

STATES OF JERSEY



Jersey

DRAFT ECCLESIASTICAL LEGISLATION (CONSEQUENTIAL AMENDMENTS) (JERSEY) LAW 202-

**Lodged au Greffe on 18th January 2022
by the Chief Minister
Earliest date for debate: 1st March 2022**

STATES GREFFE



Jersey

**DRAFT ECCLESIASTICAL LEGISLATION
(CONSEQUENTIAL AMENDMENTS) (JERSEY)
LAW 202-**

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Ecclesiastical Legislation (Consequential Amendments) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator J.A.N. Le Fondré**

Chief Minister

Dated: 18th January 2022

REPORT

Jersey has been attached to the Diocese of Winchester since the sixteenth century but, in light of the recommendations of the Archbishop of Canterbury's Commission of 2019, it is proposed to attach Jersey instead to the Diocese of Salisbury. The transfer of episcopal See to the Bishop of Salisbury and other associated changes, including the promulgation of new Canon law for Jersey, will be effected by Orders of Her Majesty in Council. However, in relation to Jersey legislation there are some amendments consequential upon the transfer to Salisbury where it is appropriate to have a new Jersey Law passed by the States and sanctioned by Her Majesty in Council. This Jersey Law would be brought into force by an Order which the Chief Minister would make once it is clear that the Order of Her Majesty in Council attaching Jersey to the Diocese of Salisbury has come into force (which it will do upon being registered in the Royal Court).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights Notes

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 Ecclesiastical Legislation (Consequential Amendments) (Jersey) Law 202-**

These notes have been prepared in respect of the Draft Ecclesiastical Legislation (Consequential Amendments) (Jersey) Law 202- (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.

In general terms, a change in the Bishop who is to be Ordinary in Jersey and the Diocese to which Jersey is to be attached, will not engage any right under the ECHR so the draft Law which would make certain consequential amendments in light of that transfer equally does not engage the ECHR. The attachment of Jersey to the See of Winchester by Order in Council of 11 March 1569, even though expressed to be “perpetual” did not give any possessory right or title for the purposes of Article 1 of the First Protocol to the ECHR (“**A1P1**”) to the person of the Lord Bishop of Winchester.

The attachment of Jersey to the See of the Lord Bishop of Winchester conferred certain rights and duties upon the person holding that office for the time being but that has always been under Her Majesty and her royal predecessors as Supreme Governors in all matters ecclesiastical. The transfer of all that it means to be Bishop of the Church of England in respect of Jersey to the Bishop of Salisbury does not engage A1P1. The function of being an appellate court that existed in centuries gone by has now ended as a matter of canon law. It is, in any event, difficult to categorise this function as a proprietary right in A1P1 terms. Appeals from the Ecclesiastical Court of Jersey go to the Royal Court, save in instances of doctrine, ritual or ceremonial where the new Canons of the Church of England in Jersey will make provision for appeals to the Archbishop. The Victorian church legislation no longer has any practical application and, therefore, the repeal of the Law of 1899 and its provision about appeals to the Bishop of Winchester does not engage rights under the ECHR.

Changing references from Winchester to Salisbury reflects the power in the Sovereign to attach Jersey to a different episcopal see, both as a matter of Jersey law on being invited by the States Assembly to make such an Order and under the vires of a Measure of the Church of England as a matter of English law. The function of approving the acquisition or disposal of ecclesiastical property held by the Rectorats of the ancient parishes of Jersey is something that is currently delegated in any event to the Dean, but it is a function to act as a protective force to ensure that any property transaction has been properly explained and justified so that the Lieutenant Governor as patron of the benefices may also approve. Similarly the functions of acting as Patron of a benefice as conferred by a statute are not a matter of possessory rights attached to any land or immovable property, so it is difficult to conclude that it represents a separate possession for the purposes of A1P1. Even considering the autonomous definition of “possessions” for A1P1 purposes, the patron’s right is simply one which gives a spiritual role to discern who to put forward for religious service at undetermined times in the future and has, therefore, no measurable value.

