

STATES OF JERSEY

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DRAFT WATER POLLUTION (AMENDMENT No. 2) (JERSEY) LAW 200

**Lodged au Greffe on 2nd February 2006
by the Minister for Planning and Environment**

STATES GREFFE



Jersey

DRAFT WATER POLLUTION (AMENDMENT No. 2)(JERSEY) LAW 200

European Convention on Human Rights

The Minister for Planning and Environment has made the following statement –

In the view of the Minister for Planning and Environment the provisions of the Draft Water Pollution (Amendment No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator F.E. Cohen**

REPORT

Background

Prior to the change from Committee to Ministerial Government in December 2005, the Water Pollution (Jersey) Law 2000 was administered by the Environment and Public Services Committee. That Committee exercised both regulatory and operational functions; its principal operational function being that of the sewerage undertaker for the Island. When the Committee sought to make a discharge into controlled waters – that would otherwise be prohibited under the Water Pollution Law – the Committee was required to issue a discharge *certificate* in favour of itself; that discharge certification regime was subject to the publicity requirements under the principal Law and review by the Royal Court on the application of (inter alia) the Attorney General.

In general terms, on the transfer to Ministerial Government, the Minister for Planning and Environment became the Regulator for the purposes of the Water Pollution Law and the Minister for Transport and Technical Services became the sewerage undertaker.

The Draft Law

Substantive Amendments are needed to the Water Pollution Law in respect of the separation of the functions assigned to the Minister for Planning and Environment and the Minister for Transport and Technical Services that were previously jointly undertaken by the Environment and Public Services Committee; the Draft Law contains those Amendments. In particular, it provides that discharges by the Minister for Transport and Technical Services will, in future, be subject to the discharge *permit* regime in the Principal Law (in the same way as discharges by private persons and bodies); the discharge permit regime is subject to the publicity provisions in the Principal Law (Article 10), rights of objections by third parties and appeals to the Royal Court (Article 44). Specifically, when it comes into force the Amendment Law will mean that –

- Any Minister (other than the Minister for Planning and Environment) who wishes to make a discharge into controlled waters will require a discharge permit from the Regulator, in the same way as a private person.
- Discharge certificates held by the Minister for Transport and Technical Services will be converted into discharge permits.
- In relation to the Minister for Planning and Environment, the discharge certification regime in the principal Law (Article 26) will continue to apply to cases in which that Minister wishes to make discharges into controlled waters for operational purposes (such as in connection with the Minister's management of a fish farm). However, this requirement will not apply to the Minister's regulatory functions under the Water Pollution Law.
- Finally, the defence of due diligence in the principal Law (Article 18(4)) will apply to the Minister for Transport and Technical Services as the sewerage undertaker, in the same way as it applies to all other Ministers and private persons.

Financial and manpower implications

The Draft Law when enacted will not have any financial or manpower implications for 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 Minister 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 30th January 2006 the Minister for Planning and Environment made the following statement before Second Reading of this *Projet* in the States Assembly –

In the view of the Minister for Planning and Environment the provisions of the Draft Water Pollution (Amendment No. 2) (Jersey) Law 2006 are compatible with the Convention Rights.

Explanatory Note

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

The amendments are connected with the separation of the regulatory activities of the Minister for Planning and Environment under the principal Law from the operational services provided by the Minister for Transport and Technical Services (notably as the sewerage undertaker for Jersey).

Before the change to ministerial government, the functions of the regulator and of the sewerage undertaker were both carried out by the Environment and Public Services Committee. Under the Water Pollution Law, a private person or body wanting to make into controlled waters a discharge of a kind restricted by the Law had to obtain a discharge *permit* from the Committee as regulator. However, instead of issuing permits to itself to make such discharges into controlled water as the sewerage undertaker, the Committee was required to *certify* that it was going to do so. Both processes – those of applying for a discharge permit and of proposing to issue a discharge certificate – entailed prior public notification, and rights of objection and appeal.

On the change to ministerial government, the regulatory role was given to the Minister for Planning and Environment, together with some operational functions. Other operational functions (including that of sewerage undertaker) were transferred to the Minister for Transport and Technical Services.

The present draft Law has the following effects –

- (a) Any Minister (other than the Minister for Planning and Environment) who wishes for operational reasons to effect discharges into controlled waters will in future be required to obtain discharge permits, in the same way as private persons. Thus the Minister for Transport and Technical Services will become one of the Ministers who needs a discharge permit.
- (b) From the commencement of the draft Law, discharge certificates that already allow the Minister for Transport and Technical Services to make discharges into controlled waters for operational purposes will be treated as discharge permits.
- (c) As long as the Minister for Planning and Environment remains the regulator under the Law, and continues at the same time to carry out other, operational functions involving discharges into controlled waters, he or she will make such discharges under the existing process of certification.
- (d) However, as the regulator, the Minister for Planning and Environment will no longer be required to issue discharge certificates for his or her own benefit before making discharges into controlled waters for the regulatory purposes of the Water Pollution Law.

The draft amending Law also makes other minor amendments, and is set out in the following way –

Article 1 is an interpretation provision.

