

# STATES OF JERSEY



Jersey

## **DRAFT REGISTER OF NAMES AND ADDRESSES (AMENDMENT) (JERSEY) LAW 202-**

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**Lodged au Greffe on 31st July 2023  
by the Chief Minister  
Earliest date for debate: 12th September 2023**

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**STATES GREFFE**



Jersey

## **DRAFT REGISTER OF NAMES AND ADDRESSES (AMENDMENT) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

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

In the view of the Deputy Chief Minister, the provisions of the Draft Register of Names and Addresses (Amendment) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy K.F. Morel of St. John, St. Lawrence and Trinity**  
*Deputy Chief Minister*

Dated: 28th July 2023

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## Report

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### Background and purpose

The Draft Law proposes amendments to the [Register of Names and Addresses \(Jersey\) Law 2012](#) (the “RNA Law”) to permit the Minister to supply certain information about Jersey residents, from the Register of Names and Addresses (“the Register”) maintained under the RNA Law, to credit reference agencies. Prior to the coming into effect of this amendment, an Order will be made to prescribe specific details as required under the Draft Law.

It is considered that the supply of information to credit reference agencies will enable the efficient performance of affordability checks, as will be required under the proposed consumer lending regime, and customer due diligence verifications, in accordance with money laundering requirements, as are required to be performed by service providers when onboarding a potential customer for credit. Local media has recently reported the challenges that Jersey residents have faced accessing credit card services and the key barrier presented by the absence of electoral register equivalent information being provided to credit reference agencies for Jersey residents. The Draft Law has been developed to follow the established concepts and processes of credit reference agencies to enable implementation whilst limiting the use of data to the purposes with which the Minister is providing the information.

### Current position

Credit reference agencies obtain information from both financial institutions and public records to build consumer reports, which are provided to credit service providers to support their decisions about whether to provide a product or not for that consumer. This information will include how consumers have maintained their credit and utility accounts, as well as personal details including address history. A key source of information permitted under the law of the United Kingdom is the UK electoral register, this providing information on consumers’ current address. The Jersey electoral register is not supplied to credit reference agencies as it is not permissible under the [Elections \(Jersey\) Law 2002](#). Neither are alternative sources of public information provided. This gap in the data limits the ability for credit reference agencies to support businesses delivering credit services to Jersey residents.

The Register maintained under the RNA Law comprises a broad set of registrable facts about individuals and is used within Government to support its operations, including the administration of social security benefits and pensions. Individuals are required to be recorded within the Register if they hold a registration card under Article 3 of the [Control of Housing and Work \(Jersey\) Law 2012](#) or have been resident in Jersey for a continuous period of 3 months or more. The parameters for registration are far broader than the electoral register, providing a more complete dataset of Jersey residents, and better aligning with the circumstances in which a new resident to Jersey will apply for financial products. It is however noted that in its current form, the RNA Law limits the use of the Register to specific Statutory Purposes primarily focused on public authority use and would not allow permit sharing with credit reference agencies.

### The proposal

As such, it is proposed that the RNA Law is amended to include within its statutory purposes permission for the supply of information maintained in the Register to credit reference agencies.

The information contained within the Register is wider than that which is necessary to provide to credit reference agencies. As such it is proposed to enable the Minister by way of Order to provide to credit reference agencies, the name, residential address and date of birth of an individual resident in Jersey. Other registerable facts recorded in the Register under Article 2(8) of the Law

will not be disclosed. The supply of information will be limited to that maintained for persons aged 18 years and above, aligning with the age at which a person can apply for credit.

There are no credit reference agencies established in Jersey and consequently there is no current regulation of credit reference agency business in Jersey. Thus the proposal envisages sharing the information with credit reference agencies which are authorised and subject to conduct regulation in the UK under the UK Financial Services and Markets Act 2000 (or authorised in another jurisdiction with equivalent regulation) and subject to equivalent data protection legislation as the [Data Protection \(Jersey\) Law 2018](#) (the “Data Protection Law”). This is built into the Draft Law as a condition for prescription of a credit reference agency by the Minister.

