

# STATES OF JERSEY



## **DRAFT EUROPEAN UNION (REPEAL AND AMENDMENT) (JERSEY) LAW 201-**

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**Lodged au Greffe on 23rd January 2018  
by the Minister for External Relations**

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**STATES GREFFE**





Jersey

## **DRAFT EUROPEAN UNION (REPEAL AND AMENDMENT) (JERSEY) LAW 201-**

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

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

In the view of the Minister for External Relations, the provisions of the Draft European Union (Repeal and Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator Sir P.M. Bailhache**

*Minister for External Relations*

Dated: 19th January 2018

## REPORT

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The purpose of the Draft European Union (Repeal and Amendment) (Jersey) Law 201- (the “new Law”) is to effect necessary changes to the principal legislation governing Jersey’s relationship with the European Union (“EU”) – including the [European Union Legislation \(Implementation\) \(Jersey\) Law 2014](#) (the “2014 Law”) – arising from the United Kingdom’s (“UK”) exit from the EU (“Brexit”).

The new Law also prepares a framework of powers to enable the Council of Ministers and States Assembly to –

- (a) implement swift change to other domestic legislation where that is necessary or expedient as a result of Brexit; and
- (b) bring directly applicable EU law, subject to any modifications that may be required as a result of Brexit, into domestic law.

It is important to recognise that the passage of this enabling legislation is the first stage in Jersey’s Brexit legislation project. There will be a substantial volume of secondary legislation which will need to be made under the 2014 Law. Some additional free-standing legislation will probably also be required in particular in relation to customs, trade and immigration. New sanctions legislation will certainly be needed.

The proposed timetable aims to complete the passage of the new Law through the States Assembly before the election of a new Assembly in May 2018. This will, in turn, permit the drafting, and proper consideration by the new Assembly, of the secondary legislation that will need to be in place before the expected Brexit Day (29th March 2019).

### **Essential amendments to principal EU legislation**

On 15th February 2017, the States Assembly approved Proposition [P.7/2017](#) by 40 votes to 3, recognising that the Government of the United Kingdom was likely to issue a notice under Article 50 of the Treaty on European Union, and endorsing the Council of Ministers’ intention to propose the repeal of the [European Union \(Jersey\) Law 1973](#) (the “1973 Law”).

Jersey must repeal its 1973 Law because that legislation will no longer be effective once the UK and Jersey’s existing treaty relationship with the EU comes to an end. Further, the [European Economic Area \(Jersey\) Law 1995](#) (“the 1995 Law”) must also be repealed.

The new Law will repeal the 1973 Law and 1995 Law. Some provisions of the 1973 Law are still required for the proper operation of the 2014 Law. These provisions will be imported into the 2014 Law so that, after Brexit, the 2014 Law can continue to be used to enable the States Assembly to give effect to provisions of EU law on a voluntary basis, where that is desirable for policy reasons.

### **EU law relevant to Jersey**

EU law that is directly applicable in Jersey is concentrated in those areas covered by Protocol 3. There is therefore much less directly applicable legislation in Jersey than in the UK, and this means that Jersey can take a more prescriptive approach to bringing EU law into Jersey law in order to ensure that there are no gaps in our legislation after Brexit occurs. Whilst the UK is pursuing a general conversion of all directly applicable EU law into domestic UK law, the Government of Jersey is instead

proposing that the States Assembly should be given the power to determine, by Regulations, the extent to which particular provisions of directly applicable EU law become part of Jersey's domestic law after Brexit.

This power should enable a list or a description of the directly applicable EU provisions to be set out in Regulations. Work is in hand to ensure that the Regulations capture all of the directly applicable EU law that is appropriate. From this work, it is clear that the majority of such Regulations will fall within the responsibility of the Department of the Environment.

The power to make these Regulations will be conferred by making minor amendments to the existing power pursuant to Article 2 of the 2014 Law. As is already the case for Regulations made pursuant to Article 2 of the 2014 Law, a Jersey court or tribunal would interpret those Regulations by reference to decisions made by the [European Court of Justice] [Court of Justice of the European Union] (whether reached before or after Brexit).

### **Fixing deficiencies in domestic legislation arising as a consequence of Brexit**

It is crucial that Jersey's Government and the States Assembly are equipped to make all the necessary corrections to Jersey law in order to ensure a smooth transition for the Island from its current relationship with the EU to its new relationship.

The States may make Regulations and Ministers may make Orders much more quickly than Laws can be enacted. If an attempt was made to take forward the legislation programme without using secondary legislative powers, then the volume of Laws required would lead to substantial logistical difficulties for the Government, Assembly and Privy Council, and may slow down the legislative process generally.

