

STATES OF JERSEY



Jersey

DRAFT STATISTICS AND CENSUS (JERSEY) AMENDMENT LAW 202- (P.29/2024): AMENDMENT

Lodged au Greffe on 11th June 2024
by Deputy Sir P.M. Bailhache of St. Clement
Earliest date for debate: 25th June 2024

STATES GREFFE

DRAFT STATISTICS AND CENSUS (JERSEY) AMENDMENT LAW 202- (P.29/2024):
AMENDMENT

PAGE 51, ARTICLE 16 –

For the inserted Article 21A substitute –

“21A Limitations of liability

- (1) The Chief Statistician, the staff of the OCS, other producers of tier 1 statistics and the Statistics Council are liable in damages for an act done in the discharge, or purported discharge, of any of their functions under this Law –
 - (a) if paragraph (2) applies; or
 - (b) if paragraph (2) does not apply, limited to the amount prescribed.
- (2) This paragraph applies –
 - (a) if the act was done in bad faith; or
 - (b) to allow an award of damages made in respect of an act if it was unlawful under Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).”.

DEPUTY SIR P.M. BAILHACHE OF ST. CLEMENT

REPORT

1. The purpose of this amendment to the draft Article 21A of the Statistics and Census (Amendment) (Jersey) Law 202- is to make the proposed limitation of liability fairer in its application to individuals who may have been wronged. Article 21A of the amended Law is not mentioned in the Chief Minister's report, but the Explanatory Note states that what is to be inserted is a "standard provision limiting the liability of the Chief Statistician, the staff of the OCS, other producers of Tier 1 statistics, and the Statistics Council except in the circumstances of bad faith or a breach of the [Human Rights \(Jersey\) Law 2000](#)." Whether it is a "standard provision" may perhaps be questionable, but it is certainly true that in recent years several similar provisions have found their way into Laws governing the activities of entities (e.g. the Jersey Financial Services Commission) engaged in statutory or regulatory functions.
2. The proposed Article 21A is a blanket provision which would prevent any person who has been wronged by the negligent, reckless or unlawful activities of the Chief Statistician or any of his staff from receiving compensation for such a wrong. The proposed provision states that the Chief Statistician and his staff (*inter alia*) "are not liable in damages for an act done in the discharge, or purported discharge, of any of their functions under this Law". No person would be able, other than in circumstances where the wrong constituted an action which was incompatible with a Convention right, or which was done in bad faith, to bring an action before the courts seeking damages for that wrong.
3. A similar provision in the [International Co-operation \(Protection from Liability\) \(Jersey\) Law 2018](#), limiting the liability of public authorities to awards of damages or costs, was recently found by the Court of Appeal to be incompatible with the provisions of the [Human Rights \(Jersey\) Law 2000](#), and a declaration of incompatibility was made (*Imperium Trustees (Jersey) Ltd v Jersey Competent Authority* [2024] JCA 014). That decision is subject to an application for leave to appeal to the Privy Council, but it is not suggested in any event that this proposed provision gives rise to issues of incompatibility with the ECHR. It does, however, encourage members to consider whether the limitation of liability is fair to all litigants.
4. I do not suggest that all limitations of liability are unfair. In a world where some corporations, and even individuals, have assets greatly exceeding the assets of the States of Jersey, it is important that those exercising statutory functions should not be inhibited from performing those functions freely and properly by a fear of incurring liabilities which might overwhelm public funds. It is also important that public funds should be protected against excessive claims.
5. However, not all litigants or prospective litigants, have vast funds at their disposal. Some individuals of modest means might be wronged (for example, by the abuse of their personal data) by the activities of the Chief Statistician or his staff and find themselves severely damaged. It is unfair that such individuals should be left without a remedy and be unable to recover any damages for the wrong.
6. The purpose of this amendment is therefore to place a cap on the amount of damages that a court could award. That would protect public funds by allowing a litigant to recover damages for any wrong which might be perpetrated, but only to the extent of the cap. I have suggested that the figure should be set by the Chief Minister by Order, which could of course be challenged, if need be, in the Assembly. I would recommend a figure between £50,000 and £100,000 as the appropriate cap. This would be broadly consistent with the Jersey Bank Depositors Compensation Scheme 2009, which provides protection of up to £50,000 per

person for deposits placed in a Jersey bank if it should fail. It would, however, be a matter for the Chief Minister to determine the balance to be struck between the public interest and the interests of individuals who may have been wronged.

Financial and staffing implications

Given that the Chief Statistician is to be a corporation sole, and that any action against him or his staff would be dependent on some wrong having been committed, there would be no direct effect upon the public finances or the human resources of the States.

Children’s Rights Impact Assessment

A Children’s Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.