The proposal further recognises the importance of safeguarding the information supplied to the credit reference agencies and will impose a further condition on the Minister that they must be satisfied that the agency has in place adequate systems for securing the confidentiality and integrity of the information, and will use the relevant information only for the specified purposes. It is anticipated that the Minister will bring effect to this through mechanisms deemed necessary to obtain the relevant assurances, including entering into agreements with prescribed agencies.

### **Specified purposes**

As mentioned above, credit reference agencies will not be permitted to use information from the Register for purposes beyond those which are proposed within the Draft Law, these being –

1. the enabling of a person to meet their obligations relating to the detection and prevention of money laundering and terrorist financing under applicable legislation;
2. to enable the vetting of an application for credit or a related application; and
3. to enable the performance of statistical analysis of credit risk assessment where the individual is not identifiable.

It is highlighted that purpose (3) is necessary to allow credit reference agencies to process the data they hold to prepare and provide broader analysis of credit risk, this providing additional context to a consumer report upon which lenders can then make decisions to provide or not provide credit.

### **Consequential Orders**

A draft Order will be signed in due course to prescribe credit reference agencies, subject to the Minister being satisfied of the conditions within the Draft Law, and also to establish a fee payable by the credit reference agencies for the supply of information. It is envisaged that the fee mechanism will be set at a level to cover administrative costs, whilst remaining within the established norms familiar to credit reference agencies. This Order will be required to be signed before the coming into force of the Draft Law.

### **Consequential amendment to Data Protection Law**

The Draft Law will make minor amendments to the Data Protection Law to ensure that its provisions extend to credit reference agencies in other jurisdictions, including the UK as intended, and individuals will have the right to request from the credit reference agencies a statement of their rights, under Jersey law or applicable legislation in another jurisdiction, in respect of the agency through a right of access request.

### **Consultation**

A consultation paper on the proposals has been issued between July and August 2023. This remains ongoing at the point of lodging however a response will be published and amendments, where necessary, will be proposed prior to the States debate. This accelerated approach to the

delivery of this solution has been deemed necessary to address what is a continuing issue for Jersey residents.

Responses to the consultation received during July have been broadly positive acknowledging the need for a solution, both to support the delivery of financial/credit products for Islanders but also to support affordability check requirements which are proposed under the regulation of consumer credit regime currently being consulted upon by Government.

### **Financial and manpower implications**

No additional resources will be required as a result of this draft legislation. There may be a limited resource necessary to support the prescription credit reference agencies and ancillary processes, however the extract and supply of information is envisaged to be automated, and costs partially offset by the administrative fee prescribed.

### **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****Human Rights Notes on the Draft Register of Names and Addresses (Amendment)  
(Jersey) Law 202-**

These Notes have been prepared in respect of the draft Register of Names and Addresses (Amendment) (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.**

The draft Law, will amend the Register of Names and Addresses (Jersey) Law 2012 (the “**2012 Law**”), which governs the compilation and use of the Register of Names and Addresses (the “**Register**”). The purpose of the draft Law is to enable the Chief Minister (the “**Minister**”), to provide a credit reference agency (“**CRA**”) with certain registrable facts about Jersey resident adults contained in the Register.

The purpose of providing this information to CRAs is to enable them to perform their functions, which include:

- a. enabling the verification of information for the purposes of Anti-Money Laundering and Counter Terrorist Financing (“**AML/CFT**”) checks by entities with obligations to make those checks on customers and business partners; and
- b. enabling the performance of affordability checks as part of an application for credit, such checks being mandatory where credit is being provided to a consumer pursuant to relevant consumer credit regulations.