There are a variety of reasons why, in a particular case, secondary legislation may be better suited than primary legislation to address a particular issue. In the context of Brexit, this includes the need to allow for the progress of negotiations, or where adjustments might need to be made to legislation at short notice, or where the level of detail that needs to be provided is not appropriate for primary legislation.

To ensure democratic accountability for the contents of any secondary legislation, it is important that appropriate limits are placed on the extent of the powers to make secondary legislation. In the new Law, it is proposed that appropriate powers be made available to make secondary legislation specifically where it is necessary to address deficiencies resulting from Brexit. The power to fix deficiencies in secondary legislation should enable corrections to be made to any domestic legislation that implements EU Law (including any Regulations giving effect to EU Law in domestic law). These powers will be included in the 2014 Law.

The new Law will also make it clear that the Assembly may, in exercise of its Regulation making powers, confer on any Minister the ability to make further provision by Order. Framing the power to fix deficiencies in this way allows the Assembly powers to correct domestic law itself, but also to be pragmatic and give Ministers appropriate and limited powers to address particular issues by Order.

There will also be express limits on the powers so that they may not be used to impose or increase taxation; make retrospective provision; create serious criminal offences; or interfere with human rights legislation.

### **Domestic legislation that will need to be amended after Brexit**

Working in partnership with the Ministry of External Relations, other Government departments and key stakeholders, the Law Officers' Department has conducted an extensive review of EU-related domestic legislation, which has identified the types of

deficiency that will arise in our domestic law as a consequence of Brexit. Further work is now taking place on the nature and priority of the changes to be made.

### **Implementing any transitional or implementation period**

The future relationship between the UK and the EU (and therefore between Jersey and the EU) is still to be negotiated, as are any transitional arrangements. It may therefore be important to be able to make provision in domestic law to implement any withdrawal or transitional agreement that is made with the EU.

The draft Law will provide the ability for the Minister for External Relations to expand the power of the States Assembly to make Regulations in the 2014 Law so that those Regulations can be used, by the Assembly, to implement any transitional or implementation agreement with the EU.

### **Collective responsibility under Standing Order 21(3A)**

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

### **Financial and manpower implications**

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

### **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.

**Human Rights Note on the Draft European Union (Repeal and Amendment)  
(Jersey) Law 201-**

These Notes have been prepared in respect of the Draft European Union (Repeal and Amendment) (Jersey) Law 201- (“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.**

Under the Treaty on the European Union (“**TEU**”) and the Treaty on the Functioning of the European Union (“**TFEU**”) (together “the **Treaties**”) the United Kingdom is the sovereign state party to whom those **Treaties** apply. Jersey and the other Crown Dependencies are territories for whose external relations the UK is responsible. Jersey’s relationship to the EU is thus predicated on the UK’s relationship with the EU.

The **Treaties** provide specifically at Article 355(5)(c) **TFEU** for the nature of the UK Crown Dependencies and their relationship to the EU via the membership of the UK Member State. Article 355(5)(c) sets out that that “the **Treaties** shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those Islands set out in the treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Community signed on 22nd January 1972.”

Those “arrangements” refer to Protocol 3 to the UK Act of Accession (“**Protocol 3**”) which means that the present relationship between Jersey and the EU can only exist by virtue of the UK remaining in its present position as a ‘Member State’. Accordingly, where the UK no longer has that status by virtue of the **Treaties** then there the extant relationship between Jersey and the EU will also cease to exist.

Article 2 of the draft Law repeals the European Union (Jersey) Law 1973 (the “1973 Law”). Some of the elements of that Law are incorporated into the European Union (Implementation) (Jersey) Law 2014 (the “2014 Law”) by subsequent Articles (see notes below). As set out in the Law Draftsman’s Explanatory Notes, the main repealed provision that is not transferred into the 2014 Law is Article 2 of the 1973 Law.

Article 2 of the 1973 Law currently gives effect automatically in Jersey to EU provisions that are directly applicable in or under the **Treaties** because they fall within the scope of **Protocol 3**. Directly applicable EU Law currently takes precedence over other Jersey legislation. The repeal of Article 2 of the 1973 Law is a matter for the States Assembly and the passage of the draft Law and subsequent enactments will determine the effect of EU Law in Jersey in the future. However, it is the UK’s departure from the EU that will bring the rights and obligations of the people of Jersey under directly applicable EU Law to an end.

