-drafted with the French version nor produced at the time for the legislation to be passed bilingually. It is considered best if the French text should remain the official version until it is repealed and re-enacted in English. The Legislative Drafting Office now has procedures in place to ensure that amendments to the French version are reproduced in the English translation and a hyperlink from the French version to the English translation as an aid to users (with a suitable caveat that the English version is not official).

Draft Article 18 would introduce a power to make what are to be known as Statute Law Revision Regulations as an alternative to law revision legislation. This would enable the States to pass Regulations containing a series of corrective measures using the law revision powers. The Bailiff, as Presiding Officer of the States Assembly, may disallow any amendments to the proposition for the Regulations that would result in any wider changes to the law. The Regulations would enable corrections to be made to legislation without the need to undergo the full legislative process, including needing Royal Assent. Other jurisdictions commonly use Statute Law Revision Bills to make corrections and other technical changes to legislation and this is the inspiration for the new Regulation-making power.

We have included in the draft Law, therefore, 3 methods of changing legislation that all fall short of a full legislative process. First, the Principal Legislative Drafter's new power to consolidate and make minor editorial changes; secondly, the existing powers of law revision to be used in future more on an ad hoc basis; thirdly, a new power for the States to make Statute Law Revision Regulations, increasing the level of political oversight. Consultees views are sought as to whether all three of these powers should be part of the draft Law.

b) Part 2: provisions regarding the making, amending and repealing of legislation

This Part brings together provisions relocated from other Laws, in particular the Interpretation (Jersey) Law 1954 (the "Interpretation Law").

Draft Article 2 would adapt and extend a provision currently in the Interpretation Law and explain how Jersey legislation is made and when it is treated as having been made.

Draft Article 3 would bring together provisions about the commencement of Jersey legislation. It would make the default position (unless provided for to the contrary) that Jersey legislation commences on the day after it is made.

Draft Article 4 would re-enact the provision enabling certain powers to be exercised before legislation commences.

Draft Article 5 would re-enact the provision preserving certain situations where legislation is repealed or expires.

Draft Article 6 would re-enact the provision enabling references to repealed legislation to be construed as referring to their replacements.

Draft Article 7 is a clarifying provision ousting any rule that an amendment of secondary legislation by primary legislation restricts any future amendment of those provisions by secondary legislation.

This is a very technical provision. Some lawyers take the view that secondary legislation such as Regulations or Orders should not be amended by a Law because it may be arguable that those changes, effected by a higher authority, cannot then be amended by later secondary legislation. This provision makes it clear that amendment in this way does not restrict the powers of amendment in the future.

Draft Article 8 would re-enact the provision enabling Regulations to amend a Law that had been lodged but not made where another Law makes provisions that are inconsistent with it.

Draft Article 9 would re-enact an existing provision about powers to make subordinate legislation with an addition enabling a repeal to be brought into force only to the extent of repealing some of the provisions of the legislation.

Draft Article 10 is a new provision that would enable secondary legislation to incorporate by reference a document of a technical nature accessible to the public either as it exists at a particular time or as amended from time to time.

This provision is designed to enable the incorporation of technical guidance documents or industry standards, usually from the UK but possibly from further afield, where Jersey would always want to follow them rather than develop its own. If necessary, power is given to incorporate these documents as amended from time to time. The types of documents might be British safety standards, technical guidance on health and safety matters, construction and use of vehicles, shipping matters, standard guidance on use of pesticides, etc. At present, unless the primary legislation gives a power, such incorporation could be considered sub-delegation and even if there was power in order to keep in step the references would have to be updated every time the guidance changed. This provision should therefore save time and money as well as ensuring Jersey is in line with British or international standards as appropriate.

Draft Article 11 would incorporate an existing provision, contained in the Subordinate Legislation (Jersey) Law 1960, which requires secondary legislation not made by the States to be laid before the States and enables the States to resolve that it be annulled. Judging by other jurisdictions it is unusual for this power to be totally open-ended, so we are suggesting in this slightly amended version of the provision that consideration be given to limiting the window to annul the legislation to the next 2 sittings after it is laid.

To have a provision enabling legislation to be annulled after it has been on the statute book any number of years contrasts with, for example, the Westminster provision whereby Parliament has only a limited time to annul statutory instruments laid before it (the negative resolution procedure). Consultees are asked to weigh up the merits in introducing this limitation in a power of the Assembly against the certainty created by making the legislation subject to annulment for a limited time only. Of course, if a Member is unhappy with the provisions in an Order at a later date a proposition could still be brought inviting the relevant Minister to repeal or amend it.

c) Part 4: provisions relating to the Legislative Drafting Office

Draft Article 19 would continue the Law Draftsman's Office as the Legislative Drafting Office with the Principal Legislative Drafter (renamed from the Law Draftsman) as the senior officer and with the Office having the objective of producing high-quality legislation that can be easily understood and is readily accessible to all persons. Under this Article the Principal Legislative Drafter is responsible to the Greffier of the States for carrying out his or her functions but not in relation to matters relating to current drafting practice. For a person to be appointed as a Legislative Drafter he or she must have completed the academic stages necessary to be eligible to practise law in a Commonwealth country

or the Republic of Ireland. It is further provided that all staff of the Legislative Drafting Office other than consultants are States' employees but are not officers of the States Greffe under the States of Jersey Law 2005.

