

STATES OF JERSEY



DRAFT MOTOR VEHICLE REGISTRATION (AMENDMENT No. 4) (JERSEY) LAW 201-

**Lodged au Greffe on 9th August 2013
by the Minister for Transport and Technical Services**

STATES GREFFE



DRAFT MOTOR VEHICLE REGISTRATION (AMENDMENT No. 4) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Transport and Technical Services has made the following statement –

In the view of the Minister for Transport and Technical Services, the provisions of the Draft Motor Vehicle Registration (Amendment No. 4) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy K.C. Lewis of St. Saviour**

Minister for Transport and Technical Services

Dated: 8th August 2013

REPORT

This law change is required to make provision for the Minister, through the Transport and Technical Services Department, to sell the right to display cherished registration marks by auction, tender or at a set amount determined by the Minister. The annual income to be derived from the sale of these rights (£100,000) is a “user pays” obligation arising from the Comprehensive Spending Review that begins in 2013.

The law change will also permit other matters that have been outstanding for some time to be regularised. These include –

- Registered owners of vehicles to notify the Department if the owner’s name changes (there is already a requirement to notify a change of address);
- Recognising that while trade licences continue to be issued by the Department on behalf of the Minister, trade plates are not and never have been issued by the Department (they are provided by the private sector).

Financial implications

If approved, it is estimated that after auctioneers’ commission and other expenses, there will be a net income of £100,000 per annum from the sale of these rights to display.

Manpower implications

There are no significant manpower implications. Existing staff will administer transactions on a daily basis, while local auctioneers will organise and hold regular auctions of cherished registration marks.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Notes on the draft Motor Vehicle Registration (Amendment No. 4) (Jersey) Law 201-

These Notes have been prepared in respect of the draft Motor Vehicle Registration (Amendment No. 4) (Jersey) Law 201- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Article 6 of the draft Law extends the vires in Article 7 of the Motor Vehicle Registration (Jersey) Law 1993 (“the 1993 Law”) and enables the Minister, by Order, to make provision with respect to the introduction of a regime of auctioning, tendering and other payments for rights to have particular registration marks assigned to motor vehicles (“mark-rights”).

Article 1 of Protocol 1 to the ECHR (“A1P1”) provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. A1P1 is a qualified right and so interference with the peaceful enjoyment of a possession can be justified if it is in accordance with the law and it is proportionate in the general interest.

The nature of mark-rights and their limitations will be set out by the Minister in an Order under Article 7 of the 1993 Law as amended by the draft Law. While it is not beyond doubt, a mark-right could be a ‘possession’ for the purposes of A1P1, so the Minister will need to consider how to exercise the new powers afforded by the draft Law in a manner that is compatible with A1P1.

Further, Article 6(l) of the draft Law provides a new power for the Minister, by Order, to provide for reviews or appeals in relation to certain decisions in respect of mark-rights and the assignment of registration marks. Article 6 of the ECHR guarantees a right of access to an independent and impartial tribunal for the determination of civil rights and obligations, and the application of that ECHR right may need to be given further consideration when the Minister exercises the amended power in Article 7 of the 1993 Law.

Notwithstanding the above, the contents of the draft Law are compatible with the ECHR.

Explanatory Note

This Law amends the Motor Vehicle Registration (Jersey) Law 1993 to enable the introduction of a regime of auctioning, tendering and other payment for rights to have particular registration marks assigned to motor vehicles. It also makes various other amendments related to the source of trade plates and to other means by which a registration mark may be changed.

Article 1 defines the Motor Vehicle Registration (Jersey) Law 1993 as the “principal Law”.

Article 2 amends Article 1 of the principal Law, to add a definition of a “registration mark” as the mark assigned to a vehicle in connection with its registration.

Article 3 amends Article 4 of the principal Law, which deals with first registration. Paragraph (3) of the Article is deleted, as it deals with previous assignments and is replaced by the new Article 5A (see below).

Article 4 amends Article 5 of the principal Law, which deals with entries after first registration. The amendment means that an owner of a registered motor vehicle will have to notify the Inspector if the owner’s name changes (as well as on a change of address).

Article 5 inserts a new Article 5A in the principal Law. The new Article replaces the current Article 4(3) with a broader equivalent, applying to assignments of registration marks whether on first registration or subsequently. Under Article 7, as amended (see below), applicants will be able to obtain rights to have a particular registration mark assigned to their vehicles. If an applicant has not obtained such a right, then the Inspector will decide what registration mark to assign, under a scheme to be published by the Minister (or at the Inspector’s discretion if no scheme is published). Registration marks can be assigned whether or not they have previously been assigned to that or another vehicle (including in arrangements for exchange between vehicles), and can be withdrawn from a vehicle. The power is limited by the need to comply with any Order made under the amended Article 7, by the requirement that one mark may only apply to one vehicle at the same time, and by the requirement that a vehicle cannot be left without a mark if it is still registered.