New rights may be established by any agreement between the UK and the EU on their future relationship, which may be reflected in enactments in Jersey. However, where directly applicable EU rights are not replicated in Jersey’s domestic law they will cease to have effect.

As reflected in the Minister's Report in respect of this draft Law, it is anticipated that a number of rights and obligations provided for in directly applicable EU law will be preserved by making Regulations pursuant to Article 2 of the 2014 Law as it will be amended by the draft Law. However, Jersey proposes to preserve the effect of EU law only to the extent that this is appropriate in Jersey's interests and necessary to implement any agreement between the UK and EU that addresses Jersey's future relationship with the latter. The extent of any preservation is therefore unlikely to cover all aspects of directly applicable law under Protocol 3.

If, and to the extent that, the rights or obligations of people in Jersey are lost because of the UK's exit from the EU this will not be a result of the draft Law's repeal of Article 2 of the 1973 Law. Accordingly, even were the loss of those rights and obligations to give rise to an arguable breach of the ECHR that will not be a consequence of the provisions of the draft Law.

For the same reasons, while Article 3 of the draft Law repeals the European Economic Area (Jersey) Law 1995 any rights or obligations it gives effect to that are currently accorded by the European Economic Area Agreement, but which are lost, will not be lost by virtue of the draft Law. They will rather be lost by virtue of the UK's departure from the EU, which will bring to an end Jersey's present relationship with the European Economic Area.

As a separate point, while the 2014 Law as amended by the draft Law will continue to provide the power to make provision (including provision amending any enactment) to give effect to EU Law or remedy deficiencies arising from Brexit, these powers may not be used to amend, repeal or revoke the Human Rights (Jersey) Law 2000. While the exercise of these powers may none the less engage ECHR rights, as might other legislation, issue of compatibility with ECHR rights can be considered in the usual way, as policy and associated legislation is developed.

Accordingly the draft Law is compatible with the ECHR.

## Explanatory Note

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This Law repeals the European Union (Jersey) Law 1973 and the European Economic Area (Jersey) Law 1995. It amends the European Union Legislation (Implementation) (Jersey) Law 2014 (the “2014 Law”) to cater for those repeals and to give the Assembly additional powers to make Regulations (which can in turn give powers to Ministers to make Orders) in connection with those repeals and with the withdrawal of the United Kingdom (the “UK”) from the European Union (the “EU”). It does not come into force until a date to be set by the Minister for External Relations, with the approval of the Council of Ministers.

*Article 1* is an interpretation provision, allowing this Law to refer to the European Union Legislation (Implementation) (Jersey) Law 2014 as the “2014 Law”.

*Article 2* repeals the European Union (Jersey) Law 1973 (the “1973 Law”). Some of the elements of that Law are incorporated into the 2014 Law by subsequent Articles (see notes below). The main repealed provision that is not transferred into the 2014 Law is Article 2 of the 1973 Law. That Article currently gives effect automatically in Jersey to EU provisions that are within the scope of Protocol 3 to the Accession Treaty under which the UK joined the EU, and are contained in or made under the “Treaties” as listed in the 1973 Law. It also provides that those EU provisions take precedence over other Jersey legislation. Neither of those elements is currently present in the 2014 Law, and neither of them is transferred into the 2014 Law by this Law, so they will cease to form part of the law of Jersey from the date of the repeal. Under Article 17(2) of the Interpretation (Jersey) Law 1954, the repeal of the 1973 Law will not affect its operation in relation to any time before the repeal. So legal proceedings can still be started or continued after the repeal, relying on the 1973 Law, if they relate to a time before its repeal by this Law.

*Article 3* repeals the European Economic Area (Jersey) Law 1995 (the “1995 Law”). The 1995 Law has much more limited effect than the 1973 Law, in that it only affects Jersey enactments that were already in force on 16th June 1995 (the commencement of the 1995 Law). The effect of the 1995 Law is that those older enactments, which implemented EU provisions, are read as implementing those EU provisions as modified for the purpose of the European Economic Area Agreement, where appropriate (whereas Jersey enactments made after 1995 have had to make express provision if they were to implement the European Economic Area Agreement). Article 17(2) of the Interpretation (Jersey) Law 1954 applies to the repeal of the 1995 Law as it applies to the repeal of the 1973 Law (see note on *Article 2* above).

