

DRAFT PUBLIC RECORDS (JERSEY) LAW 200-

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by the Finance and Economics Committee**



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European Convention on Human Rights

The President of the Finance and Economics Committee has made the following statement -

In the view of the Finance and Economics Committee the provisions of the Draft Public Records (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

General background

The majority of countries have legislation governing the records of government and public institutions; some have had archive or public records laws for over 200 years, others for just a few years: for example, the Isle of Man passed such legislation in 1999. Nor is such legislation a static thing, and both the United Kingdom and Scotland are in the process of revising their archive legislation to take account of changing information and records management needs.

The fundamental principles of archive and public record legislation are identifying, managing, protecting, preserving and providing access to records whilst respecting privacy, confidentiality, inalienability and legal admissibility.

High quality public record-keeping and management are now seen as vital to government efficiency and to its transparency and accountability. The availability, reliability and correct management of information not only protects the rights of the citizen, but also enables quality and timely decision-making by public authorities.

We are also now living in a world where technology is changing concepts of record-keeping and where the need to identify, capture and preserve the record requires new skills and new decisions.

Public records legislation should support all these activities and provide a framework of standards and processes.

Jersey background

On 27th October 1992, the States of Jersey unanimously approved the proposition of the Policy and Resources Committee and the report of Dr. Athol Murray (P.99/92) that the Jersey Heritage Trust should establish an archives service for the Island and that the necessary legislation should be prepared in due course.

Dr. Murray stated in his report: "...it is essential that the archives service be given a legislative basis. The legislation should not only define the respective powers and responsibilities of the Heritage Trust, the Archives Committee and the Archivist, but also the responsibility of departments for implementing records management programmes and transmitting their records to the archives, the public's right of access and other related matters."

In 1993 the Jersey Heritage Trust appointed the first Archivist and established the archives service. In July 2000 the Trust opened the purpose-built Jersey Archive that provides all the necessary facilities to meet the provisions of a public records law.

There is currently no requirement for public institutions to transfer records over a specified age to the Archive. Thus many valuable records remain stored by the institutions themselves, often in unsuitable conditions and inaccessible to the public, and, in some cases, to the institutions themselves. There is always a danger that the historical importance of records may not be understood and records could be thrown out.

There is a continuing need to improve the quality and standard of records and information management in response to the Data Protection (Jersey) Law 1987, particularly if the definition of data is to be extended to include structured manual records; the Code of Practice on Access to Information adopted in 1999 and the Jersey Human Rights Law which comes into effect this year. The e-government strategy of the States of Jersey adds further impetus.

Overview of the proposed Public Records Law

The aim of the proposed Law is to make statutory provision for the management and preservation of public records and for the provision of facilities for and control of public access to them.

It does this by -

- Defining what is a record and what is a public record (Part 1)
Within this the Law sets out those public funded bodies whose records fall within the remit of the Law and allows for others to be included by Regulations.
- Setting out the duties, powers and functions of the Archivist and the Jersey Heritage Trust in relation to the appraisal, selection, management and safeguarding of public records (Articles 9 to 11)
The Trust is to be the custodian of the archives and responsible for maintaining a public record office for the purpose of safeguarding the records and making them accessible. Ownership of the public records remains with the public

institutions. The Trust will also appoint the Archivist and staff.

The Archivist is responsible for the management of public records in the custody of the Trust and for carrying out the records management functions imposed by the Law.

- Establishing a Records Advisory Panel to review, advise and direct the Archivist, the Trust and the public institutions in the performance of their functions under the Law (Article 12, Part 3 and Schedule 2)
This Panel of five members, including the Chair, will be appointed by the Finance and Economics Committee and is to be an independent scrutiny body. It is intended that members of the Panel will have such qualifications and experience as are necessary to carry out the functions of the Panel.
- Requiring the appraisal, scheduling and correct disposal of public records including the transfer of non-current records selected for permanent preservation to the Trust when they are 20 years old (Part 4)
This sets out the records management duties and processes of the Archivist and the public institutions. The intention is to improve the management of information and records and ensure that the right records are kept for the right length of time, and, if they are archival, that their permanent preservation is assured.
- Providing public access to the records when 30 years old unless exempt for the time being for reasons of confidentiality (Parts 5 and 6)
*The assumption is that records, not previously in the public domain, will be made available for public consultation under the "30 year rule". Records may be granted exemption from access by the Panel according to listed criteria, however, no record may remain closed to the public indefinitely. Generally exemption will be granted if access could damage the security of the Island, certain economic interests, the privacy of an individual or interfere in the administration of justice.
The manner of application for access and granting of access is set out, as is the manner of appeal against refusal of access to the Panel.*
- Reiterating the duty of public institutions to create, keep and manage records (Part 7).

The requirements of this Law are in addition to any other requirements in any other enactment and, in the case of any inconsistency with the Data Protection Law that Law will prevail.

Financial/manpower implications

The Finance and Economics Committee believes there are no matters arising from the introduction of this Law which will cause additional expenditure or manpower resources to States departments.

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 5th June 2002 the Finance and Economics Committee made the following statement before Second Reading of this *projet* in the States Assembly -

In the view of the Finance and Economics Committee the provisions of the Draft Public Records (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law provides for the management of records concerning States functions and other public functions in Jersey, as well as access to those records when they become archives, and confers various functions on the Jersey Heritage Trust, on an Archivist to be employed by the Trust and on a Records Advisory Panel to be set up under the draft Law.

The draft Law is divided into eight Parts.

Part 1 Preliminary contains provisions for the interpretation of the draft Law. *Article 1* contains most of the definitions for the draft Law and explains the use of cross-references within the draft Law and references in it to enactments. *Articles 2 to 7* contain detailed definitions of terms of special significance in the draft Law (record, public record, age of public record, public institution, public record of a public institution, records management).

Part 2 Functions in relation to Records sets out the responsibilities of the various functionaries under the draft Law.

Articles 8 to 11 set out in detail the duties, powers and other functions of the Jersey Heritage Trust and the Archivist in relation to public records. The Trust is to provide premises and staff, appoint the Archivist and in a formal sense be custodian of the archives under the Law. The Archivist is to have a managerial role, to supervise staff and to implement the Law in a day-to-day sense.

Under *Article 12*, the Records Advisory Panel (set up under Part 3) may give directions to (and shall set standards for) the Trust and the Archivist in relation to the exercise of their functions under the draft Law.

Article 13 deals with public records officers and their duties. Each public institution is to have such an officer (and, in default of the specific nomination of such an officer, the chief officer of the institution is to be the public records officer).