Article 6 amends Article 7 of the principal Law, which gives power to make Orders in relation to registration. The amendments particularly expand on the power to provide for grant, retention and exchange of rights to assignment of particular registration marks. An Order can provide for assignment and withdrawal of registration marks, and for the grant of a right (a “mark-right”) to have a particular mark assigned. The Order could provide for that to be by way of allowing an owner to keep a mark when it is withdrawn from a vehicle, for assignment to another vehicle later (as the Motor Vehicle Registration (General Provisions) (Jersey) Order 1993 does now), and combinations of withdrawal and assignment could be used to provide for exchanges of existing marks between several owners (as now). The amendments mean the Order could also provide expressly for the grant of the right to assignment of unassigned marks to be for payment, so effectively by sale (by private sale, tender, auction or otherwise). The Order can provide for the functions of the Inspector to be delegated, in particular so that auctions and tendering exercises could be contracted out and made subject to appropriate arrangements for payment (whether directly or by commission

or by other means such as allowing an auctioneer to retain some or all of the proceeds in return for a payment). The Order can also provide for delays and refusals in relation to applications (or to any function of an Inspector), for withdrawal of registration marks in appropriate circumstances, and for reviews or appeals in relation to those decisions. The Order can provide for documents certifying mark-rights, which would then be surrendered when the person claims the assignment of the mark.

Article 7 amends Article 8 of the principal Law, which deals with the issue and renewal of trade licences. The amendments remove the provision for the Inspector to issue trade licence plates, and replace it with provision for the Inspector to require the trader to obtain trade licence plates (which must still comply with the requirements of an Order under Article 10).

Article 8 amends Article 9 of the principal Law, which deals with the display of trade licence plates. The amendment removes the reference to the issuing (by the Inspector) of trade licence plates, following on from the amendment of Article 8.

Article 9 substitutes Article 10(k) of the principal Law (which allows Orders to be made in relation to trade licences), again to remove references to the issuing of trade licence plates, following on from the amendment of Article 8.

Article 10 amends Article 11 of the principal Law, which deals with offences relating to information, to extend those offences to cover applications for mark-rights or for assignment of particular registration marks, under an Order under Article 7. It also extends the offences to cover failure to notify the Inspector of a change of name, reflecting the amendment to Article 5.

Article 11 amends Article 13 of the principal Law, which deals with offences of forgery and fraud, to extend those offences to cover mark-right documents issued under an Order under Article 7.

Article 12 names this Law and would bring it into force 7 days after the Law is registered in the Royal Court.



DRAFT MOTOR VEHICLE REGISTRATION (AMENDMENT No. 4) (JERSEY) LAW 201-

Arrangement

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DRAFT MOTOR VEHICLE REGISTRATION (AMENDMENT No. 4) (JERSEY) LAW 201-

A LAW to amend further the Motor Vehicle Registration (Jersey) Law 1993

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 “principal Law” means the Motor Vehicle Registration (Jersey) Law 1993¹.

2 Article 1 amended

In Article 1(1) of the principal Law, after the definition “registration document” there is inserted the following definition –

“ ‘registration mark’ means a mark assigned to a motor vehicle under this Law or under any Order under this Law;”.

3 Article 4 amended

Article 4(3) of the principal Law is deleted.

4 Article 5 amended

In Article 5 of the principal Law –

- (a) in paragraph (1)(b) after the words “change of the address” there are inserted the words “or name”;

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- (b) in paragraph (5)(a) after the words “change of address” there are inserted the words “or name”.

5 Article 5A inserted

After Article 5 of the principal Law there is inserted the following Article –

“5A Assignment of registration marks

- (1) This Article applies to the assignment of a registration mark under Article 4 or under any other provision of or under this Law.
- (2) The Inspector shall ensure –
 - (a) that when an assignment takes effect, the registration mark assigned is different from any registration mark for the time being assigned to any other registered motor vehicle; and
 - (b) that when a withdrawal of a registration mark from a vehicle takes effect, either another mark is assigned to that vehicle or the vehicle is no longer registered.
- (3) Subject to paragraph (2) and any provision of an Order under Article 7, the fact that a registration mark has previously been assigned to or withdrawn from a vehicle does not prevent the Inspector from assigning that mark to, or withdrawing it from, that vehicle or any other vehicle.
- (4) The Inspector shall determine the registration mark to be assigned to a motor vehicle –
 - (a) in accordance with any scheme published by the Minister; or
 - (b) if no such scheme is published, as the Inspector sees fit.
- (5) Paragraph (4) does not apply to the extent that an Order under Article 7 makes other provision (whether in relation to the composition of the mark, or to any right of a person to assignment of a particular mark, or otherwise).”.