*Articles 4 to 10* amend the 2014 Law. Under that Law the States can currently make Regulations to implement EU provisions, and the Minister for External Relations can make Orders to implement EU provisions on sanctions, or give further effect to EU provisions that are directly applicable in Jersey (such as EU Regulations falling within Protocol 3). The 2014 Law, and the Regulations made under it, are preserved by this Law, but powers are added to implement the agreements that are expected to arise from the UK’s withdrawal from the EU (the “withdrawal”).

*Article 4* amends the long title to the 2014 Law, to reflect the withdrawal and to allow for the new express provision for Regulations to empower any Minister to make Orders (as well as the Minister for External Relations making certain Orders directly under the Law).

*Article 5* substitutes Article 1 of the 2014 Law, which is the interpretation provision.

Paragraph (1) of the substituted Article 1 adapts the definitions in the 2014 law, and imports several of the definitions from the 1973 Law on which the 2014 Law currently relies. The main new definition is “repeal day”, which is defined as the date on which the 1973 Law is repealed (by the bringing into force of *Article 2* – see notes above). Paragraph (2) adapts the definitions of the main EU Treaties from the 1973 and 2014 Laws.

Paragraph (3) of the substituted Article 1 gives the Minister for External Relations power, with the approval of the Council of Ministers, to make Orders adding further treaties to the definition “EU Treaties”. The addition of a treaty will not have the same effect as the addition of a treaty to the equivalent definition in the 1973 Law. That is because under the 1973 Law the added treaty would have immediate effect in Jersey if it fell within the scope of Protocol 3. By contrast, under the 2014 Law, an added treaty will only expand the powers of the States Assembly to make Regulations, and accordingly the addition will have no effect on Jersey law unless and until the Assembly chooses to make those Regulations. The treaties that can be added include any withdrawal agreement between the UK and the EU, any transitional, implementing or subsequent agreement between them about their ongoing relationship (or any related treaty that Jersey enters into, or that is extended to Jersey), any accession treaty, and any other withdrawal agreements or other treaties among EU member States (a previous example being the Lisbon Treaty).

Paragraph (4) of the substituted Article 1 ensures that an Order made by the Minister under this Article cannot extend the powers of any Minister to make Orders under any Regulations already enacted by the Assembly.

Paragraph (5) of the substituted Article 1 reproduces the effect of Article 1(4A) of the 1973 Law, so that changes in numbering and terminology (and changes consequential or incidental on those changes) can be made by Order if a treaty that is added to the list of EU Treaties makes numbering or terminology changes to the other EU Treaties.

*Article 6* amends Article 2 of the 2014 Law, which is the key provision of that Law, and currently enables Regulations and Orders to be made to implement EU provisions. The power to make Regulations remains, and accordingly all the Regulations made under that power will remain in force.

The main change is to repeal the powers that the Minister for External Relations currently has to make Orders directly under the 2014 Law (to implement sanctions or give further effect to EU Regulations, and other provisions with direct effect, that fall within Protocol 3). Instead express provision is made for the Regulations to be able to give any Minister the power to make Orders under the Regulations (the intention is also that a new Law will be introduced to deal with sanctions, and to replace the power of the Minister for External Relations to make sanctions Orders under the 2014 Law). The scope of the power to make the Regulations is not changed (apart from expressly providing for the Regulations to confer powers to make Orders), so they can make any provision that could be made by a Law except taxation provision, retrospective provision or amendments to the 2014 Law. The Regulations and Orders are also newly prevented from amending the Human Rights (Jersey) Law 2000. The scope of the power to make Orders (now under Regulations) is adapted from that in the 2014 Law, except that an amendment by the United Nations Financial Sanctions (Jersey) Law 2017 is reversed, so that an Order cannot provide for imprisonment for more than 2 years (it is currently 7 years for sanctions Orders, which will no longer be made directly under the 2014 Law).

*Article 7* repeals Articles 3, 3A and 4 of the 2014 Law, which relate mainly to the repealed power of the Minister for External Relations to make Orders directly under

the 2014 Law, and are particularly concerned with sanctions (see notes on *Article 6* above). Articles 3 and 3A can only be used in relation to sanctions, and Article 4 has only been used for that purpose. Article 3 of the 2014 Law was introduced to enable sanctions Orders to be extended to cover types of financial services not covered by the implemented EU provision. Article 3A of the 2014 Law was inserted by the United Nations Financial Sanctions (Jersey) Law 2017 to enable sanctions Orders to apply on an interim basis to persons designated by the United Nations, pending their designation by the EU. Article 4 of the 2014 Law was introduced to allow general provisions to be made, so as to form part of Orders made under Article 2.

