

STATES OF JERSEY



DRAFT EMERGENCY POWERS AND PLANNING (AMENDMENT No. 3) (JERSEY) LAW 201- (P.76/2019): AMENDMENT

**Lodged au Greffe on 30th August 2019
by the Chief Minister**

STATES GREFFE

1 PAGE 18, ARTICLE 6 –

For the text of Article 6 substitute –

“In Article 11(4) –

- (a) for “food, water, fuel, light, telecommunication services, postal services and other necessities,” there is substituted “food, water, medical supplies, fuel, gas, electricity, light, telecommunication services, postal services and other necessities.”;
- (b) there is deleted “and make such provisions incidental to the powers aforesaid (including the making by the States of compensation) as may appear to the Council to be required for making the exercise of those powers effective”.”.

2 PAGE 18, ARTICLE 7 –

For the text of Article 7 substitute –

“In Article 12 –

- (a) in paragraph (2) for “expedient to include” there is substituted “expedient, and the incidental provisions may include provision for the making by the States of compensation”;
- (b) after paragraph (7) there is inserted –
 - “(7A) An Act is effected under Article 4, and an Order is made under Article 11(4) if the Act or Order, as the case may be, is signed on behalf of the Council by any member of the Council.”.”.

CHIEF MINISTER

REPORT

The Chief Minister has decided to make a small amendment to the [Draft Emergency Powers and Planning \(Amendment No. 3\) \(Jersey\) Law 201-](#) (the “**draft Law**”) so as to provide a competent authority, appointed for the purposes of Articles 5, 6, 6A, 7, 8, 8A, 9 and 9A of the [Emergency Powers and Planning \(Jersey\) Law 1990](#) (the “**EPP Law**”) with the power to make provision by Order for the payment of compensation, where that would be an appropriate action in all the circumstances in light of the level and nature of interference with an individual’s property rights that arise from the effect of an Order that may be made by the competent authority.

To explain the context for this amendment, the powers of each competent authority under the EPP Law might enable a competent authority, by Order, to requisition or confiscate property for particular purposes. Those powers might also enable the competent authority to require a person to use property in a particular way, or to perform a particular function that results in the person being deprived of some of his or her property (e.g. by providing a service or goods for free to the Public).

Public authorities are required by the [Human Rights \(Jersey\) Law 2000](#) to act compatibly with the [European Convention on Human Rights](#). Where a person is deprived of their property by a public authority, even where that deprivation is lawful, it will be necessary to achieve compliance with Article 1, Protocol 1 of the European Convention on Human Rights (“**A1P1**”), which protects the peaceful enjoyment of property. The European Court of Human Rights has ruled that where an interference with a person’s property amounts to a deprivation of that property, to comply with A1P1 it is necessary to achieve a “fair balance” between the rights of the individual and the public interest and that this necessarily gives rise to a right to compensation in all but the most exceptional circumstances.

The question of whether and how much compensation should be paid in respect of a competent authority’s proposed course of action would need to be assessed on a case-by-case basis. The Government will consider whether non-statutory guidance should be produced to add clarity to this process. It should also be emphasized that it will often be possible to use a competent authority’s powers in a way that does not deprive a person of his or her property, and therefore will not give rise to an obligation to pay compensation pursuant to A1P1.

It should also be emphasized that the EPP Law and the draft Law are not incompatible with A1P1 at present. This is because it may already be possible to make a compensation payment using other powers available to the competent authority, compatibly with the [Public Finances \(Jersey\) Law 2005](#) and relying on other vires available to each competent authority as a Minister. However, in response to Scrutiny’s comments, the Government is happy to add a power to the EPP Law to enable each competent authority to make provision by Order for the payment of compensation. This amendment will reflect the Government’s firm commitment to respecting human rights in all contexts, including emergencies.

Making this change will also align the Order-making powers of competent authorities with those of the Emergencies Council (the latter being available only after the declaration of a State of Emergency by the Lieutenant-Governor). At present, Article 11(4) of the EPP Law, which is concerned with the making of Orders by the Emergencies Council, states that “those Orders may confer or impose on the Council or

any competent authority ... such powers and duties as the Council may deem necessary for the preservation of peace [etc.] ... and make such provisions incidental to the powers aforesaid (including the making by the States of compensation) ...”.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this proposed amendment.