Consultees are invited to consider the merits of placing the Legislative Drafting Office on a statutory footing as was done recently with Statistics Jersey under the Statistics and Census (Jersey) Law 2018. Rather like the functions of compiling and commenting on statistics, the legislative drafting function is an impartial service provided to all arms of the public sector. The office was made an associated office of the States Greffe after a lengthy enquiry considered whether it should remain part of the (then) Chief Minister's Department or become part of the Law Officers' Department. The new provision enshrining the current arrangement in legislation is not intended to remove flexibility; we are suggesting these provisions should be capable of being amended by Regulations. However, we see merit in setting out the current structure to stress that the Legislative Drafting Office is primarily there to serve the Assembly, of which Government as represented by Ministers is a key part. The provision clarifies the relationship between the Office and the Greffe, provides for Legislative Drafters to be lawyers and for all Office staff to continue to be States' employees.

Draft Article 20 would set out the functions of the Principal Legislative Drafter. These 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 as required by 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 to or ancillary to the preparation of legislation as the Principal Legislative Drafter considers appropriate or as directed by the Greffier of the States.

Further to the comments in relation to Article 19 we think it helpful to set out the functions of the Legislative Drafting Office that devolve to the Principal Legislative Drafter as head of the office. In addition to the functions already covered under Part 3 of the draft Law, there is a duty to promote access to Jersey legislation. This creates a continuing duty that is intended to lead to further refinements not covered by this Law, such as access to legislation on given dates in the past, which would be a useful tool to aid the practitioner and other users of legislation. The duty in relation to standing orders, it is suggested, should be to advise on their drafting rather than to draft them. standing orders should not be regarded as legislation: they are the internal rules of the States Assembly and should therefore be wholly under the auspices of the Assembly. The Greffier and his senior staff are experts in the operation of the standing orders. The Legislative Drafting Office will continue to make itself available to assist the Greffe by advising on the drafting and stepping in to draft if this proves necessary.

Draft Article 21 would enable the Principal Legislative Drafter to delegate his or her functions and requires that an appropriate delegation is in place at all times.

We think this provision would be useful. For example, at the moment, if the Principal Legislative Drafter is away there has been no-one else able to discharge her functions in respect of the revised edition. There is a deputy head of the office, now entitled the Senior Legislative Drafter, to whom the functions could be delegated under this Article in the event of her absence in future, and specific functions can be delegated as necessary, such as much of the work in relation to producing consolidated legislation and publishing to the website, which naturally devolves onto the Legislation Editor.

Draft Article 22 would enable Part 4 to be amended by Regulations so as to make alternative provision for the Legislative Drafting Office.

As mentioned above, we consider this provision necessary to allow for future changes in the structure, reporting lines and functions of the Legislative Drafting Office.

d) Part 5: closing provisions

Draft Article 23 and Schedule 2 would cover amendments to legislation, including updating a provision concerned with copyright of Jersey legislation, the deletion of provisions that have been moved into the new draft Law or are no longer considered to be needed (including the requirement to publish in the Jersey Gazette) and to reflect the change of title of “Law Draftsman” to “Principal Legislative Drafter”. There are also the following minor amendments included for consultees’ consideration:

Advocates and Solicitors (Jersey) Law 1997

The amendment would allow 6 months employment in the Legislative Drafting Office to be treated as employment in a relevant office and therefore accrue towards the time that must be spent in practice before a person may become a Jersey Advocate or solicitor.

At the moment any lawyer in the Legislative Drafting Office who has passed the qualifying exam under the Advocates and Solicitors (Jersey) Law is unable to count any time spent in that Office towards the time in practice necessary to qualify as an advocate or solicitor, as is the case with time spent in the Judicial Greffe or Law Officers’ Department. We are asking consultees to consider whether a period of 6 months spent in the Legislative Drafting Office might count, in the same way as does 6 months spent in a law practice outside Jersey. This may encourage junior lawyers in the Law Officers’ Department to take secondments in the Legislative Drafting Office, which could provide them with very useful experience. This amendment would remove a disincentive to taking such a secondment because time spent in the Legislative Drafting Office could then count towards the time in practice needed to qualify as a Jersey Advocate or solicitor.