Article 2 deletes from the interpretation provisions in the principal Law a definition that is no longer necessary.

Article 3 includes surface water drains in the definition of controlled waters.

Article 4 excludes from the definition “pollution” discharges by or on behalf of the Minister for Planning and Environment for the regulatory purposes of the Water Pollution Law.

Article 5 amends Article 9 of the principal Law to provide that the Minister for Planning and Environment need not consult the Minister for Economic Development, before proceeding on –

- (a) a proposal for a Water Quality Order,
- (b) a proposal for a Water Catchment Management Order,
- (c) a proposal to approve a code of practice under the principal Law, or
- (d) a proposal to prescribe charges for discharge permits,

unless the Minister for Planning and Environment considers it appropriate to do so. At present, he or she must consult the Minister for Economic Development in every case.

Article 6 amends Article 10 of the principal Law to provide that the Minister for Planning and Environment need notify the Minister for Economic Development of –

- (a) a proposal relating to the grant or variation of a discharge permit, or

(b) a proposal for the issue or variation of a discharge certificate, only if the Minister for Planning and Environment considers it appropriate to do so. At present, he or she must notify the Minister for Economic Development in every case.

Article 7 amends the penalties in Article 17 of the principal Law for offences, to take into account the change to ministerial government.

Article 8 amends the statutory defences in Article 18 of the principal Law to take account of those changes, and to make a drafting improvement.

Article 9 contains consequential and corrective amendments.

Article 10 is a consequential amendment.

Article 11 removes an anomaly.

Article 12 is a corrective amendment.

Article 13 is a drafting improvement.

Article 14 amends Schedule 1 to the principal Law, to take into account the change to ministerial government.

Article 15 removes inapposite wording from Schedule 3 to the principal Law.

It also provides for discharge certificates that have been issued to the Minister for Transport and Technical Services to be treated as discharge permits.

Article 16 provides for the citation of the draft Law, which will come into force 7 days after its registration in the Royal Court.



Jersey

DRAFT WATER POLLUTION (AMENDMENT No. 2)(JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 2 amended</u>
<u>4</u>	<u>Article 4 amended</u>
<u>5</u>	<u>Article 9 replaced</u>
<u>6</u>	<u>Article 10 amended</u>
<u>7</u>	<u>Article 17 replaced</u>
<u>8</u>	<u>Article 18 amended</u>
<u>9</u>	<u>Article 23 amended</u>
<u>10</u>	<u>Article 26 amended</u>
<u>11</u>	<u>Article 27 amended</u>
<u>12</u>	<u>Article 28 amended</u>
<u>13</u>	<u>Article 50 amended</u>
<u>14</u>	<u>Schedule 1 amended</u>
<u>15</u>	<u>Schedule 3 amended</u>
<u>16</u>	<u>Citation and commencement</u>



Jersey

DRAFT WATER POLLUTION (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to amend further the Water Pollution (Jersey) Law 2000.

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 Water Pollution (Jersey) Law 2000.^[1]

2 Article 1 amended

In Article 1(1) of the principal Law, the definition “person” shall be deleted.

3 Article 2 amended

In Article 2(1)(c) of the principal Law, after the words “surface water sewers” there shall be inserted the words “, surface water drains”.

4 Article 4 amended

In Article 4 of the principal Law, the following paragraph shall be added as paragraph (2), and the paragraph preceding it shall be renumbered accordingly as paragraph 1–

“(2) However, ‘pollution’ does not include a discharge by the Minister or by a person acting on his or her behalf, for the purposes of the exercise of a regulatory power or the performing of a regulatory duty under this Law.”.

5 Article 9 replaced

For Article 9 of the principal Law there shall be substituted the following Article–

“**9 Consultation with other persons**

- (1) Before proceeding on any proposal to make a Water Quality Order –
 - (a) the Minister shall consult the Minister for Health and Social Services and the Company; and
 - (b) the Minister shall also consult such other Ministers, and other persons, as he or she considers appropriate.
- (2) Before proceeding on –
 - (a) any proposal to make a Water Catchment Management Order;
 - (b) any proposal to approve a code of practice under Article 16; or
 - (c) any proposal to prescribe charges under Article 28,the Minister shall consult such other Ministers, and other persons, as he or she considers appropriate.”.

6 Article 10 amended

- (1) In Article 10 of the principal Law, in paragraphs (1), (3), (7) and (9), for the words “on his or her own behalf” in each place where they appear there shall be substituted the words “of his or her own motion”.
- (2) For Article 10(4) of the principal Law there shall be substituted the following paragraph–
 - “(4) In the case of an application for the grant or variation of a discharge permit, or of a proposal by the Minister of his or her own motion to vary a permit or to issue or vary a discharge certificate –
 - (a) the Minister shall send a copy of the proposal to the Minister for Health and Social Services; and
 - (b) the Minister shall also send copies to such other Ministers, and other persons, as he or she considers appropriate.”.