Part 3 Records Advisory Panel provides for the setting up (*Article 14*), procedure (*Article 15*, with *Schedule 2*) and functions (*Article 16*) of the Records Advisory Panel. *Article 14* also provides for the appointment of the Panel's members, who must have appropriate experience or qualifications. The Panel is to review the implementation of the draft Law, review decisions on access to public records and approve conditions for the storage of public records. The Panel may also provide advice to the Trust, the Archivist, the Committee and other public institutions and may give directions to the Trust and the Archivist.

Part 4 Appraisal and Retention of Public Records provides for the Archivist to inspect (*Article 21*) and appraise public records (*Article 17*), to draw up schedules that classify public records and detail what has to be done with them from time to time (*Article 18*), and to review the appraisals (*Article 19*). The schedules have no effect unless approved by the relevant public institutions. Part 4 also provides for the transfer of non-current archival public records to the safe-keeping of the Trust (*Article 20*) and creates a general duty not to dispose of public records (by e.g. transfer, modification or complete destruction), but sets out a number of exceptions to this duty (*Article 26*).

Part 4 also allows the Panel to prevent or restrict the Archivist's access to certain records (*Article 22*) and deals with cases where a public institution ceases to be such an institution (*Article 23*) and where public functions are performed by non-public institutions that have been specified by Regulations (*Article 24*).

The Archivist must allow a public institution reasonable access to the institution's own records if they have been transferred to the Trust (*Article 25*).

Part 5 Access to Public Records

Generally, a public record in the open access period (i.e. after 30 years unless otherwise prescribed: *Article 28*) must, unless exempt, be made available to the public on request: *Article 27*, but this does not prevent public institutions from allowing earlier access to their public records or access to public records that are exempt from access (*Article 29*).

Certain exceptions apply: *Article 30* requires prior intergovernmental consultation in certain cases and *Article 31* makes public records exempt from access if their disclosure could damage security, defence, international relations and in cases where disclosure could threaten, for example, the privacy or health of an individual, the administration of justice, various forms of privilege or confidentiality or certain economic interests. Records of the Lieutenant Governor are also exempt if they relate to the Royal Family.

The manner of application for access is set out in *Article 33* and of giving access in *Article 32*. *Article 34* requires a timely decision on applications for access and notice to be given of the decision.

Part 6 Review of Decisions provides for the Records Advisory Panel to review decisions on access (*Articles 35 and 36*) if

timely application is made for the review.

Part 7 Management of Public Records imposes a public duty to create and manage public records (*Article 38*) as well as to store them as approved by the Panel (*Article 37*).

Part 8 Miscellaneous

The draft Law is to coexist with other Laws and is not to override them (*Article 39*); but the Law does override the secrecy provisions contained in other enactments unless *they* make it clear that the Law does not do so (*Article 40*).

The draft Law does not affect the validity of records and their ownership or the power of the Trust to enter arrangements concerning records that are not public records (*Article 41*).

The Bailiff may resolve certain public sector disputes concerning the administration of the Law (*Article 42*).

Article 43 confers certain immunities on persons who give access to records under the draft Law while *Article 44* confers immunity from actions for damages on officials administering the draft Law.

The Archivist must draw up an annual report relating to his functions under the draft Law and to those of the Trust (*Article 45*), may certify copies of public records as true copies (*Article 46*) and may charge fees for services he provides under the draft Law (*Article 48*). Those fees may only be applied in the exercise of the functions of the Trust and the Archivist under the draft Law (*Article 47*) and the Archivist cannot charge for personal access to a public record in a straightforward case (*Article 27(5)*).

Article 49 provides that Regulations and Orders may be made in aid of the draft Law.

Article 50 and *Schedule 3* set out savings and transitional provisions.

Article 51 sets out the citation for the draft Law and provides for the Law's commencement.

Schedule 1 sets out the oaths of office to be sworn by the Archivist and the members of the Records Advisory Panel before entering on duty under the draft Law.

Schedule 2 is referred to above with *Article 15* and *Schedule 3* with *Article 50*.

PUBLIC RECORDS (JERSEY) LAW 200-

ARRANGEMENT OF ARTICLES

PART 1

PRELIMINARY

Article

- 1 Interpretation
- 2 Record
- 3 Public record
- 4 Age of public record
- 5 Public institution
- 6 Public record of public institution
- 7 Records management

PART 2

FUNCTIONS IN RELATION TO RECORDS

- 8 Principal duties of Trust
- 9 Principal duties of Archivist
- 10 Other functions of Trust
- 11 Other functions of Archivist
- 12 Panel may give directions and shall approve standards
- 13 Public records officer

PART 3

RECORDS ADVISORY PANEL

- 14 Establishment
- 15 Meetings and terms of appointment
- 16 Functions

PART 4

APPRAISAL AND RETENTION OF PUBLIC RECORDS

- 17 Appraisal of public records
- 18 Schedules of public records
- 19 Further appraisal
- 20 Transfer of non-current archival public records to Trust
- 21 Archivist may inspect public records
- 22 Records to which Archivist is not entitled
- 23 Records of former public institution
- 24 Records of non-public institution performing public functions
- 25 Public institution to have access
- 26 Disposal of public records

PART 5

ACCESS TO PUBLIC RECORDS

- 27 Public records in open access period
- 28 Open access period
- 29 Earlier access

- 30 Inter-governmental consultation
- 31 Public records exempt from access
- 32 How access may be given
- 33 Manner of application for access
- 34 Decision on access

PART 6

REVIEW OF DECISIONS

- 35 Review by Panel
- 36 Procedure on review

PART 7

MANAGEMENT OF PUBLIC RECORDS

- 37 Conditions of records storage
- 38 Public duty to create and keep records

PART 8

MISCELLANEOUS

- 39 Relationship with other laws
- 40 Secrecy provisions do not apply in open access period
- 41 Law does not affect validity etc.
- 42 Dispute resolution
- 43 Protection from liability for making record available
- 44 Protection from liability in general
- 45 Annual and other reports
- 46 Certified copy of public record
- 47 Fees to go to Trust
- 48 Charges for services
- 49 Regulations and Orders
- 50 Savings and transitional provisions
- 51 Citation and commencement

SCHEDULE 1 - Oaths of office

SCHEDULE 2 - Records Advisory Panel

SCHEDULE 3 - Savings and transitional provisions

PUBLIC RECORDS (JERSEY) LAW 200-

A LAW relating to records concerning States functions and other public functions in Jersey, relating to access to those records when they become archives and conferring various functions on the Jersey Heritage Trust, an Archivist and a Records Advisory Panel; 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 -

PART 1

PRELIMINARY

ARTICLE 1

Interpretation

(1) In this Law unless the context otherwise requires -

“archival” means, in respect of a public record, that it has significant permanent value, whether for the purposes of public administration or as a matter of cultural heritage;

“Archivist” means the officer employed as Archivist under this Law;

“Committee” means the Finance and Economics Committee;

“conservation” means, in respect of a record, repairing it or otherwise applying treatment to it;