As set out in the Minister’s Report on this Proposition, it is important that CRAs can support the efficient performance of these checks in relation to Jersey residents and provide information to the providers of credit or other services to support their decisions about whether to provide a product or not. The purpose of the present law is to ensure that CRAs have access to all the information they need to verify the address of Jersey residents.

The draft Law engages the right to private and family life in Article 8 ECHR. The issues in respect of the application of that right and the reasons why the draft Law is compatible with it are set out below.

**Article 8 ECHR: Right to respect for private and family life**

Article 8 of the ECHR provides –

*Everyone has the right to respect for his private and family life, his home and his correspondence.*

*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The European Court of Human Rights (“**ECtHR**”) has held that the protection of personal data is of fundamental importance to a person’s enjoyment of the right to respect for private and family life, as guaranteed by Article 8 of the ECHR. States are obliged to enact domestic law that affords

appropriate safeguards to prevent the use of personal data in a way that would be inconsistent with Article 8 ECHR. Domestic law must also afford adequate guarantees that the volume of personal data retained by public sector organisations is not excessive, is retained for no longer than necessary and is protected from misuse.

Reflecting these principles, Jersey has enacted the Data Protection (Jersey) Law 2018 (the “**Data Protection Law**”) and the Data Protection Authority (Jersey) Law 2018 which provide equivalent protection for personal data to that in place in the UK and in the EU pursuant to the General Data Protection Regulation 2016/679 (the “**GDPR**”) and the associated Directive, the Law Enforcement Directive (Directive (EU) 2016/680 (the “**LED**”). The compatibility of the draft Law with Article 8 ECHR should be evaluated in the context of the legal framework for the protection of personal data set out in the Data Protection Law.

### *Purpose of the draft Law*

As set out in the Minister’s Report on the Proposition, there are no credit reference agencies established in Jersey presently. However there are UK CRAs that provide services in respect of Jersey residents. Those CRAs are authorised and subject to regulation in the UK under the UK’s Financial Services and Markets Act 2000 (“**FSMA**”) and the Consumer Credit Act 1974. UK CRAs are also subject to the Data Protection Act 2018 and UK GDPR (i.e. the GDPR as retained in UK law by operation of the UK’s European Union (Withdrawal) Act 2018) which provide equivalent protection to that in place in Jersey.

UK CRAs draw on a range of information from both financial institutions and public records to build a report on an individual who is seeking to access a product or service. An important source of information that is available to CRAs in respect of UK residents are the UK’s electoral registers. Copies of the full electoral register (i.e. copies which have not been edited to remove people who have opted out of inclusion on the edited register) for each local authority area are routinely provided to UK CRAs. In England and Wales, local authorities are required to sell their full electoral registers following a request from a regulated CRA made under Regulation 114 of the Representation of the People (England and Wales) Regulations 2001.

The full electoral register is used by UK CRAs as a means of verifying an individual’s address because the register is regularly updated and sufficiently comprehensive for that purpose. At present there is no equivalent provision enabling Jersey’s electoral registers to be provided to CRAs. Article 11 of the [Elections \(Jersey\) Law 2002 \(jerseylaw.je\)](#) requires that the electoral register is made available for inspection, but does not permit copies of the register to be provided to CRAs. Further, the 2012 Law does not currently allow a CRA to access information in the Register.

For the reasons provided in the Minister’s Report, the absence of a method through which CRAs can gain access to an authoritative source of address verification data for Jersey residents is having a negative effect on the availability of credit and other financial services to Islanders. To address this issue, rather than providing CRAs with access to the electoral registers maintained by Jersey’s 12 Parishes, the Government considers that it will be more efficient and effective for access to be provided to information on the Register, which provides a central, authoritative source of address verification data for adults in Jersey. The draft Law will enable the Minister to periodically disclose personal data relating to the home address of each Jersey resident adult to specific CRAs to enable them to perform their functions.