Interpretation (Jersey) Law 1954

The suggested provision is taken from recent Scottish and New Zealand legislation. It would include, where there is a power of appointment, power to determine the terms of appointment, to remove or suspend a person from office, to reappoint or reinstate a person to the office and to appoint a person where the office is vacant or the person holding it is absent, has been suspended or removed from the office or has become incapacitated.

We think this change could provide useful powers when appointments are made. It will save specific provision always being written into each separate piece of legislation.

States of Jersey Law 2005

The amendment removes enactments from the provisions concerning liability in respect of the publication of documents under the authority of the States.

Draft Article 24 and Schedule 3 provide for the repeal of legislation replaced by the draft Law, namely the Subordinate Legislation (Jersey) Law 1960, the Legislation (Amending Powers) (Jersey) Law 1999 and the Law Revision (Jersey) Law 2003 as well as some Laws, mostly French Laws, that are considered as no longer being used nor having any practical effect in Jersey today.

Summary of suggested law changes for consultation

- Do you support a statutory requirement to make Jersey legislation available in consolidated form? (Article 13)
- Do you agree with the limited editorial changes it is proposed that the Principal Legislative Drafter may make under Article 14 when consolidating legislation?
- Do you agree with the continuation of the Law Revision Board but to enable its business to be transacted electronically? And are you content with the proposal that its existing revision powers be continued with a view to their being exercised on an ad hoc basis to enable specific legislation to be revised when necessary? (Article 15)
- Do you agree with the suggested provision requiring publication of all Jersey legislation, including in consolidated form and that should continue to be by means of the website but not to continue with a separate notice in the Jersey Gazette? (Article 16)
- Do you agree with the provisions that make any as-enacted or consolidated legislation prepared in accordance with this Law an official version of legislation capable of being cited in court provided it is displayed on the appropriate website or consists of a printed version issued by the Principal Legislative Drafter? (Article 17)
- Do you think that the States should be given the powers set out in Article 18 to make Statute Law Revision Regulations?
- Do you agree with the consolidation of the general provisions in respect of legislation that are set out in Part 2 of the draft Law?
- Consultees' views are sought in respect of the following provisions of Part 2 that are new or extended:
 - Article 2 setting out how Jersey legislation is made;
 - Article 7 clarifying that Jersey subordinate legislation is not affected by the type of legislation amending it;
 - The additional provision in Article 9(4) enabling partial commencement of repeals;
 - The power to incorporate technical documents by reference as set out in Article 10;
 - The inclusion, in Article 11, of the limitation on the power of the States to annul Orders and similar secondary legislation to no later than 2 sittings after it has been laid in Article 11;
- Do consultees support the making of the Legislative Drafting Office a statutory office, the provisions as to the status of its staff, the functions of the Principal Legislative Drafter, the provisions as to the delegation of functions and the power to amend the Part by Regulations? (Articles 19-22)
- Do consultees support the amendments set out in Part 2 of Schedule 3, namely:

- Allowing 6 months' employment in the Legislative Drafting Office to count towards time in practice for the purpose of qualification as an advocate or solicitor;
 - Including within the Interpretation Law a provision that when there is power to appoint to an office there is automatically a power to determine the terms and conditions of appointment, power to remove or suspend the appointee and to reappoint a person.
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- Do you think Jersey legislation should continue to be copyright or made available to be reproduced without the need for permission and free of charge? Or should consent be required only if it is reproduced for supply for commercial gain? (Sch 2 para 1)
 - Are consultees content with the repeal of the Laws set out in Schedule 3?

The Appendix below contains a table of derivations showing where the provisions of the legislation have been derived from, including where inspiration has been obtained from other jurisdictions.

Privileges and Procedures Committee

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Appendix: Table of origin of provisions

Article	Origin of provision
1	
2	Partially new partially Art 1 of Interpretation (Jersey) Law (“IJL”); also derived from Isle of Man Legislation Act 2015 (“IOM”) s24 & 25.
3	IJL Art 1(2), (5) & (6); IOM s 19-21, Interpretation and Legislative Reform (Scotland) Act 2010 (“Scot”) s2-3 & 8;
4	IJL Art 16; Scot s4
6	IJL Art 17; IoM s 58, Scot s19
7	IoM s69
8	Legislation (Amending Powers) (Jersey) Law 1999
9	IJL Art 11(3) and (4); IoM s87, 88 & 93; Scot s 6 & 7, Legislation (Wales) Bill, cl17
10	IoM Interpretation Act s 89, provision of Canadian Act (modified)
11	Subordinate Legislation (Jersey) Law 1960; IoM s33
12	
13	
14	New Zealand Legislation Act 2012 (“NZ”) s24&25 (partial)
15	
16	IoM s 43 & 70-72; NZ s 6
17	NZ s9, 17, 18 & 22
18	
19	NZ s58 & 66(1) (adapted)
20	NZ s59, Wales Bill , cl 1
21	NZ 63
22	
23	
24	
25	