“current” means, in respect of a public record, that it is required to be readily available for the performance of the day-to-day functions of a public institution (other than the function of providing access, or deciding whether to provide access, to the record under this Law);

“destroy” a record includes treat or modify it in any irreversible way that would prevent any information that could previously have been retrieved from the record from being retrieved from the record;

“dispose” of a record includes -

(a) transfer custody, control or ownership of the record;

(b) be a party to an arrangement for the transfer of the custody, control or ownership of the record; and

(c) destroy the record;

“electronic record” means a record in such a medium or language that it can only be read or understood by a natural person after electronic processing;

“function” includes power, authority and duty;

“open access period” means, in respect of a public record, the period that applies to the record under Article 28;

“Order” means Order made under this Law;

“Panel” means the Records Advisory Panel established by this Law;

“person” includes a public institution and any other body of persons corporate or unincorporate;

“preservation” means, in respect of a record, protecting it against damage, deterioration, loss or corruption;

“public institution” has the meaning set out in Article 5;

“public record” has the meaning set out in Article 3;

“public record of a public institution” has the meaning set out in Article 6;

“public records officer” has the meaning set out in Article 13;

“record” has the meaning set out in Article 2;

“records management” has the meaning set out in Article 7;

“Regulations” means Regulations made under this Law;

“retention period” means, in respect of a public record, the period, determined by appraisal under Article 17, during which the record should be kept and at the end of which, according to that appraisal, the record should be the subject of further appraisal, or of disposal;

“Trust” means the Jersey Heritage Trust incorporated by an Act of Incorporation granted by the States by the Loi accordant un acte d’incorporation à l’association dite “The Jersey Heritage Trust”^[1] registered on 3rd June 1983.

(2) Notes inserted in the text of this Law do not form part of the Law.

(3) A reference in this Law to a Part, Article or Schedule by number only and without further identification is a reference to the Part, Article or Schedule of that number in this Law.

(4) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or other division of this Law.

(5) A reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

(6) A reference in this Law to an enactment includes a reference to an enactment of the United Kingdom that applies to Jersey and that reference is a reference to such an enactment as amended from time to time and includes a reference to such an enactment as extended or applied under another enactment of the United Kingdom.

ARTICLE 2

Record

(1) For the purposes of this Law, a record is information that -

(a) is created or received (whether before or after this Article comes into force) in the conduct of a corporate, institutional or individual activity; and

(b) has such content, context and structure as to provide evidence of the activity.

(2) Notwithstanding paragraph (1), for the purposes of this Law a record includes anything prescribed by Regulations as a record, but does not include anything prescribed by Regulations as not being a record.

(3) For the purposes of this Law, a record may be in any code or language, and in any medium.

(4) For the purposes of this Law, the purpose of the author of something is not conclusive in deciding whether it is a record.

(5) Regulations that prescribe something for the purposes of paragraph (2) may do so by reference to a particular object or to a class of objects.

(6) Regulations that prescribe something for the purposes of paragraph (2) may also prescribe a sample (such as a postage stamp, coin or banknote) drawn from a class of objects and may specify how that sample is to be taken.

ARTICLE 3

Public record

(1) For the purposes of this Law, a public record is a record that has been created, or received, by a public institution in the performance of its functions and to the possession of which that or another public institution is entitled.

(2) However, a record is not a public record merely because it was received by the Trust in the performance of such functions as it has otherwise than under this Law or any other enactment.

ARTICLE 4

Age of public record

(1) For the purposes of this Law, the age of a public record is calculated starting on 1st January next after the day when the last change was made to the substance of the record.

(2) That calculation is not affected by the circumstance that the record was not (or is not taken to have been) a public record on either of those days, or for all of the time that started running on either of those days or on the day when Part 4 comes into force.

ARTICLE 5

Public institution

(1) For the purposes of this Law, “public institution” means any of the following -

(a) a Department referred to in Article 1 of the Departments of the Judiciary and the Legislature (Jersey) Law 1965;^[2]

(b) any Department of the States;

(c) the Trust, to the extent that it performs functions under this Law or any other enactment (other than the Loi accordant un acte d’incorporation à l’association dite “The Jersey Heritage Trust”,^[3] registered on 3rd June 1983);

(d) the Archivist;

(e) the Panel;

(f) a person prescribed by Regulations for the purposes of this definition;

(g) except to the extent that Regulations otherwise provide -

(i) the staff establishment of the Lieutenant Governor;^[4]

- (ii) the States of Jersey Police Force;
- (iii) any office or institution in Jersey where natural persons who are officers of the Crown, or are employed by the Crown, the States or a Committee of the States, work in their capacity as such officers or employees;
- (iv) a corporation owned by the States or in which the States have a controlling interest;
- (v) any of the twelve parishes of Jersey so far as concerns its staff establishment, offices, and institutions (including the Honorary Police), that perform the temporal functions of the parish, to the extent that they perform those functions.

(2) Regulations made under paragraph (1)(f) may prescribe a person to be a public institution for the purposes of some or all of the provisions of this Law.

(3) Regulations made under paragraph (1)(g) may prescribe an exception for the purposes of some or all of the provisions of this Law.

ARTICLE 6

Public record of public institution

(1) For the purposes of this Law, a reference to a public record of a public institution is a reference to a public record in the custody or control of a public institution (or to possession of which a public institution is entitled).

(2) For the purposes of this Law, a reference to a public record of a named public institution is a reference to a public record in the custody or control of the named public institution (or to possession of which the named public institution is entitled).

(3) However, a public record in the custody or control of the Trust is not a public record of the Trust merely because it was transferred to the custody or control of the Trust under Article 20.

ARTICLE 7

Records management

For the purposes of this Law, records management is the process of ensuring the creation of records concerning the activities of a public institution to the extent needed to document its activities, the retention of those records to the extent necessary to ensure that the institution can account for its activities and the disposal of those records in a manner that depends on whether or not they still have significant value as evidence of those activities.

PART 2

FUNCTIONS IN RELATION TO RECORDS

ARTICLE 8

Principal duties of Trust

The Trust shall -

- (a) receive archival public records into its custody or control or make some other arrangement for their keeping;
- (b) maintain a public records office for the safe keeping of public records so received;
- (c) employ a person with appropriate qualifications as Archivist;
- (d) employ other persons with appropriate qualifications to assist the Archivist;
- (e) perform such other duties as the States may prescribe by Regulations;

- (f) perform its functions under this Law in accordance with standards approved from time to time by the Panel;
and
- (g) comply with any directions of the Panel in relation to the performance of those functions.