*Article 8* amends Article 5 of the 2014 Law, which provides for the interpretation of EU provisions implemented under the 2014 Law, and of Regulations and Orders that implement those EU provisions. Article 5(3) of the 2014 Law currently relies on Article 3 of the 1973 Law, which will be repealed, and so equivalent provisions are imported into the 2014 Law, so that EU provisions continue to be interpreted in light of EU law. The other changes are consequential on the repeal of the power to make Orders to implement sanctions (see notes on *Article 6* above).

*Article 9* inserts Articles 5A and 5B in the 2014 Law, to give the Assembly powers to make Regulations to deal with deficiencies arising from the UK's withdrawal from the EU, and to prevent or remedy breaches of international obligations following that withdrawal.

Under the new Article 5A, Regulations can prevent, remedy or mitigate anything that appears to the States to amount to a failure of a Jersey enactment (implementing EU law under the 2014 Law or otherwise) to operate effectively, or to amount to any other deficiency in such an enactment. The failure or deficiency must appear to the States to be caused by the withdrawal, by the ending of Protocol 3 or other arrangements for Jersey or by the repeal of the 1973 Law (or by any of those factors when taken together with the 2014 Law and any Regulations or Orders under that Law). The power could be used, for instance, to give a Jersey or UK authority the power to do something that was formerly done by an EU institution, or to set up a Jersey authority to carry out relevant functions. As with Regulations under Article 2 of the 2014 Law (as amended by this Law), the Regulations that can be made under the new Article 5A can include power for a Minister to make Orders, and the Regulations and Orders have similar scope.

Under the new Article 5B, Regulations can similarly be made to prevent or remedy breaches of international obligations that appears to the States to arise from the withdrawal or related changes listed in Article 5A. Again the Regulations can include power for a Minister to make Orders, and the Regulations and Orders have similar scope to those under Article 2 of the 2014 Law (as amended by this Law). However, no Regulations can be made under Article 5B more than 2 years after the repeal day.

*Article 10* inserts a new Article 6A in the 2014 Law, to enable the States to make Regulations to make transitional, consequential incidental, supplementary or savings provisions in respect of the repeal of the 1973 and 1995 Laws and the amendments made to the 2014 Law by this Law. The Regulations under the new Article can amend any Law or other enactment, but not the 2014 Law, this Law or the Human Rights (Jersey) Law 2000.

*Article 11* names this Law and provides for the Minister for External Relations to bring it into force, with the approval of the Council of Ministers, on a date or dates (and time or times, if necessary) appointed by Order.

It also ensures that all the necessary Regulations and Orders, under the 2014 Law as amended, can be made in advance to be ready to come into force on the date on which

they are needed (such as the date on which the UK withdraws from the EU), even where they are to be made under powers that are themselves to be amended. It does so by expanding on the provision made by Article 16 of the Interpretation (Jersey) Law 1954, so that the Regulations and Orders can be made, under the amended powers, after the Law has been registered by the Royal Court, but before it has been brought into force, subject to the restriction that the Regulations and Orders do not come into force themselves until the relevant provisions of this Law are brought into force.



Jersey

## **DRAFT EUROPEAN UNION (REPEAL AND AMENDMENT) (JERSEY) LAW 201-**

### **Arrangement**

#### **Article**

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Jersey

## **DRAFT EUROPEAN UNION (REPEAL AND AMENDMENT) (JERSEY) LAW 201-**

**A LAW** to repeal the European Union (Jersey) Law 1973 and the European Economic Area (Jersey) Law 1995, to amend the European Union Legislation (Implementation) (Jersey) Law 2014, and for related purposes

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<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>

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

### **1 Interpretation**

In this Law “2014 Law” means the European Union Legislation (Implementation) (Jersey) Law 2014<sup>1</sup>.

### **2 Repeal of European Union (Jersey) Law 1973**

The European Union (Jersey) Law 1973<sup>2</sup> is repealed.

### **3 Repeal of European Economic Area (Jersey) Law 1995**

The European Economic Area (Jersey) Law 1995<sup>3</sup> is repealed.

### **4 Amendment of long title to 2014 Law**

In the long title to the 2014 Law –

- (a) for the words “or the Minister for External Relations” there are substituted the words “and Ministers”;
- (b) for the words “the Treaty of Lisbon” there are substituted the words “the withdrawal of the United Kingdom from the European Union”.

