

STATES OF JERSEY



DRAFT DIGITAL SWITCHOVER (DISCLOSURE OF INFORMATION) (JERSEY) LAW 200-

**Lodged au Greffe on 5th October 2009
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT DIGITAL SWITCHOVER (DISCLOSURE OF INFORMATION) (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 Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Digital Switchover (Disclosure of Information) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator A.J.H. Maclean**

REPORT

In November 2010 Digital Switchover will take place in the Channel Islands.

The Jersey Digital Switchover Help Scheme is in the process of being agreed, and as in the U.K., the Isle of Man and Guernsey, it has been set up to help people who qualify for help to change one TV to digital. The BBC is responsible for the delivery of the Scheme, although the day to day operation has been contracted out. It is run through an agreement with the U.K. government, and funded through the BBC licence fee.

The Minister for Economic Development, having confirmed those elements of the Jersey benefit structure which qualify for assistance, recognises the need to identify people eligible for the Scheme.

The object of the Digital Switchover (Disclosure of Information) (Jersey) Law 200- is to facilitate the implementation of the Targeted Help Scheme by allowing relevant information to be passed to the BBC or to certain specified companies or to persons who have been engaged to administer the Scheme.

The Minister will ensure that the maximum levels of protection are put in place in relation to the processing of such information.

Financial and manpower implications

There are no additional financial or manpower implications for the States associated with adopting this 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 1st October 2009 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Digital Switchover (Disclosure of Information) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

The switchover help scheme is designed to help eligible persons with the transition from analogue to digital television broadcasting. The object of this Law is to facilitate the implementation of the scheme by allowing relevant information to be passed to the BBC or to certain specified companies or to persons who have been engaged to administer the scheme.

Article 1 sets out a number of the terms used in the Law and defines them.

Article 2 enables the disclosure of certain information if it has been specified in an Order and relates to care homes, social security benefits or visual impairment or to another subject specified by Order.

Article 3 prohibits the unwarranted disclosure of information that has been disclosed under Article 2.

Article 4 enables the Minister for Economic Development to make Orders specifying what information may be disclosed and other matters for the purposes of the Law.

Article 5 spells out the name of the Law and when it is to come into force.



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Arrangement

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Jersey

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A LAW to enable the disclosure of information for the purposes of a digital switchover help scheme.

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, unless the context otherwise requires –

“BBC” means the British Broadcasting Corporation;

“BBC Charter and Agreement” means the following documents, or any one or more of them, so far as they are for the time being in force –

- (a) a Royal Charter for the continuance of the BBC;
- (b) supplemental Charters obtained by the BBC under such a Royal Charter;
- (c) an agreement between the BBC and the Secretary of State entered into (whether before or after the passing of this Law) for purposes that include the regulation of activities carried on by the BBC;

“broadcasting” means broadcasting by wireless telegraphy (as defined by section 116 of the Wireless Telegraphy Act 2006 of the United Kingdom, as that Act has effect in Jersey) otherwise than by satellite;

“care home” means –

- (a) a home to which the Nursing and Residential Homes (Jersey) Law 1994¹ applies, within the meaning of that Law; or

- (b) any hospital, establishment, or premises, that, but for the operation of Article 3(2)(a) or (c) of the Nursing and Residential Homes (Jersey) Law 1994, would be a home to which that Law applies, within the meaning of that Law,

and includes (for the avoidance of doubt) a hospital to the extent that it accommodates a long-stay patient within the meaning of the Hospital Charges (Long-Stay Patients) (Jersey) Law 1999²;

“digital switchover” means the replacement of the broadcast of television services in Jersey in analogue form with their broadcast in digital form;

“Minister” means the Minister for Economic Development;

“prescribed” means prescribed by Order made by the Minister;

“relevant person” means –

- (a) the BBC;
- (b) any company in respect of which any one or more of the following –
- (i) the BBC,
 - (ii) the Secretary of State, or
 - (iii) a nominee of the BBC or the Secretary of State,
- hold at least 51% of the issued ordinary share capital or possess at least 51% of the voting rights; or
- (c) any person who is engaged by the BBC, the Secretary of State or any company falling within paragraph (b) –
- (i) to provide any service connected with switchover help functions,
 - (ii) to carry out a switchover help function, or
 - (iii) to carry out any function connected with switchover help functions;

“Secretary of State” means –

- (a) Her Majesty’s Secretary of State for Culture, Media and Sport; or
- (b) Her Majesty’s Secretary of State for any government department (or any other Minister of the Crown) to whom the functions of the Secretary of State for Culture, Media and Sport are transferred;

“switchover help function” means –

- (a) the identification of persons who may be eligible for help under a switchover help scheme;
- (b) making contact with those persons with a view to the provision of such help; and
- (c) the establishment of any person’s entitlement to such help;

“switchover help scheme” means any scheme that applies to or in relation to Jersey for the provision of help to individuals in connection with digital switchover, being a scheme that is agreed between the BBC and the Secretary of State in pursuance of the BBC Charter and Agreement, as the scheme has effect from time to time.