ARTICLE 9

Principal duties of Archivist

The Archivist shall -

- (a) before he begins to perform any of his functions under this Law, take oath before the Royal Court, in the form set out in Part 1 of Schedule 1;
- (b) appraise public records and survey the disposal of public records;
- (c) have the management of the public records in the custody or control of the Trust and make them available for public access in accordance with this Law;
- (d) perform such other duties as the States may prescribe by Regulations;
- (e) perform his functions under this Law in accordance with standards approved from time to time by the Panel;
and
- (f) comply with any directions of the Panel in relation to the performance of those functions.

ARTICLE 10

Other functions of Trust

The Trust may -

- (a) establish and manage specialized places of deposit and other facilities to house or exhibit public and other records (whether or not the Trust has custody or control of those records);
- (b) have the custody or control of any records (other than public records) that, in the opinion of the Archivist, are of significant evidential or cultural value and are offered by or on behalf of any person to the Trust on loan, as a gift, or under some other arrangement;
- (c) acquire copyright, other forms of intellectual property, and other interests, in public and other records, and, to the extent that it has any such property or other interests (or is acting on behalf of any person who has), dispose of that property or any of those interests;
- (d) employ staff, and engage consultants, for the purposes of this Law;
- (e) obtain and maintain equipment for the purposes of this Law;
- (f) perform such other functions as the States may prescribe by Regulations;
- (g) do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Law.

ARTICLE 11

Other functions of Archivist

The Archivist may -

- (a) accredit specialized places of deposit and other facilities to house or exhibit public and other records;
- (b) manage any records (other than public records) that, in the opinion of the Archivist, are of significant

evidential or cultural value and are offered by or on behalf of any person to the Trust on loan, as a gift, or under some other arrangement;

- (c) promote, by providing advice and other assistance, records management relating to public functions, whether those functions are carried out by the public or private sector;
- (d) promote the preservation, conservation, appreciation and use of public records and other records;
- (e) enter into arrangements with respect to the preservation, conservation, management and custody or control of public records relating to places outside Jersey;
- (f) enter into arrangements with archives services outside Jersey with respect to public records relating to Jersey;
- (g) inspect, assess, acquire, catalogue and dispose of (or authorize the disposal of) public and other records;
- (h) copy and publish public and other records (but not so as to infringe copyright, or any other intellectual property right, in the records);
- (i) lend records that, under this Law, have come into the custody or control of the Trust to museums and other places of public exhibition and to different places of deposit (but not in breach of any condition attaching to that custody or control);
- (j) publish catalogues and indexes of, and other guides to, public and other records;
- (k) promote and undertake research and promote and provide education, advice and assistance in connection with public and other records;
- (l) undertake the preservation and conservation of records in the custody or control of the Trust and of other records;
- (m) train, or assist in the training of, persons for work in connection with public and other records;
- (n) provide information and facilities for persons using public and other records;
- (o) subject to Article 27(5), charge reasonable fees for services provided by him;
- (p) perform such other functions as the States may prescribe by Regulations;
- (q) do all things that are necessary or convenient to be done for or in connection with the performance of his functions.

ARTICLE 12

Panel may give directions and shall approve standards

(1) The Panel may give directions, not inconsistent with this Law, to the Trust and the Archivist in relation to the performance of their functions under this Law.

(2) The Panel shall ensure that at all times there are standards that it has approved, for the purposes of Articles 8 and 9, that are not less strict and not less extensive than the standards in force at those times of the British Standards Institute, and of the International Organization for Standardization, on records management and the storage, conservation and preservation of records.

ARTICLE 13

Public records officer

(1) A public records officer of a public institution has a duty to ensure that the institution complies with any requirement of this Law that applies to the institution.

(2) If the Archivist is required to consult a public institution, it is sufficient compliance with that requirement if

the Archivist consults the public records officer of the institution.

(3) For the purposes of this Law, the public records officer of a public institution is the person prescribed by Order for those purposes or, if no such person is so prescribed, the chief officer or other person who has charge of the day-to-day running of the institution.

(4) A person so prescribed as public records officer of a public institution need not be a person employed by or in the institution.

PART 3

RECORDS ADVISORY PANEL

ARTICLE 14

Establishment

(1) There is established a body to be known as the Records Advisory Panel.

(2) The Panel shall consist of five members appointed by the Committee.

(3) The members of the Panel shall have such qualifications or experience as qualify them to perform the functions of the Panel and to balance, in that performance, the interests of public institutions, the Trust, the Archivist, the States and the general public.

(4) The Committee shall appoint one of those members as chairman of the Panel.

(5) The Committee shall notify the States of the appointments made under this Article.

(6) The performance of the functions of the Panel shall not be affected by any vacancy in its membership.

ARTICLE 15

Meetings and terms of appointment

(1) Schedule 2 shall have effect with respect to the members and the meetings of the Panel.

(2) The States may make Regulations amending any provision of Schedule 2.

(3) Subject to this Law, the Panel may regulate the conduct of its meetings.

ARTICLE 16

Functions

The Panel may -

(a) review from time to time the performance by the Trust, the Archivist and public institutions of their functions under this Law;

(b) review from time to time the appraisal of the records of public institutions, and the schedules based on that appraisal, under Part 4;

(c) advise the Committee, the Trust and the Archivist with respect to the functions of the Trust and the Archivist under this Law;

(d) advise public institutions with respect to their duties under this Law;

(e) advise the Committee, the Trust, the Archivist and public institutions with respect to the preservation of public records and the provision of public access to them;

- (f) give directions to the Trust and the Archivist with respect to the performance of their functions under this Law; and
- (g) perform such other functions with respect to public records as are conferred on the Panel by this Law or that the States may prescribe by Regulations.

PART 4

APPRAISAL AND RETENTION OF PUBLIC RECORDS

ARTICLE 17

Appraisal of public records

(1) The Archivist shall appraise regularly the public records of each public institution for the purposes of this Law and further appraise the records in accordance with the schedules referred to in this Article.

(2) The Archivist shall carry out his first appraisal of any class of electronic record so far as possible in anticipation, that is, at the time when the electronic program for creating records of that class is designed, or set in operation, for the public institution that is to create records of that class.

(3) The public institution shall provide the Archivist with such assistance as the Archivist may reasonably require in order to carry out appraisals of the public records of the institution under this Article.

(4) The Archivist shall on the basis of these appraisals prepare and update schedules that classify the public records appraised and indicate when further appraisal of the records should be carried out under this Article or disposal of the records should occur.

ARTICLE 18

Schedules of public records

(1) A schedule referred to in Article 17, and any amendment to it, shall be of no effect in relation to public records unless approved by the public records officer of the public institution that has custody or control of the records (or is entitled to their possession).

(2) Such a schedule shall indicate for the purposes of this Law -

- (a) the retention periods for classes of records;
- (b) whether a record of any class is current;
- (c) whether a record of any class is archival;
- (d) at what intervals the records of each class should be the subject of further appraisal;
- (e) what precautions (if any) should be taken to prevent inadvertent or wrongful disposal of records of each class;
- (f) when records of each class are to be disposed of (if at all); and
- (g) how records of each class are to be disposed of.