The data on the Register has been collected for the purposes of public administration and customer service, and further purposes specified in Regulations made under Articles 5(2) and 8 of the 2012 Law. The disclosure of information from the Register to CRAs for this new purpose may amount to an interference with the rights of individuals provided for under Article 8(1) of the ECHR. However, an interference with the rights afforded by Article 8(1) can be justified if it is

in accordance with the Law and is proportionate in pursuit of one or more of the legitimate aims set out in Article 8(2) of the ECHR.

If the draft Law is passed by the Assembly, then the disclosures permitted by it will necessarily be “in accordance with the law” in Jersey, being authorised by primary legislation that will be sufficiently precise and accessible to meet this requirement.

Further the interference with Article 8(1) rights pursues several legitimate aims set out in Article 8(2) of the ECHR. In particular, providing access to the information in the Register so that accurate and appropriate checks are carried out by CRAs on individuals will enable Jersey resident adults to access credit; and enable businesses to verify the identity of persons with whom they are dealing. Enabling this pursues the legitimate aims of protecting the economic well-being of Jersey and preventing crime both in Jersey and elsewhere.

The draft Law ensures that these legitimate aims are pursued in a proportionate way by placing appropriate limits on the personal data from the Register that can be disclosed; safeguards on the persons to whom data can lawfully be disclosed, and specifying purposes for which data may be used.

Article 3 of the draft Law inserts new Article 5A into the 2012 Law. Pursuant to paragraph (1) of Article 5A, the Chief Minister may only supply a CRA with the name, residential address, and date of birth of an individual who is over the age of 18 (see new Article 5A(8)) and resident in Jersey (the “**relevant information**”). This Article does not permit the supply of other “registrable facts” (as defined in Article 2(8) of the 2012 Law) contained in the Register in relation to an individual. The data that may be disclosed does not include ‘special category data’ as defined under Article 1(1) of the Data Protection Law the processing of which is subject to greater restrictions to protect the rights of data subjects under that Law.

Secondly, pursuant to new Article 5A(1), the relevant information may only be provided to a CRA that is prescribed by an Order made by the Minister under paragraph (4) of that Article. Pursuant to paragraph (4), the Minister may only prescribe a person as a CRA that may be provided with the relevant information if Conditions A and B in paragraphs (5) and (6) of the same Article are satisfied:-

- c. Condition A, will be met where the Minister is satisfied that the person is either:
  - i. authorised in the UK to provide credit references under FSMA, or
  - ii. authorised to provide credit references in another jurisdiction<sup>1</sup> with equivalent regulation and with data protection legislation equivalent to the Data Protection Law.
- d. Condition B, will be met where the Minister is satisfied that the person has adequate systems in place to secure both the confidentiality and integrity of the relevant information and that the relevant information will be used only for the purposes specified in paragraph (2) (which relate to money laundering and the vetting of credit applications) of new Article 5A (the “**specified purposes**”).

These provisions ensure that the Minister will only be able to prescribe a CRA as a potential recipient of the relevant information if it is subject to conduct regulation in the UK or an equivalent regime in another jurisdiction, and will be subject to robust data protection legislation that will protect the rights of Jersey data subjects and provide avenues for such data subjects to seek redress (for example complaints to the UK Information Commissioner can be made by non UK resident data subjects).

It is relevant also to note that disclosures to UK CRAs will be compatible with the controls on cross-border transfers of personal data in Part 8 of the Data Protection Law, because the UK has an EU adequacy decision for the purposes of Article 66(2)(a) of the Data Protection Law.

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<sup>1</sup> This could include Jersey if it introduces conduct regulation for credit reference business in the future.

Further, as reflected in Condition B and in paragraph (3) of new Article 5A, the Chief Minister will only be able to provide data to a CRA where the CRA has demonstrated that it has systems in place both to ensure the data remains confidential to the CRA and will be used only for the specified purposes.

Having regard to these safeguards, the interference with Article 8(1) rights resulting from the disclosure of the relevant information from the Register may be said to be justified as being in accordance with the law and proportionate to the legitimate aims set out in Article 8(2) of the ECHR.

