

DRAFT WATER POLLUTION (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 11th June 2002
by the Public Services Committee**



STATES OF JERSEY

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European Convention on Human Rights

The President of the Public Services Committee has made the following statement -

In the view of the Public Services Committee, the provisions of the Draft Water Pollution (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy R.C. Hacquoil**

REPORT

The Draft Water Pollution (Amendment) (Jersey) Law 200- proposes miscellaneous amendments to the Water Pollution (Jersey) Law 2000 (“the principal Law”) in the light of initial operational experience.

The principal Law has been in force for more than two years and it is now thought desirable to modify certain procedural requirements that have no environmental benefit or are unduly time-consuming. These proposed modifications would amend the principal Law to allow the Public Services Committee to dispense with the requirement to advertise an application for the grant of a discharge permit, if there is unlikely to be an appreciable adverse effect on the aquatic environment. They would also allow a designated officer, having exercised his powers of entry, to take evidence, such as water samples and photographs, whilst investigating pollution incidents without the need to provide written details to the person effected, unless the person requested such information.

During the drafting of the proposed Water Resources (Jersey) Law 200-, it was agreed that provision should be made in that Law for an appeal against a decision of the Public Services Committee regarding the transfer of water abstraction licences, to be fully compliant with human rights legislation. For consistency, it is proposed to amend the Water Pollution (Jersey) Law 2000, so that it contains the same provision with regard to discharge permits.

The proposed amendment to Article 39(2) of the principal Law allows reasonable expenses to be claimed by the Committee for the investigation of pollution incidents or for the identification of polluters. This amendment would further strengthen the ‘polluter pays principle’, one of the main operating considerations of the principal Law.

The Draft Water Pollution (Amendment) (Jersey) Law 200- also proposes changes to Schedule 1 of the principal Law to follow changes made in the U.K. In addition, it proposes further rights of appeal to the Court of Appeal.

The implementation of the Draft Water Pollution (Amendment) (Jersey) Law 200- has no additional implications for the financial or manpower resources of the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 17th April 2002 the Public Services Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Public Services Committee the provisions of the Draft Water Pollution (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law would amend the Water Pollution (Jersey) Law 2000.

Article 1 identifies that Law as the enactment that is being amended.

Article 2 enables the States, by Regulations, to amend Schedule 1 to the principal Law (which specifies information that the Committee need not publish).

Article 3 amends the principal Law to enable the Public Services Committee to dispense with the requirement to advertise an application for the grant of a discharge permit, if there is unlikely to be an adverse effect on the aquatic environment.

Articles 4 and 5 (which are to be read with the consequential amendments in Article 10) confer a right of appeal to the Royal Court on an applicant for the variation or transfer of a discharge permit, in consequence of the enactment of the Human Rights (Jersey) Law 2000.

Article 6 gives the Attorney General a right of appeal to the Court of Appeal against a decision by the Royal Court on an application for review brought by him in respect of a discharge certificate.

Article 7 provides that if a designated officer exercises a power under Article 32 of the principal Law (dealing with general powers of entry and investigation), he is bound to give written details as soon as practicable to the person affected. The effect of the amendment is to limit the requirement only to cases in which the person requests that information.

Article 8 effects a drafting improvement in Article 34(2) of the principal Law.

Under Article 39 of the principal Law, the Committee may act to deal with a case of threatened or actual pollution if the person responsible fails to do so. It may then recover its expenses from him.

The effect of the amendment in *Article 9* is to state explicitly that the recoverable expenses may include its costs of investigating an incident and ascertaining the identity of the person concerned.

Article 10 is consequential upon Articles 4 and 5 (*see above*). It also gives an appellant in the Royal Court a further right of appeal, against that court's decision, to the Court of Appeal.

Article 11 revises Schedule 1 to the principal Law (which sets out information that the Committee need not make public) to follow recent changes to the same effect in the United Kingdom.

Article 12 describes how the amending Law may be cited, and provides that it will come into force on the seventh day following its registration.

WATER POLLUTION (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend the Water Pollution (Jersey) Law 2000; sanctioned by Order of Her Majesty in Council of the

(*Registered on the day of 200-*)

STATES OF JERSEY

The day of 200-

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

ARTICLE 1

In this Law, “principal Law” means the Water Pollution (Jersey) Law 2000.^[1]

ARTICLE 2

After Article 8(7) of the principal Law^[2] there shall be inserted the following paragraph -

“(7A) The States may by Regulations amend Schedule 1.

ARTICLE 3

In Article 10(3) of the principal Law,^[3] for the words “an application for the variation of a discharge permit” there shall be substituted the words “an application for the grant or variation of a discharge permit”.

ARTICLE 4

In Article 23(7) of the principal Law,^[4] the words “to vary or revoke a discharge permit” shall be deleted.

ARTICLE 5

After Article 25(2) of the principal Law^[5] there shall be added the following paragraph -

“(3) There shall be a right of appeal, in accordance with Article 44, against the decision of the Committee.”.

ARTICLE 6

After Article 26(10) of the principal Law^[6] there shall be inserted the following paragraph -

“(10A) The Attorney General shall have a right of appeal to the Court of Appeal against a decision of the Royal Court under this Article.”.

ARTICLE 7

In Article 32(7) of the principal Law,^[7] for the words “he shall in writing inform the owner, occupier, driver, master, commander, or person in charge (as the case may be)” there shall be substituted the words “he shall upon request inform the owner, occupier, driver, master, commander, or person in charge (as the case may be) in writing”.

ARTICLE 8

In Article 34(2) of the principal Law,^[8] for the word “the” in the second place where it occurs there shall be substituted the word “a”.

ARTICLE 9

After Article 39(2) of the principal Law^[9] there shall be added the following paragraph -

“(3) For the purposes of this Article, the Committee’s reasonable expenses of acting under paragraph (1) shall include any expenses incurred by the Committee in investigating and establishing -

- (a) the source and extent of any potential pollution or actual pollution to which the matter relates; and
- (b) the identification of any person on whom a notice may be served under Article 36 or Article 37 in respect of the matter.”.

ARTICLE 10

(1) In Article 44(1)(a) of the principal Law,^[10] for the words “an applicant for a discharge permit” there shall be substituted the words “an applicant for a discharge permit or for its variation or transfer”.

(2) After Article 44(5) of the principal Law^[11] there shall be added the following paragraph -

“(6) The appellant shall have a right of appeal to the Court of Appeal against a decision of the Royal Court under this Article.”.

ARTICLE 11

In Schedule 1 to the principal Law,^[12] for paragraphs (a), (b), (c) and (d) there shall be substituted the following paragraphs -

- “(a) affecting the confidentiality of the deliberations of any public or parish authority;
- (b) relating to international relations, national defence or public security;
- (c) relating to matters that are under enquiry (whether or not the enquiry is of a disciplinary nature) or to documents that are still in draft form or to any internal communications of a public or parish authority;
- (d) relating to matters that are or have been the subject of legal or other proceedings (whether actual or prospective) or to any investigations undertaken with a view to such proceedings;”.

ARTICLE 12

This Law may be cited as the Water Pollution (Amendment) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

^[1] Volume 2000, page 149.

^[2] Volume 2000, page 164.

^[3] Volume 2000, page 166.

^[4] Volume 2000, page 178.

^[5] Volume 2000, page 179.

^[6] Volume 2000, page 180.

[7] Volume 2000, page 186.

[8] Volume 2000, page 187.

[9] Volume 2000, page 191.

[10] Volume 2000, page 195.

[11] Volume 2000, page 196.

[12] Volume 2000, page 208.