**5 Substitution of Article 1 of 2014 Law: interpretation of 2014 Law**

For Article 1 of the 2014 Law there is substituted the following Article –

**“1 Interpretation**

(1) In this Law, unless the context otherwise requires –

‘EU’ means the European Union, being the Union established by the Treaty on European Union, and includes, if and in so far as the context permits or requires, the European Atomic Energy Community established by the Euratom Treaty;

‘EU Court’ means the Court of Justice of the European Union and includes, if and in so far as the context permits or requires, the EFTA Court established under the EEA Agreement;

‘EU institution’ means any institution of the EU;

‘EU instrument’ means any instrument issued by an EU institution;

‘EU provision’ means any provision that –

- (a) is contained in or arises under any of the EU Treaties; or
- (b) comprises or is contained in an EU instrument.

‘EU Treaties’ means –

- (a) the Treaty on European Union;
- (b) the Treaty on the Functioning of the European Union;
- (c) the Euratom Treaty; and
- (d) the EEA Agreement;

‘implemented EU provision’ has the meaning given by Article 5(1);

‘implementing Jersey provision’ means a provision of an enactment, whenever made, so far as that provision –

- (a) is made, or is to be treated as made, under Article 2 or under Regulations made under that Article;
- (b) is otherwise made for a purpose described in Article 2(2); or
- (c) relates otherwise to the EU or the European Economic Area;

‘member’, in the expression ‘member State’, refers to membership of the EU;

‘Minister’ means the Minister for External Relations;

‘repeal day’ means the date on which the European Union (Jersey) Law 1973<sup>4</sup> is repealed;

‘treaty’ includes any international agreement, and any protocol or annex to a treaty or international agreement.

(2) For the purpose of paragraph (1) –

- (a) the ‘Treaty on European Union’ is the treaty of that name signed at Maastricht on 7th February 1992, as amended by any treaty up to the date on which the European Union

- (Repeal and Amendment) (Jersey) Law 201-<sup>5</sup> is adopted by the States;
- (b) the ‘Treaty on the Functioning of the European Union’ is the treaty of that name signed (as the Treaty Establishing the European Economic Community) at Rome on the 25th March 1957, as amended by any treaty up to the date on which the European Union (Repeal and Amendment) (Jersey) Law 201[-] is adopted by the States;
  - (c) the ‘Euratom Treaty’ is the Treaty establishing the European Atomic Energy Community signed at Rome on 25th March 1957, as amended from time to time by any treaty; and
  - (d) the ‘EEA Agreement’ is the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as amended from time to time by any treaty.
- (3) The Minister may, with the approval of the Council of Ministers, by Order amend the definition ‘EU Treaties’ in paragraph (1), and the definitions in paragraph (2), to add any other treaty –
- (a) that is entered into between the United Kingdom and the EU, in connection with the withdrawal of the United Kingdom from the EU;
  - (b) that is entered into between the United Kingdom and the EU, in connection with the relationship between the United Kingdom and the EU at any time after that withdrawal;
  - (c) that is entered into by Jersey, or is extended to Jersey, and, in the opinion of the Minister, is related to that withdrawal or that relationship;
  - (d) that is entered into by the EU, or by all of the member States, and another country, in connection with the accession of that country to the EU; or
  - (e) that is entered into by all of the member States and by no other party, whether –
    - (i) to amend any of the EU Treaties,
    - (ii) to provide for the withdrawal of a member State (other than the United Kingdom), or
    - (iii) for any other purpose.
- (4) An Order under paragraph (3) is not to be read as altering, whether by virtue of provision made under Article 2(4)(b)(iii) or otherwise –
- (a) the effect of any Regulations under Article 2, if those Regulations were made before the making of the Order; or
  - (b) the effect of any Order made under Regulations falling within sub-paragraph (a).
- (5) An Order under paragraph (3) may –
- (a) amend any enactment (including this Law) to reflect a change in terminology or numbering arising out of an

- amendment, by the treaty that is added to paragraph (1) or (2), to any of the EU Treaties; and
- (b) make any provision incidental or consequential on such a change in terminology or numbering.”.