## EXPLANATORY NOTE

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The Register of Names and Addresses (Amendment) (Jersey) Law 202- would, if adopted, amend the Register of Names and Addresses (Jersey) Law 2012 (“the Law”), under which the Register of Names and Addresses (“the Register”) containing registrable facts about individuals is established and maintained, to permit the supply of certain information from the Register about Jersey residents to credit reference agencies.

*Article 1* introduces the amendments.

*Article 2* amends Article 2(3) (the Register of Names and Addresses) of the Law to include, as a statutory purpose for which the Register is established and maintained, the purposes specified in new Article 5A.

*Article 3* inserts Article 5A (Minister may supply relevant information to credit reference agencies), which provides as follows:

Paragraph (1) empowers the Chief Minister to supply to a credit reference agency, prescribed by Order for the purposes of this Article, the name, residential address and date of birth of an individual resident in Jersey (“relevant information”). This Article does not permit the supply of other “registrable facts” (as defined in Article 2(8) of the Law) on the Register in relation to an individual, including date of arrival in Jersey, gender and social security number.

Paragraph (2) specifies the purposes (“the specified purposes”) for which relevant information may be supplied to a prescribed credit reference agency. These purposes are to enable a person to meet their obligations relating to the detection and prevention of money laundering and terrorist financing under applicable legislation, vetting of an application for credit or a related application, and statistical analysis of credit risk assessment.

Paragraph (3) provides that a person to whom relevant information is supplied under this Article must use the information only for the specified purposes.

Paragraph (4) empowers the Chief Minister to prescribe a person as a credit reference agency if Conditions A and B are satisfied.

Condition A, in paragraph (5), is that the Minister is satisfied that the person is authorised in the UK to provide credit references under FSMA, or is authorised to provide credit references in another jurisdiction with equivalent regulation and with data protection legislation equivalent to the Data Protection (Jersey) Law 2018.

Condition B, in paragraph (6), is that the Minister is satisfied that the person has adequate systems in place for securing the confidentiality and integrity of relevant information, and will use the relevant information only for the specified purposes.

Paragraph (7) provides for a prescribed fee to be payable for supply of relevant information under this Article.

Paragraph (8) prevents the supply of information about persons under 18 years of age.

Paragraph (9) contains definitions, including of “credit” and “application for credit”, and provides that “use” of information includes accessing, obtaining, recording, holding and disclosing the information (which follows the definition in Article 5(8) of the Law).

*Article 4* amends Article 8 (Regulations and Orders) of the Law to give the States power to make transitional and consequential provision by Regulations.

*Article 5* makes an amendment to Article 62(3) (credit reference agency as controller) of the Data Protection (Jersey) Law 2018. This will require a credit reference agency in receipt of a right of access request from an individual under Article 28 of that Law to provide a statement of any other

rights arising in respect of the agency under Jersey law or applicable legislation of another jurisdiction.

*Article 6* gives the citation, and provides that this Law will come into force 7 days after it is registered.



Jersey

## **DRAFT REGISTER OF NAMES AND ADDRESSES (AMENDMENT) (JERSEY) LAW 202-**

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Jersey

## DRAFT REGISTER OF NAMES AND ADDRESSES (AMENDMENT) (JERSEY) LAW 202-

A **LAW** to amend the [Register of Names and Addresses \(Jersey\) Law 2012](#) to permit the supply of certain information to credit reference agencies; and for connected purposes.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His 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 His Most Excellent Majesty in Council, have adopted the following Law –

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**1** [Register of Names and Addresses \(Jersey\) Law 2012](#) amended

Articles 2 to 4 amend the [Register of Names and Addresses \(Jersey\) Law 2012](#).

**2** **Article 2 (the Register of Names and Addresses) amended**

In Article 2(3), after sub-paragraph (a) there is inserted –

“(aa) the purposes specified in Article 5A;”.