2 Disclosure of information

- (1) The Minister for Social Security may, at the request of a relevant person, supply a relevant person with social security information for use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions.
- (2) The Minister for Health and Social Services may, at the request of a relevant person, supply a relevant person with care home residency information for use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions.
- (3) A person registered under the Nursing and Residential Homes (Jersey) Law 1994 to carry on a care home, being a home to which that Law applies, may, at the request of a relevant person, supply a relevant person with care home residency information in relation to that care home for use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions.
- (4) The Jersey Blind Society may, at the request of a relevant person, supply a relevant person with visual impairment information for use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions.
- (5) Any person prescribed for the purposes of this paragraph may, at the request of a relevant person, supply a relevant person with information of a prescribed description for use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions.
- (6) In this Article –

“care home residency information” means information of a prescribed description –

- (a) held by or on behalf of the Minister for Health and Social Services and obtained as a result of, or for the purpose of, the exercise of his or her functions in relation to care homes; or
- (b) held by or on behalf of a person registered under the Nursing and Residential Homes (Jersey) Law 1994 to carry on a care home, being a home to which that Law applies, and relating to the patients in the care home;

“social security information” means information of a prescribed description held by or on behalf of the Minister for Social Security and obtained as a result of, or for the purpose of, the exercise of that Minister’s functions including, without limitation, his or her functions under any of the following –

- (a) the Income Support (Jersey) Law 2007³;
- (b) the Social Security (Jersey) Law 1974⁴;
- (c) any Regulation, Order, or other enactment, made under an enactment referred to in sub-paragraph (a) or (b);

“visual impairment information” means information of a prescribed description about persons who are registered as blind or partially sighted in a register maintained by or on behalf of the Jersey Blind Society.

3 Offences

- (1) A relevant person shall not disclose without lawful authority any information supplied to him or her or another relevant person under Article 2.
- (2) A person who –
 - (a) is or has been employed by a relevant person;
 - (b) is or has been engaged –
 - (i) in the provision of services to a relevant person in connection with the carrying out of a switchover help function, or
 - (ii) to carry out any switchover help function, or to carry out any function in connection with the carrying out of a switchover help function; or
 - (c) is or has been employed by, or is or has been engaged in the provision of services to, or to carry out a function for, a person engaged as mentioned in paragraph (b),shall not disclose without lawful authority information supplied to a relevant person under Article 2.
- (3) A person who contravenes paragraph (1) or (2) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (4) It shall not be an offence under this Article –
 - (a) to disclose information in the form of a summary, or collection of information, so framed as not to enable information supplied under Article 2 relating to any particular person to be ascertained from it; or
 - (b) to disclose information that has previously been disclosed to the public with lawful authority.
- (5) It is a defence for a person charged with an offence under this Article to prove that –
 - (a) at the time of the alleged offence he or she believed that –
 - (i) he or she was making the disclosure in question with lawful authority, or
 - (ii) the information in question had previously been disclosed to the public with lawful authority; and
 - (b) he or she had no reasonable cause to believe otherwise.
- (6) For the purposes of this Article, a disclosure is to be regarded as made with lawful authority only if it is made –
 - (a) for the purpose of carrying out a switchover help function, or for doing anything connected with the carrying out of a switchover help function;
 - (b) in accordance with any enactment or court order;
 - (c) for the purpose of instituting, or otherwise for the purposes of, proceedings before a court; or

- (d) with the consent of the person to whom the information relates or of any person authorized to act on that person's behalf.

4 Orders

- (1) The Minister may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter that may be prescribed under this Law by Order.
- (2) Orders under this Law may contain such consequential, incidental, supplemental and transitional provisions as may appear to the Minister to be necessary or expedient.

5 Citation and commencement

- (1) This Law may be cited as the Digital Switchover (Disclosure of Information) (Jersey) Law 200-.
- (2) This Law shall come into force on the seventh day after it is registered.

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- ¹ *chapter 20.725*
 - ² *chapter 20.550*
 - ³ *chapter 26.550*
 - ⁴ *chapter 26.900*