## 6 Amendment of Article 2 of 2014 Law: implementation of EU provisions

In Article 2 of the 2014 Law –

- (a) paragraph (1) is deleted;
- (b) in paragraph (2)(a) the words “, whether or not one in respect of which the Minister may make an Order under paragraph (1)” are deleted;
- (c) in paragraph (3) for the words “made under paragraph (1) or (2) includes” there are substituted the words “made under paragraph (2) includes”;
- (d) in paragraph (4) for the words “the generality of paragraphs (1) to (3), an Order or Regulations under this Article” there are substituted the words “the generality of paragraph (3), Regulations under paragraph (2)”;
- (e) in paragraph (4)(b)(i) for the words “in the Order or Regulations” there are substituted the words “in the Regulations”;
- (f) in paragraph (4)(b)(ii) for the words “any one or more of Jersey, Guernsey and the Isle of Man” there are substituted the words “any one or more of Jersey, Guernsey, the Isle of Man and the United Kingdom”;
- (g) in paragraph (4)(b)(iii) for the words “European Court” there are substituted the words “EU Court”;
- (h) after paragraph (4)(c) there is inserted the following sub-paragraph –
  - “(ca) confer a power or impose a duty on the Minister, or on any other Minister, to make, by Order, any provision that may be made by the Regulations;”;
- (i) in paragraph (4)(d) the words “Minister or” are deleted;
- (j) in paragraph (5)(b) for the words “the Order or Regulations” there are substituted the words “the Regulations”;
- (k) in paragraph (5)(c) for the words “or the 1973 Law” there are substituted the words “or the Human Rights (Jersey) Law 2000”;
- (l) in paragraph (6) for the words “by Order under paragraph (1)” there are substituted the words “by Order under Regulations under paragraph (2),”;
- (m) for paragraphs (6)(a) and (b) there are substituted the following sub-paragraphs –
  - “(a) imposing a penalty of imprisonment for more than 2 years for a criminal offence;
  - (b) falling within either of paragraphs (5)(a) or (c);
  - (ba) taking effect from a date earlier than that of the making of the Order containing the provision; or”.

**7 Repeal of Articles 3, 3A and 4 of 2014 Law: sanctions**

Articles 3, 3A and 4 of the 2014 Law are repealed.

**8 Amendment of Article 5 of 2014 Law: interpretation of EU provisions, and of Regulations and Orders under 2014 Law**

In Article 5 of the 2014 Law –

(a) for paragraph (1) there is substituted the following paragraph –

“(1) In this Article ‘implemented EU provision’ means an EU provision in respect of which Regulations under Article 2, or an Order under such Regulations, purport –

- (a) to give effect, wholly or partly, to that EU provision; or
- (b) to deal with matters arising out of or related to that EU provision.”;

(b) in paragraph (2) for the words “in Regulations or an Order under Article 2” there are substituted the words “in Regulations under Article 2, or in an Order under such Regulations.”;

(c) in paragraph (2)(b) for the words “defined in the 1973 Law or in this Law” there are substituted the words “defined in this Law”;

(d) for paragraph (3) there are substituted the following paragraphs –

“(3) For the purposes of all legal proceedings any question as to the validity or meaning of an implemented EU provision is to be treated as a question of law and is to be for determination as such in accordance with the principles laid down by, and any relevant decision of, the EU Court.

(3A) Judicial notice is to be taken of the EU Treaties, of the Official Journal of the EU and of any decision of, or expression of opinion by, the EU Court on any such question, and the Official Journal is admissible as evidence of any EU instrument, or of any other act of the EU or of any EU institution, communicated by the Official Journal.

(3B) Evidence of any EU instrument, including any judgment or Order of the EU Court, or of any document in the custody of an EU institution, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of that institution.

(3C) A document purporting to be a copy certified as described in paragraph (3B) is to be received in evidence without proof of the official position or handwriting of the person signing the certificate.”;

(e) in paragraph (4) for the words “Regulations or an Order under Article 2 may provide that paragraph (3)” there are substituted the words “Regulations under Article 2, or an Order under such Regulations, may provide that any of paragraphs (3) to (3C)”.