(3) A public institution shall comply in respect of each record that is a public record of that public institution with the action for the time being specified in the relevant schedule as action to be taken by the institution in respect of the record.

(4) The Archivist shall comply in respect of each record that is a public record with the action for the time being specified in the relevant schedule as action to be taken by the Archivist in respect of the record.

ARTICLE 19

Further appraisal

(1) The Archivist shall further appraise public records at regular intervals, in accordance with the schedules prepared and updated under Article 17.

(2) A schedule prepared under Article 17 shall require the further appraisal of the records of any class to be carried out no later than one month before the end of the retention period that applies to the records.

ARTICLE 20

Transfer of non-current archival public records to Trust

(1) After an archival public record of a public institution has reached 20 years of age, the institution shall transfer the record to the custody or control of the Trust, in accordance with directions of the Archivist.

(2) However, paragraph (1) does not require the public institution to transfer of any of the following material -

(a) anything that is still current;

(b) anything that the public institution cannot transfer because the thing has already been lawfully disposed of;

(c) anything in respect of which a direction of the Panel is in force under Article 22;

(d) library material in the collection of the Public Library;

(e) historical material and works of art in the collection of the museums that the Trust administers;

(f) material prescribed by Order for the purposes of this Article.

(3) For the purposes of this Article, a transfer of a record to the control of the Trust includes a transfer of the record to a specialized place of deposit specified by the Archivist.

ARTICLE 21

Archivist may inspect public records

(1) The Archivist, in connection with his functions under this Law, may inspect any public record of a public institution and may require a public institution to furnish any public record of the public institution for inspection by the Archivist.

(2) The public institution shall comply with the requirement.

ARTICLE 22

Records to which Archivist is not entitled

(1) The Panel may, notwithstanding Article 20, direct that a public record, or each record in a specified class of public records, is a record that is not required to be transferred in accordance with that Article.

(2) The Panel may, notwithstanding Article 21, direct that a public record, or each record in a specified class of public records, is a record to which the Archivist is not entitled to have access under that Article or is entitled to have access under that Article only on specified conditions to be observed by the Archivist.

(3) A direction under this Article may only be given in respect of a record that is exempt from access under Part 5 or in respect of which there is reason to believe that it may be so exempt.

(4) A direction under this Article has effect for such period as is specified in the direction but may at any time be revoked by the Panel.

ARTICLE 23

Records of former public institution

(1) If a person who is a public institution ceases to be a public institution or, not being a public institution, takes over the functions of a public institution -

- (a) the public records of the public institution that existed before the day of the cessation or take-over do not cease to exist as public records for the purposes of this Law just because the person is not actually a public institution;
- (b) those records continue to be subject to this Law as if the person had not ceased to be a public institution on that day or the functions had not been so taken over; and
- (c) for the purposes of this Law, the person shall be taken to be a public institution in respect of each record that continues to exist as a public record under this Article.

(2) For the avoidance of doubt it is declared that if a person was taken to be a public institution in respect of any public records, by virtue of Article 24, and then ceased to be taken to be such an institution, this Article applies to the person and those records as if the person were a public institution that ceased to be a public institution.

ARTICLE 24

Records of non-public institution performing public functions

(1) If a person who is not a public institution performs public functions and both the person and the functions have been prescribed by Regulations for the purposes of this Article -

- (a) the person's records that relate to the prescribed functions begin, if the Regulations so prescribe, to exist for the purposes of this Law as public records when the Regulations come into force (or if the Regulations prescribe a later date, the later date); and
- (b) for the purposes of this Law, the person shall be taken to be a public institution in respect of each record that exists as a public record because of this Article on and from the date when it begins so to exist.

(2) A person may be prescribed for the purposes of this Article even if the person, if a body corporate, is not in public ownership or is not under public control.

(3) For the purposes of this Article, a person's records are the records in the person's custody or control (or to possession of which the person is entitled).

ARTICLE 25

Public institution to have access

(1) The Archivist shall ensure that a public record that is in the custody or control of the Trust because of a transfer under Article 20 is made available, as reasonably required for use by, or at the direction of, the public institution for the time being exercising the functions in the performance of which the record was created.

- (2) The Archivist may make the record available on such conditions as are necessary to ensure its preservation.

ARTICLE 26

Disposal of public records

(1) A person who has custody or control of a public record has a duty not to dispose of it.

(2) This Article does not prevent -

- (a) the doing of anything as required by any law or enactment, including Part 7 of this Law,^[5]
- (b) the transfer of a public record to the custody or control of the Trust;

- (c) the transfer of a public record to such custody or control as the Archivist directs (including transfer to a specialized place of deposit), to the custody or control of a person who owns or has some other interest in the record, to the archives of another country or to the archives of an international organization;
- (d) the doing of anything with the specific approval of the Archivist or in accordance with a practice generally approved by the Panel;
- (e) in the case of a current public record, the addition of material to, or alteration of the material in, the record for the purposes of the performance of the functions of the public institution that has custody or control of the record or is entitled to possession of the record; or
- (f) the disposal of a duplicate that is not unique in any of the following respects -
 - (i) its form;
 - (ii) its content;
 - (iii) its being the only surviving duplicate of a lost record;
 - (iv) its being the only surviving one of a number of duplicates that have no known original at the time of the disposal.

PART 5

ACCESS TO PUBLIC RECORDS

ARTICLE 27

Public records in open access period

- (1) A person (other than the Archivist) shall make a public record that is in the open access period and is in the custody or control of the person available for public access unless it is exempt from access under this Part.
- (2) The Archivist shall make a public record that is in the open access period and is in the custody or control of the Trust available for public access unless it is exempt from access under this Part.
- (3) If the record is exempt from access under this Part only because of matter in certain parts of the record, the other parts of the record shall be made available for public access by the person (or, as the case may be, the Archivist) if it is practicable to do so and by doing so the matter because of which the record is exempt from access will not be revealed.
- (4) A person may withhold a public record, or public records of a particular class, from public access for a reasonable time until the record or records have been assessed to determine whether they are exempt from access under this Part.
- (5) A person shall not make any charge for making any record or any part of a record available for public access if -
 - (a) the access is given under paragraph (1), (2) or (3); and
 - (b) the access is given simply by allowing a visitor to the premises where the record is kept to examine, or examine and make notes from, the record.

ARTICLE 28

Open access period

- (1) A public record is in the open access period if it has reached 30 years of age.
- (2) The States may, by Regulations, prescribe a different open access period generally or in respect of a particular public record or a public record within a specified class, and if the States have done so, that period applies instead as the open access period under paragraph (1) generally or in respect of that record or records of that class.