**3** **Article 5A inserted**

After Article 5 there is inserted –

**“5A Minister may supply relevant information to credit reference agencies**

- (1) The Minister may supply to a prescribed credit reference agency the following registrable facts about an individual resident in Jersey –
  - (a) name;
  - (b) residential address;
  - (c) date of birth.
- (2) The only purposes for which the Minister may supply relevant information to a prescribed credit reference agency are to enable –

- (a) a person to meet their obligations relating to the detection and prevention of money laundering and terrorist financing under FSMA or the [Proceeds of Crime \(Jersey\) Law 1999](#), or under legislation in another jurisdiction that the Minister is satisfied imposes equivalent obligations;
  - (b) vetting of –
    - (i) an application for credit, or
    - (ii) an application that could result in the giving of credit, or the giving of any guarantee, indemnity or assurance in relation to the giving of credit; and
  - (c) statistical analysis of credit risk assessment in a case where no individual whose details are included in the Register is referred to by name or necessary implication.
- (3) A person to whom relevant information is supplied under this Article must use the information only for the specified purposes.
- (4) The Minister may prescribe a person as a credit reference agency if Conditions A and B are satisfied.
- (5) Condition A is that the Minister is satisfied that the person is –
- (a) authorised under FSMA to carry on the regulated activity of providing credit references; or
  - (b) authorised to provide credit references in another jurisdiction, if the Minister is satisfied that the jurisdiction has –
    - (i) legislation equivalent to FSMA that regulates persons providing credit references, and
    - (ii) data protection legislation equivalent to the [Data Protection \(Jersey\) Law 2018](#).
- (6) Condition B is that the Minister is satisfied that the person –
- (a) has adequate systems in place for securing the confidentiality and integrity of information supplied under this Article; and
  - (b) will use the relevant information only for the specified purposes.
- (7) The Minister may require a prescribed credit reference agency to pay a fee prescribed for the supply of relevant information under this Article.
- (8) The Minister must not supply information under this Article in relation to a person who has not attained full age.
- (9) In this Article –
- “application for credit” includes an application by an individual to enter into, refinance or reschedule a credit agreement under which credit is provided to the individual by a creditor;
- “credit” includes –
- (a) a cash loan;
  - (b) a loan secured against immovable property, whether by hypothecation or by mortgage or in any other manner;
  - (c) financial accommodation provided in the letting of goods under a hire-purchase agreement, or in the selling of goods under a conditional sale

agreement, within the meaning of the [Supply of Goods and Services \(Jersey\) Law 2009](#); and

(d) any other form of financial accommodation;

“FSMA” means the Financial Services and Markets Act 2000 of the United Kingdom, as amended, revised or re-enacted from time to time;

“prescribed credit reference agency” means a person prescribed by the Minister under paragraph (4);

“relevant information” means the registrable facts listed in paragraph (1);

“specified purposes” means the purposes specified in paragraph (2);

“use”, in relation to information, includes accessing, obtaining, recording, holding and disclosing the information.”.

#### **4 Article 8 (Regulations and Orders) amended**

In Article 8 (Regulations and Orders) the existing text becomes paragraph (1), and after that paragraph there is inserted –

“(2) The States may, by Regulations, make such transitional or consequential provision in connection with the coming into force of Article 5A (inserted by the Register of Names and Addresses (Amendment) (Jersey) Law 202-) as appears to the States to be necessary or expedient.”

#### **5 [Data Protection \(Jersey\) Law 2018](#) amended**

In Article 62 (credit reference agency as controller) of the [Data Protection \(Jersey\) Law 2018](#), in paragraph (3), for the words after “enactment” to the end of that paragraph there is substituted “or applicable legislation in another jurisdiction”.

#### **6 Citation and commencement**

This Law may be cited as the Register of Names and Addresses (Amendment) (Jersey) Law 202- and comes into force 7 days after it is registered.