6 Article 7 amended

In Article 7 of the principal Law –

- (a) in paragraph (a) after the words “motor vehicles” there are inserted the words “and in respect of the assignment of registration marks”;
- (b) after paragraph (b) there is inserted the following paragraph –
 - “(ba) assignment and withdrawal of registration marks, including the grant (whether for payment, as part of an arrangement of exchange, or otherwise) of rights to assignment of particular marks (‘mark-rights’), and the issue of documents certifying such rights (‘mark-right documents’);”;
- (c) in paragraph (c) for the words “particulars required to be furnished in connection with them and evidence of insurance” there are substituted the words “for assignment of registration marks and for grant of mark-rights,

- including requirements for particulars to be furnished in connection with the vehicles involved and for evidence to be furnished of insurance”;
- (d) in paragraph (d) after the words “motor vehicles” there are inserted the words “, for assignment of registration marks and for grant of mark-rights, including repayment of such fees”;
 - (e) for paragraph (e) there is substituted the following paragraph –
“(e) payments for grant of mark-rights (whether by private agreement, tender, auction or otherwise);”;
 - (f) in paragraph (f)(ii) after the words “change of address” there are inserted the words “or name”;
 - (g) in paragraph (g) after the words “eligibility for registration or” there are inserted the words “for assignment of a registration mark, or”;
 - (h) in paragraph (i) after the word “omitted” there are inserted the words “, or to record changes in assignment of registration marks”;
 - (i) in paragraph (j) for the words “, particulars to be entered on them, issue and surrender of registration documents and correction or replacement of incorrect or incomplete registration documents” there are substituted the words “and of mark-right documents, particulars to be entered on such documents, issue and surrender of such documents and correction or replacement of such documents that are incorrect or incomplete”;
 - (j) in paragraph (k) for the words “registration documents in replacement of registration documents which may be lost” there are substituted the words “documents in replacement of registration or mark-right documents, if those documents are lost”;
 - (k) in paragraph (l) after the words “registration documents” there are inserted the words “, and surrender of mark-right documents”;
 - (l) for paragraph (o) there are substituted the following paragraphs –
“(o) delegation (whether by the Order itself, by the Minister or Inspector or otherwise) of any function of the Inspector under this Law or the Order to any other person, or for authorization of any other person to act on behalf of the Inspector, including arrangements for payment of that person (including by that person keeping amounts paid by persons for grant of mark-rights);”
 - (p) refusal or delay of grant of mark-rights, or of assignment of registration marks, or of performance of other functions of the Inspector, and reviews or appeals in relation to such refusal or delay or to withdrawal of registration marks.”.

7 Article 8 amended

In Article 8 of the principal Law –

- (a) for paragraph (2) there are substituted the following paragraphs –
“(2) On application in the prescribed form for a trade licence by a motor trader, the Inspector may, on payment of the prescribed fee, issue a trade licence to the motor trader.”

- (2A) If the Inspector issues a trade licence under paragraph (2), the Inspector shall –
- (a) assign a trade licence mark to the motor trader;
 - (b) require the motor trader to obtain trade licence plates bearing that trade licence mark; and
 - (c) deliver to the motor trader a receipt in respect of the fee paid.”;
- (b) in paragraphs (3) and (7) for the word “issued” there is substituted the word “obtained”.

8 Article 9 amended

In Article 9 of the principal Law the words “issued to that person” are deleted.

9 Article 10 amended

For Article 10(k) of the principal Law there is substituted the following paragraph –

- “(k) issue of trade licences in replacement of licences which may be lost, stolen, destroyed, damaged or become illegible, and fees to be paid on the issue of a replacement licence;”.

10 Article 11 amended

In Article 11 of the principal Law –

- (a) in paragraph (1)(a) after the words “under Article 4” there are inserted the words “, or for the grant of a mark-right under an Order under Article 7, or for the assignment of a registration mark under such an Order”;
- (b) in paragraphs (1)(b) and (2) after the words “change of address” there are inserted the words “or name”.

11 Article 13 amended

In Article 13(b) of the principal Law after the words “registration document,” there are inserted the words “mark-right document (under an Order under Article 7),”.

12 Citation and commencement

This Law may be cited as the Motor Vehicle Registration (Amendment No. 4) (Jersey) Law 201- and comes into force 7 days after it is registered.

¹

chapter 25.350