(3) The Panel may approve a different open access period in respect of a particular public record, or public records of a particular class, and if the Panel has done so, that period applies instead as the open access period under paragraph (1) in respect of that record or records of that class.

(4) Such an approval may be given only with the consent of the public records officer of the public institution for the time being exercising the functions in the performance of which the record or records were created.

(5) An approval under paragraph (3), whether given before or after the making of Regulations under this paragraph, is of no effect in respect of a public record if the States by Regulations specify that any such approval is to be of no effect in respect of the public record or public records within a particular class into which the public record falls.

ARTICLE 29

Earlier access

Nothing in Article 27 or 28 prevents a person from making available to a member of the public a public record, or a public record of a class, that is not in the open access period or that is exempt from access under this Part if the person does so with the consent of the public records officer of the public institution for the time being exercising the functions in the performance of which the record was created.

ARTICLE 30

Inter-governmental consultation

If it appears to a person that the Government of the United Kingdom or of any other country might reasonably wish to contend that the making available of a public record under this Part could adversely affect the interests of that country, the person shall not make the record available to a member of the public under this Part unless that Government has been consulted on the matter.

ARTICLE 31

Public records exempt from access

(1) A public record is for the time being exempt from access under this Part if it is current or within a retention period that applies to it.

(2) A public record of the Lieutenant Governor is exempt from access under this Part if it contains matter that relates to Her Majesty the Queen, to members of the Royal Family or to members of the Royal Household.

(3) The Archivist shall assess in respect of public records, or classes of public records, in the custody or control of the Trust whether the records or classes are exempt from access.

(4) The Archivist shall, if practicable, do that just before the records enter the open access period and then, if at that point they are exempt from access, again from time to time while they remain exempt from access.

(5) A public record is for the time being exempt from access under this Part if it contains matter the disclosure of which at that time under this Law would, or could reasonably be expected to, do any of the following -

- (a) constitute an unwarranted invasion of the privacy of an individual;
- (b) prejudice the administration of justice, including fair trial, and the enforcement or proper administration of the law;
- (c) prejudice legal proceedings or the proceedings of any tribunal, public enquiry, Board of Administrative Appeal or other formal investigation;
- (d) prejudice the duty of care owed by the Education Committee to a person who is in full-time education;
- (e) infringe legal professional privilege or lead to the disclosure of legal advice to a public institution, or other authority of Jersey, or the States, or infringe medical confidentiality;

- (f) prejudice the prevention, investigation or detection of crime, the apprehension or prosecution of offenders, or the security of any property;
- (g) harm the conduct of national or international affairs or Jersey's relations with other jurisdictions;
- (h) prejudice the defence of Jersey or any of the other British Islands or the capability, effectiveness or security of the armed forces of the Crown or any forces co-operating with those forces;
- (i) cause damage to the economic interests of Jersey;
- (j) prejudice the financial interests of a public institution, or other authority of Jersey, or the States by giving an unreasonable advantage to a person in relation to a contract or commercial transaction that the person is seeking to enter into with the public institution, authority or the States;
- (k) prejudice the competitive position of a person, if the disclosure of the matter would, by revealing commercial information supplied by the person, be likely to cause significant damage to the lawful commercial or professional activities of the person;
- (l) prejudice the competitive position of a public institution, or other authority of Jersey, or the States;
- (m) prejudice the relationships between employers and employees or the effective conduct of personnel management;
- (n) constitute a premature release of a draft policy of a public institution, or other authority of Jersey, or the States that is in the course of development;
- (o) cause harm to the physical or mental health, or emotional condition, of an individual;
- (p) prejudice the provision of health care or carrying out of social work, including child care, by disclosing the identity of an individual (other than a health or social services professional) who has not consented to such disclosure;
- (q) prejudice the proper supervision or regulation of financial services;
- (r) prejudice the consideration of any matter relating to immigration, nationality, consular or entry clearance cases;
- (s) constitute a breach of the confidence between any person and the States, between any person and a public institution, or other authority, of Jersey or between the States and the Government of the United Kingdom or of any other country, an authority of such a government or an international organization.

ARTICLE 32

How access may be given

- (1) If a person is required by this Part to make a public record available for public access, any person is entitled to access in the following forms -
 - (a) a reasonable opportunity to examine the record, or an extract or copy of the record, in a form appropriate to the medium of the record; and
 - (b) the supply of an extract or copy of the record (in a form appropriate to the medium of the record).
- (2) If a person has applied for access in a particular form, access shall be given in that form, unless access in that form may be refused under paragraph (3) or (4).
- (3) Access in a particular form to a public record may be refused if access in that form -
 - (a) would interfere unreasonably with the operations of the Archivist or of the person who has custody or control of the record;

- (b) would not be appropriate to the medium of the record;
- (c) would be detrimental to the preservation of the record; or
- (d) would involve an infringement of copyright (other than copyright owned by the States or a public institution) in matter contained in the record.

(4) Access may also be refused if the person who applies for the access has refused (on demand by the Archivist or the person who has custody or control of the record) to pay a reasonable charge for the access in a case where such a charge may be made.

(5) Access may be made available subject to conditions designed to promote the preservation of the record, or to avoid infringement of copyright.

(6) Access may be refused or cut short if the person who has been given access refuses or fails to comply with a condition to which the access is subject.

(7) A reference in this Article to a public record includes a reference to part of a public record.

ARTICLE 33

Manner of application for access

(1) An application to a person for access to a public record in the custody or control of the person is in accordance with this Article if it -

- (a) provides such particulars concerning the record as are reasonably necessary for the person who has custody or control of the record to identify it;
- (b) is accompanied by such proof of the identity of the applicant as the person who has custody or control of the record may reasonably require;
- (c) provides such other particulars as may be prescribed by Order; and
- (d) is in writing, if so required by Order.

(2) A person who has custody or control of a public record shall, on request, give reasonable assistance to a person to make an application in accordance with this Article for access to the record.

(3) If the person who has custody or control of a public record is the Trust, a reference in this Article to a person who has custody or control of a public record is taken to be a reference to the Archivist.

ARTICLE 34

Decision on access

(1) If application is made to a person in accordance with Article 33, the person shall make his decision on the application as soon as practicable, but in any case not later than 30 days after the day on which the application was made.

(2) If application is made to a person in accordance with Article 33 and includes an address for service, the person shall serve notice of his decision as soon as practicable, but in any case not later than 20 days after the day on which the decision was made.

(3) If the decision is to refuse access, or to grant it but not in accordance with the application, the notice shall -

- (a) state the reasons for the decision; and
- (b) inform the applicant that review of the decision may be sought under Part 6.

(4) The notice is not required to contain any matter that is of such a nature that its inclusion in a record would

make that record exempt from access because it contained matter of a kind referred to in Article 31(2) or (5).