EXPLANATORY NOTE

This Law, if passed, would make amendments to Jersey legislation consequential on the attachment of Jersey to the Church of England Diocese of Salisbury instead of the Diocese of Winchester. In some cases, this has involved a direct substitution of “Salisbury” for “Winchester” though in others the change has been effected differently.

Article 1 changes the requirement for the consent of the Bishop for the alienation of rectorate immovable property to be a requirement for the Dean of Jersey to give consent.

Article 2 repeals a Law containing a reference (in French) to the Bishop of Winchester as the Law applies a number of Victorian Church Acts to Jersey that no longer have any practical application in the Island.

Article 3 updates references to the See and Bishop of Winchester to refer to Salisbury as well as updating a reference to the Jersey Deanery Synod.

Article 4 removes an incorrect reference to Jersey being in the Diocese of Winchester in a Law that amalgamated the Ecclesiastical districts of St. Luke and St. James. It also amends that Law to give the Crown the sole right of presentation to the benefice of the combined District instead of alternately with the Bishop.

Article 5 contains the citation provisions and provides for the Law to come into force on a day to be specified by the Chief Minister by Order.



Jersey

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Contents

Article

1	Loi (1839) sur l'acquis de propriété foncière par les rectorats amended....	11
2	Loi (1899) réglant l'application de certains Actes de Parlement aux Districts Ecclésiastiques repealed	11
3	Sharing of Church Buildings (Jersey) Law 1973 amended.....	11
4	Ecclesiastical District of St. Luke with St. James (Jersey) Law 1993 amended	12
5	Citation and commencement.....	12



Jersey

DRAFT ECCLESIASTICAL LEGISLATION (CONSEQUENTIAL AMENDMENTS) (JERSEY) LAW 202-

A **LAW** to amend Jersey legislation consequential on the attachment of Jersey to the Church of England Diocese of Salisbury instead of the Diocese of Winchester.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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- [Loi \(1839\) sur l’acquis de propriété foncière par les rectorats](#) amended**
In the [Loi \(1839\) sur l’acquis de propriété foncière par les rectorats](#) for “avec l’autorisation de Monseigneur l’Evêque de Winchester” there is substituted “avec l’autorisation du Très Révérend Doyen de Jersey”.
 - [Loi \(1899\) réglant l’application de certains Actes de Parlement aux Districts Ecclésiastiques](#) repealed**
The [Loi \(1899\) réglant l’application de certains Actes de Parlement aux Districts Ecclésiastiques](#) is repealed.
 - [Sharing of Church Buildings \(Jersey\) Law 1973](#) amended**
In Article 2 of the [Sharing of Church Buildings \(Jersey\) Law 1973](#) (agreements for sharing church buildings) –
 - in paragraph (4) for “Bishop of Winchester and the Jersey Decanal Synod” there is substituted “Bishop of Salisbury and the Jersey Deanery Synod”;

- (b) in paragraph (5) for “Where the See of Winchester is vacant, or the Bishop of Winchester is unable” there is substituted “Where the See of Salisbury is vacant, or the Bishop of Salisbury is unable”.

4 [Ecclesiastical District of St. Luke with St. James \(Jersey\) Law 1993](#) amended

In the [Ecclesiastical District of St. Luke with St. James \(Jersey\) Law 1993](#) –

- (a) in the long title “in the Diocese of Winchester,” is deleted;
- (b) in Article 4 (right of presentation of subsequent incumbents) for “alternately by the Bishop of the Diocese and the Crown, the Bishop of the Diocese having the first turn” there is substituted “by the Crown”.

5 Citation and commencement

This Law may be cited as the Ecclesiastical Legislation (Consequential Amendments) (Jersey) Law 202- and comes into force on a day to be specified by the Chief Minister by Order.