7 Article 17 replaced

For Article 17 of the principal Law there shall be substituted the following Article–

“17 Pollution offences

- (1) Any person who causes or knowingly permits the pollution of any controlled waters shall be guilty of an offence and –
 - (a) if the person is a Minister (whether or not he or she is the Minister for Planning and Environment), liable to a fine; or
 - (b) in any other case, liable to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (2) Where –
 - (a) the Minister for Transport and Technical Services in his or her capacity as the sewerage undertaker for Jersey receives anything into a public sewer,
 - (b) it passes subsequently from any public sewer into controlled waters, and
 - (c) its introduction into controlled waters constitutes pollution,he or she shall be guilty of an offence and liable to a fine.
- (3) Any person who, being the holder of a discharge permit, contravenes any condition of the permit shall be guilty of an offence and –

- (a) if the person is a Minister, liable to a fine; or
 - (b) in any other case, liable to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (4) Where the Minister contravenes any condition of a discharge certificate, he or she shall be guilty of an offence and liable to a fine.”.

8 Article 18 amended

- (1) In Article 18(3) of the principal Law, for the figure“(4)” there shall be substituted the figure “(3)”.
- (2) For Article 18(4) of the principal Law there shall be substituted the following paragraph–
- “(4) Where a person is charged with an offence under either of Article 17(1) and (2), it shall be a defence to prove –
- (a) that the person took all reasonable precautions and exercised due diligence to avoid the commission of the offence; and
 - (b) that the person took all steps that were reasonably practicable for minimizing the extent of pollution of controlled waters,
- and, if the person is not the Minister, that the person gave full details of the occurrence to the Minister, or ensured that they were given to the Minister, as soon as was reasonably practicable.”.
- (3) For Article 18(6) of the principal Law there shall be substituted the following paragraph–
- “(6) Where a person is charged with an offence under any of Article 17(1), (2), (3) and (4) by reason of the introduction of anything into controlled waters, it shall be a defence to prove –
- (a) that it was introduced in consequence of a decision to do so in an emergency that arose in circumstances beyond the person’s control;
 - (b) that the decision was reasonable; and
 - (c) that the person took all steps that were reasonably practicable for minimizing the extent of pollution of controlled waters,
- and, if the person is not the Minister, that the person gave full details of the occurrence to the Minister, or ensured that they were given to the Minister, as soon as was reasonably practicable.”.

9 Article 23 amended

- (1) In Article 23(1) of the principal Law, for the words “on his or her own behalf” there shall be substituted the words “of his or her own motion”.
- (2) In Article 23(2) of the principal Law –
- (a) for the words “on his or her own behalf” there shall be substituted the words “of his or her own motion”;
 - (b) in sub-paragraph (a), for the words“which shall specify the proposal and inform” there shall be substituted the words “, specifying the proposal and informing”.

10 Article 26 amended

In Article 26(1) of the principal Law, for the words“either the Minister or the Minister for Transport and Technical Services” there shall be substituted the word “the Minister”.

11 Article 27 amended

- (1) In Article 27(1)(b) of the principal Law, for the words “on his or her own behalf” there shall be substituted the words “of his or her own motion”.
- (2) For Article 27(2)(b) of the principal Law there shall be substituted the following sub-paragraph –
“ (b) the Minister for Health and Social Services;”.

12 Article 28 amended

In Article 28(2) of the principal Law, for the words “the expenditure incurred by the Minister for the purpose of” there shall be substituted the words “the Minister’s expenditure in”.

13 Article 50 amended

In Article 50(1) of the principal Law –

- (a) for the words “nor any of the Minister’s officers, servants or agents” there shall be substituted the words “nor any officer nor any of the Minister’s servants or agents”;
- (b) for the words “the Minister or he or she (as the case requires)” there shall be substituted the words “he or she”.

14 Schedule 1 amended

In Schedule 1 to the principal Law, the following paragraph shall be added as paragraph 2, and the paragraph preceding it shall be renumbered accordingly as paragraph 1–

- “2. In this Schedule, a reference to a public authority includes a reference to the Council of Ministers, the Chief Minister and any Minister of the States.”.

15 Schedule 3 amended

- (1) In Schedule 3 to the principal Law, in paragraph 1, the words “by the Minister” shall be deleted in both places where they appear.
- (2) In Schedule 3 to the principal Law, after paragraph 3, there shall be inserted the following paragraph –

“3A.(1) This paragraph applies to a discharge certificate that –

- (a) has been issued under Article 26 in respect of an introduction into controlled waters by the Minister for Transport and Technical Services; and
 - (b) is in effect immediately before the commencement of the Water Pollution (Amendment No. 2) (Jersey) Law 200.
- (2) From the commencement of the Water Pollution (Amendment No. 2) (Jersey) Law 200, each discharge certificate to which this paragraph applies shall for the purposes of this Law have effect, subject to the provisions of this Law relating to discharge permits but otherwise according to the certificate’s tenor, as if the certificate were a permit issued under Article 21.”.

16 Citation and commencement

- (1) This Law may be cited as the Water Pollution (Amendment No. 2) (Jersey) Law 200.

(2) This Law shall come into force on the seventh day after its registration.