PART 6

REVIEW OF DECISIONS

ARTICLE 35

Review by Panel

(1) Application may be made to the Panel for a review of a decision made under Article 34.

(2) The application for review is not valid unless made within 28 days after notice of the decision appealed against is served under Article 34, or, if no such notice is served within 60 days after application for access is made, within 28 days after the end of those 60 days.

ARTICLE 36

Procedure on review

(1) At the hearing of an application for review referred to in Article 35, the Panel shall hold in private any part of the hearing during which evidence or information is given to the Panel if a public institution submits to the Panel that there are reasonable grounds to believe that the evidence or information contains matter of a kind referred to in Article 31(2) or (5).

(2) At the hearing of an application for review referred to in Article 35, the Panel shall hold in private any part of the hearing during which a public record is produced to the Panel if a public institution submits to the Panel that there are reasonable grounds to believe that the record contains matter of a kind referred to in Article 31(2) or (5).

(3) Nothing in this Part affects the operation of the Administrative Decisions (Review) (Jersey) Law 1982. ^[6]

PART 7

MANAGEMENT OF PUBLIC RECORDS

ARTICLE 37

Conditions of records storage

A person who has custody or control of an archival public record has a duty to ensure that the record is kept at such a place and in such manner as the Panel approves.

ARTICLE 38

Public duty to create and keep records

(1) A public institution has a duty of records management in relation to the performance of its functions.

(2) Regulations may make provision for or with respect to the manner in which that duty is to be discharged, and a public institution shall discharge the duty in accordance with any such provision.

(3) The requirements of this Article are in addition to any other requirements as to the keeping of records or the preparation of accounts, reports and other documentation.

PART 8

MISCELLANEOUS

ARTICLE 39

Relationship with other laws

(1) The requirements of this Law are in addition to any requirements of any other enactment applying in Jersey and, except as expressly provided in this Law or that enactment, do not affect the application of those requirements.

(2) Nothing in this Law prevents a person from obtaining access to, or publishing or otherwise giving access to, a public record (including a record exempt from access under Part 5) otherwise than in pursuance of this Law where he can properly do so or is required by law to do so.

(3) Paragraph (2) applies whether or not the record is in the custody or control of the Trust and whether or not the record is in the open access period.

(4) In the case of any inconsistency between the operation of this Law and the Data Protection (Jersey) Law 1987,^[7] the latter shall prevail.

ARTICLE 40

Secrecy provisions do not apply in open access period

(1) A provision of an enactment that prohibits the disclosure of information or matter does not apply to the giving of access under this Law to a public record that is in the open access period and contains that information or matter.

(2) However, this Article does not prevent the application of such a provision of an enactment if the enactment expressly provides that the provision applies notwithstanding this Law or notwithstanding any enactment.

ARTICLE 41

Law does not affect validity etc.

(1) Nothing in this Law or done under this Law affects the validity of any record or its admissibility in any proceedings.

(2) Nothing in this Law affects the ownership of a record or any other legally enforceable interest in a record (whether the interest is in the nature of copyright or otherwise).

(3) In particular, a transfer of a public record under this Law does not of itself transfer the ownership of the record or any other legally enforceable interest in the record (whether the interest is in the nature of copyright or otherwise).

(4) Nothing in this Law prevents the Trust from agreeing with a person that records in the custody or control of the Trust as a result of a transfer from that person that are not public records are to be held on conditions (including conditions as to fees) to be observed by the person and the Trust, not being conditions inconsistent with this Law.

ARTICLE 42

Dispute resolution

(1) A dispute concerning the operation of this Law may be referred by the Committee, the Trust, the Archivist, the Panel or a public institution to the Bailiff for resolution if it is a dispute involving any two or more of those parties (but not if it is a dispute to which the Bailiff or any person other than those parties is a party).

(2) A decision of the Bailiff on such a dispute shall be final and shall be complied with by the parties to the dispute.

ARTICLE 43

Protection from liability for making record available

(1) If, in the course of the administration of this Law, access is given to a record -

(a) no action for defamation, breach of confidence, or infringement of copyright lies, by reason of the authorizing or giving of the access, against the Bailiff, the Committee, the Trust, the Archivist, the Panel, a public institution, or any person concerned in the authorizing or giving of the access;

- (b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of the access lies against the author of the record or any other person because the author or other person supplied the record to the Bailiff, the Trust, the Archivist, the Panel or a public institution; and
- (c) a person concerned in the authorizing or giving of the access is not guilty of a criminal offence by reason only of the authorizing or giving of the access.

(2) The giving of access to a record under this Law shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the record or of its contents by the person to whom the access was given.

(3) A person who transfers the custody or control of a public record to the Trust under this Law, or otherwise in accordance with this Law, shall not be liable in damages for that transfer.

ARTICLE 44

Protection from liability in general

(1) A person to whom this Article applies shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.

(2) This Article applies to -

- (a) a public institution, an officer, employee or agent of a public institution and a public records officer;
- (b) the Committee and the Trust, any member of the Committee or the Trust, and any person who is, or is acting as, an officer, employee or agent of the Committee or the Trust or performing any duty or exercising any power on behalf of the Committee or the Trust;
- (c) the Bailiff;
- (d) the Archivist;
- (e) the Panel and any member of the Panel;
- (f) any person with whom the Trust has made arrangements for the custody or control of a public record; and
- (g) a person prescribed for the purposes of this Article by Regulations.

ARTICLE 45

Annual and other reports

(1) The Archivist shall, as soon as practicable after the end of the year 2003 and of each subsequent calendar year, make to the States a report on -

- (a) the performance of his functions, and those of the Trust, under this Law during that year; and
- (b) such developments during that year in the making, management and keeping of public records as are relevant to Jersey.

(2) The Archivist may also prepare such other reports as he thinks appropriate with respect to those matters and may publish any such report in such manner as he considers appropriate.

(3) In making any report under this Article the Archivist shall have regard to the need for excluding from the report, so far as practicable, any matter of a kind referred to in Article 31(2) or (5).

ARTICLE 46

Certified copy of public record

(1) The Archivist may give a certificate that a record referred to in the certificate is a true copy of a public record in the custody or control of the Trust and such a certificate is prima facie evidence in all courts of the matters stated in the certificate.

(2) Any writing purporting to be a certificate given under this Article shall, unless the contrary is proved, be taken to be such a certificate and to have been duly given.

ARTICLE 47

Fees to go to Trust

A fee or charge that the Archivist may require under this Law is payable into the income of the Trust, but may be applied by the Trust only in the performance of the functions of the Trust and of the Archivist under this Law.

ARTICLE 48

Charges for services

(1) If the Archivist provides a service that is not within his duties under this Law, but is within in his functions under this Law, and no provision is made by or under this Law for a charge for the service, the Archivist may make a reasonable charge for the service.