**9 Insertion of Articles 5A and 5B in 2014 Law: provision by Regulations for consequences of UK withdrawal from EU**

After Article 5 of the 2014 Law there are inserted the following Articles –

**“5A Regulations to deal with deficiencies arising from withdrawal of UK from EU**

- (1) The States may by Regulations make such provision as the States consider appropriate to prevent, remedy or mitigate any matter appearing to the States to amount to –
  - (a) a failure, arising from a relevant change, of an implementing Jersey provision to operate effectively; or
  - (b) any other deficiency of any kind, arising from a relevant change, in an implementing Jersey provision.
- (2) For the purpose of this Article a relevant change is –
  - (a) the withdrawal of the United Kingdom from the EU;
  - (b) the ending of the arrangements for Jersey set out in the EU Treaties before that withdrawal;
  - (c) the repeal of the European Union (Jersey) Law 1973<sup>7</sup>;
  - (d) the repeal of the European Economic Area (Jersey) Law 1995<sup>8</sup>; or
  - (e) a matter falling within any of sub-paragraphs (a) to (d) when taken together with –
    - (i) the operation of any provision made by or under this Law, or
    - (ii) the interaction between any such provisions.
- (3) Paragraphs (4) to (6) of Article 2 –
  - (a) apply to Regulations made under this Article as they apply to Regulations made under Article 2; and
  - (b) apply accordingly to an Order, made under Regulations that are made under this Article, as they apply to an Order made under Regulations that are made under Article 2.
- (4) Without prejudice to the generality of paragraph (3), Regulations under this Article may in particular –
  - (a) provide for a function of an EU institution or of a public authority in a member State (including the making of an EU instrument of a legislative character or the provision of funds) to be –
    - (i) exercisable instead by a public authority (whether already or newly established) in Jersey or in the United Kingdom, or
    - (ii) replaced, abolished or otherwise modified;
  - (b) provide for the establishment of a public authority in Jersey to carry out a function provided for by Regulations under this Article; or

- (c) enable provision falling within sub-paragraph (a) or (b) to be made by an Order under the Regulations.

**5B Regulations to prevent or remedy breaches of international obligations following withdrawal of UK from EU**

- (1) The States may by Regulations make such provision as the States consider appropriate to prevent or remedy any breach of an international obligation that applies or extends to Jersey, being a breach that appears to the States to arise from a relevant change, within the meaning of Article 5A.
- (2) Paragraphs (4) to (6) of Article 2 –
  - (a) apply to Regulations made under this Article as they apply to Regulations made under Article 2; and
  - (b) apply accordingly to an Order made under Regulations that are made under this Article as they apply to an Order made under Regulations that are made under Article 2.
- (3) No Regulations may be made under this Article after the end of the period of 2 years beginning with the repeal day.”.

**10 Insertion of Article 6A in 2014 Law: consequential, transitional and other provision**

After Article 6 of the 2014 Law there is inserted the following Article –

**“6A Consequential, transitional and other provisions related to repeal of 1973 Law**

- (1) The States may by Regulations make such transitional, consequential incidental, supplementary or savings provisions as they consider necessary or expedient in respect of –
  - (a) the repeal of the European Union (Jersey) Law 1973<sup>9</sup>;
  - (b) the repeal of the European Economic Area (Jersey) Law 1995<sup>10</sup>; or
  - (c) an amendment to this Law made by the European Union (Repeal and Amendment) (Jersey) Law 201-<sup>11</sup>.
- (2) Regulations under paragraph (1) may amend any enactment, including any Law other than this Law or the Human Rights (Jersey) Law 2000<sup>12</sup>.”.

**11 Citation and commencement**

- (1) This Law may be cited as the European Union (Repeal and Amendment) (Jersey) Law 201-.
- (2) This Law comes into force on such day or days, and time or times, as the Minister may, with the approval of the Council of Ministers, by Order appoint.

- (3) For the purpose of paragraph (4) –
- (a) an “amended power” is a power to make Regulations or an Order, that is conferred by a provision of the 2014 Law as amended by a provision of this Law; and
  - (b) a “treaty addition Order” is an Order made under Article 1(3) of the 2014 Law, as amended by Article 5 of this Law, to add a treaty to the definition “EU Treaties” in Article 1 of the 2014 Law.
- (4) Without prejudice to the generality of Article 16 of the Interpretation (Jersey) Law 1954<sup>13</sup> –
- (a) an amended power may be exercised at any time after the registration of this Law by the Royal Court, subject to the restriction that the Regulations or Order, made under the amended power, may not come into force until the commencement of the provision of this Law that amends the amended power;
  - (b) if a treaty addition Order is made as described in sub-paragraph (a), Regulations may, at any time after the making of that Order, be made under Article 2 of the 2014 Law as amended by Article 6 of this Law and as read with the definition amended by the treaty addition Order, subject to the restriction that the Regulations may not come into force until the commencement of the treaty addition Order;
  - (c) if Regulations are made as described in sub-paragraph (a) or (b), and confer a power to make an Order, that Order may be made at any time after the making of the Regulations, subject to the restriction that the Order may not come into force until the commencement of the Regulations.

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- 1* chapter 17.245  
*2* L.18/1973 (chapter 17.210)  
*3* L.17/1995 (chapter 17.205)  
*4* chapter 17.210  
*5* P.16/2018  
*6* chapter 15.350  
*7* chapter 17.210  
*8* chapter 17.205  
*9* chapter 17.210  
*10* chapter 17.205  
*11* P.16/2018  
*12* chapter 15.350  
*13* chapter 15.360