(2) The Archivist may refuse to provide or complete the service if the charge is not paid.

ARTICLE 49

Regulations and Orders

(1) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter that may be prescribed by Regulations under this Law.

(2) The Committee may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to the following matters -

- (a) fees and charges relating to access to records, and to the provision of extracts, copies and certificates, under this Law;
 - (b) the form and content of any notice or certificate given under this Law; and
 - (c) any other matter that may be prescribed by Order under this Law.
- (3) Regulations or an Order made under this Law may -
- (a) make different provision in relation to different cases or circumstances; and
 - (b) contain such transitional, consequential, incidental or supplementary provisions as appear to the States or the Committee, as the case may be, to be necessary or expedient for the purposes of the Regulations or Order.
- (4) The Subordinate Legislation (Jersey) Law 1960^[8] shall apply to Orders made under this Law.

ARTICLE 50

Savings and transitional provisions

Schedule 3 shall have effect.

ARTICLE 51

Citation and commencement

(1) This Law may be cited as the Public Records (Jersey) Law 200-.

(2) This Law shall come into force on such day as the States may by Act appoint and different days may be appointed for different purposes or different provisions of this Law.

SCHEDULE 1

(Article 9 and Schedule 2)

OATHS OF OFFICE

PART 1

You swear and promise before God that you will well and faithfully discharge the duties of Archivist under the Public Records (Jersey) Law 200- and that you will not disclose any information that may come to your knowledge in the performance of your functions under that Law except in so far as the law requires or authorizes you so to do.

PART 2

You swear and promise before God that you will well and faithfully discharge the duties of a member of the Records Advisory Panel under the Public Records (Jersey) Law 200- and that you will not disclose any information that may come to your knowledge in the performance of your functions under that Law except in so far as the law requires or authorizes you so to do.

SCHEDULE 2

(Article 15)

RECORDS ADVISORY PANEL

Terms of appointment of members

1.-(1) Subject to this paragraph, a member of the Panel shall hold and vacate office in accordance with the terms of his appointment.

(2) A member shall be appointed by instrument in writing for a period not exceeding six years and upon expiry of such period shall be eligible for reappointment.

(3) A member may at any time resign his office by giving not less than one month's notice in writing to the Committee.

(4) A member vacates office if he -

- (a) has not attended any meeting of the Panel for a period longer than 12 consecutive months without the permission of the Committee;
- (b) dies;
- (c) has become bankrupt;
- (d) is incapacitated by physical or mental illness; or
- (e) is otherwise unable or unfit to discharge the functions of a member.

(5) A person appointed as chairman of the Panel shall continue to hold appointment as such until -

- (a) he resigns from that appointment by notice in writing delivered to the Committee;
- (b) that appointment is revoked by the Committee by an instrument in writing; or
- (c) he ceases to be a member of the Panel.

Disclosure of interest

2. If a member of the Panel has any direct or indirect personal interest in the outcome of the deliberations of the Panel in relation to any matter he shall not take part in those deliberations or, if he has already started to take part in those deliberations, he shall cease to take part in those deliberations.

Oath

3. A member of the Panel shall, before he begins to perform any function under this Law, take oath before the Royal Court in the form set out in Part 2 of Schedule 1.

Frequency of meetings

4. The Panel shall meet at least twice in each year.

Procedure at meetings

5.-(1) At a meeting of the Panel

- (a) three members of the Panel constitute a quorum;
- (b) the chairman of the Panel (or, in the absence of the chairman, another member of the Panel appointed for the purposes of the meeting by the members present at the meeting) shall preside;

- (c) the Bailiff and the Archivist are entitled to be present but shall have no vote;
- (d) each member shall have one vote on each matter for deliberation; and
- (e) in the event of an equality in the votes the person presiding shall have a casting vote.

(2) The validity of any proceedings of the Panel shall not be affected by the absence during those proceedings of the Bailiff or the Archivist.

Minutes

- 6. The Panel shall keep minutes of its meetings.

Expenses of members

7.-(1) The States shall pay each member of the Panel who attends a meeting of the Panel reasonable out-of-pocket and other expenses occasioned by him in the course of carrying out his duties as such a member.

- (2) A person is not entitled to any other fee or remuneration as a member of the Panel.

SCHEDULE 3

(Article 50)

SAVINGS AND TRANSITIONAL PROVISIONS

Regulations

1.-(1) Regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Law.

(2) Any such provision may, if the Regulations so provide, come into force on the day on which this Schedule comes into force or a later day.

(3) To the extent to which any such provision comes into force on a date that is earlier than the date of its promulgation, the provision does not operate so as -

- (a) to affect, in a manner prejudicial to any person (other than the States or a public institution), the rights of that person existing before the date of its promulgation; or
- (b) to impose liabilities on any person (other than the States or a public institution) in respect of anything done or omitted to be done before the date of its promulgation.

Application of Law to existing records

2. This Law applies to records already in existence on the day when the Law comes into force in the same way as it does to records created on or after that day, and any age or other period referred to in this Law that relates to any record shall be reckoned as if this Law had always been in force in relation to the record.

References to Jersey Archives Service

3. Unless other provision is made in that respect by Regulations, a reference to the Jersey Archives Service in any enactment of Jersey, or in any agreement or arrangement, in force immediately before the date when this Law comes into force, shall, on and from that date, be taken to be a reference -

- (a) to the Archivist, in the case of a matter that concerns functions of the Jersey Archives Service that are, from that date, analogous to those of the Archivist under this Law;
- (b) to the Trust, in the case of a matter that concerns the Jersey Archives Service's having custody or control of a record or other functions of the Jersey Archives Service that are, from that date, analogous to those of the Trust under this Law.

Existing arrangements

4.-(1) Notwithstanding this Law, an arrangement in force immediately before the date when this Law comes into force relating to the disposal or custody or control of public records continues in force after that date until the Archivist otherwise directs.

(2) If, immediately before that date, a record was in the custody or control of the Jersey Archives Service, as constituted immediately before that date, under an arrangement by which the custody or control of the record was accepted from a person other than a public institution by or on behalf of the States, that arrangement (including any provision of the arrangement concerning access to or disposal of the record) has effect on and from that date as if made, on that date, by that person with the Trust.

[1] Volume 1982-1983, page 139.

[2] Volume 1963-1965, page 551 and Volume 1992-1993, page 439.

[3] Volume 1982-1983, page 139.

[4] Note: some material of the Lieutenant Governor is exempt from access: Article 31(2).

[5] Note: Part 7 requires the proper management of public records, and this in turn depends on what a schedule may say about a record (see Article 18). Records management requires among other things the proper culling of records.

[6] Volume 1982-1983, page 39 and Volume 1994-1995, page 605.

[7] Volume 1986-1987, page 315.

[8] Tome VIII, page 849 and Volume 2001, pages 3 and 4.