

STATES OF JERSEY

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DRAFT THE LAW SOCIETY OF JERSEY LAW 200

**Lodged au Greffe on 28th September 2004
by the Legislation Committee**

STATES GREFFE



Jersey

DRAFT THE LAW SOCIETY OF JERSEY LAW 200

European Convention on Human Rights

The President of the Legislation Committee has made the following statement –

In the view of the Legislation Committee the provisions of the Draft The Law Society of Jersey Law 200- are compatible with the Convention Rights.

(Signed) **Connétable of St. Clement**

REPORT

On 30th November 1993, the Legislation Committee presented the Report of the Legal Practice Committee to the States (R.C.35/93). The Report included the following recommendations –

- (a) The Law Society of Jersey, which is the professional association for Jersey advocates and solicitors, should be incorporated by statute.
- (b) The Law Society should have statutory responsibilities in respect of discipline within the Jersey profession.

This draft Law provides accordingly for the incorporation of the Law Society. It also introduces a statutory disciplinary procedure for dealing with complaints against Jersey law practitioners.

The Report proposed the establishing of a three-tiered disciplinary process. In the first instance, complaints would be referred to a disciplinary committee consisting of 3 practitioners. Such a committee would have jurisdiction to dispose of minor cases and to refer more serious matters to a Disciplinary Tribunal.

The Tribunal, which would consist of 2 practitioners and 3 Jurats, was to have jurisdiction to determine such matters at first instance. If the complaint were substantiated, the Tribunal would have power to impose sanctions ranging from a rebuke to suspension from practice for up to 6 months. In appropriate cases, it could refer a complaint to the Royal Court for a determination as to whether a practitioner should be suspended for a longer period, or struck off the roll.

Beyond this, the role of the Royal Court under the proposed statutory procedure was to be to hear appeals from decisions of the Tribunal.

The recommendations in the Report have been the subject of extensive consultation with the Judiciary and the legal profession.

It is the view of the Royal Court that the proposed three-tier system is inappropriate. The Court has the following concerns –

- (a) It is too complicated for Jersey's needs.
- (b) It will inevitably undermine the standing of the Royal Court. (Advocates and solicitors are officers of the Court. One of the fundamental purposes of disciplinary control of lawyers by a judiciary is to ensure the efficacy of its own process - in other words, of its own constitutional function).
- (c) Given the size of Jersey's profession, the Royal Court is in any case better equipped than a tribunal consisting of members of the profession to undertake disciplinary functions.

The Legislation Committee concurs with the views of the Royal Court. The draft Law therefore provides that the functions that would have been undertaken by the Disciplinary Tribunal shall instead be exercised directly by the Court. It also provides that nothing in the draft Law limits the inherent jurisdiction of the Royal Court.

It is also the view of the Committee that disciplinary committees should include lay members.

For the same reasons as in (c) above, it is proposed that complaints that are to be referred by the Royal Court will be handled by the Attorney General – and on determining a complaint, the Court may therefore make an order for costs against the Attorney General or the practitioner, as appropriate. These will be payable by or to the Treasurer of the States.

The standard of proof that is required to sustain a complaint of professional misconduct must take into account both the public interest in ensuring adequate standards of professional competence and conduct, and the gravity of the consequences of a finding of serious professional conduct against an individual. What matters is the truth.

The issue was recently addressed by the Judicial Committee of the Privy Council in Sadler v. The General Medical Council (Privy Council Appeal No. 59 of 2002) in relation to the position in England and Wales. The ordinary rule is that the civil standard applies: it must be shown that a complaint is probably true. However, the Privy Council endorsed earlier judicial decisions to the effect that in more serious cases a heightened civil standard (requiring more cogent evidence) may be appropriate – and that if a disciplinary charge also amounts to serious criminal conduct, it must be proved beyond reasonable doubt.

The Legislation Committee has been advised and agrees that the better approach is therefore to leave the proper standard of proof in any particular case to be determined judicially, rather than to attempt to tie the hands of the body whose function is simply to determine the facts.

To the extent that complaints before the Royal Court will be undertaken by the Attorney General, there are potentially some financial implications for the States in this proposition. However, it is not considered likely that these will be significant; and there are no material manpower implications for the States in the proposition.

Replacement of P.154 of 2003

After the lodging of P.154/2003 (in which the Legislation Committee first proposed the passing of a draft Law for these matters) Deputy R.G.Le Hérissier of Saint Saviour lodged proposed amendments to that projet.

Those amendments have been considered by the Committee, which supports the proposal that the States themselves, on the recommendation of the Jersey Appointments Commission, should appoint the lay members of the disciplinary panel. The Committee also agrees that where in the course of a hearing a disciplinary committee is reduced to 2 members because one is unable to continue to act, the disciplinary committee should only be able to do so if one of the remaining members is a lay member.

The Committee itself also considers that it should be open to a disciplinary committee to issue a public reprimand in an appropriate case, and that if the President of the Law Society decides not to refer a complaint to a disciplinary committee, the Attorney General should have power to refer it directly to the Royal Court.

The present projet therefore incorporates these changes, and it is intended to seek leave accordingly to withdraw P.154/2003.

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 23rd September 2004 the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Legislation Committee the provisions of the draft The Law Society of Jersey Law 200-P.162/2004 are compatible with the Convention Rights.

Explanatory Note

This Law relates to the Jersey legal profession.

It incorporates The Law Society of Jersey as the professional association for Jersey advocates and solicitors, and also provides for discipline within the profession.

The Law is set out in the following way –

Article 1 defines expressions used in the draft Law.

PART 1

THE LAW SOCIETY OF JERSEY

Article 2 incorporates the Law Society.

Article 3 provides that from its incorporation, the Law Society will consist of its existing members and persons who subsequently become new members in accordance with the draft Law.

Persons who wish to practise as Jersey advocates or solicitors will be required to join the Society.

Article 4 provides for classes of membership.

Advocates and solicitors who intend to practise law and are not suspended from practice will be entitled, on application, to become ordinary members of the Law Society.

The Society may provide in its bye-laws for other classes of members.

Article 5 provides for the termination of membership. An ordinary member may resign, and will in any event cease to be an ordinary member on ceasing to be an advocate or solicitor or on transferring to any other class of membership.

Bye-laws may provide for the termination of membership of other classes of members.

Article 6 provides that an ordinary member will be automatically suspended from membership while suspended from practice as an advocate or solicitor. The bye-laws may also provide for the suspension of an ordinary member who owes money to the Society under the draft Law.

Bye-laws may provide for the suspension of a member of any other class.

Article 7 limits any member's liability to contribute to the funds of the Law Society to the amounts owing to it by that member under the draft Law.

Article 8 sets out the objects of the Law Society. In summary, these are to encourage the rule of law, to promote high professional standards, to protect its members' interests, to encourage the study of law, and to make representations as appropriate on matters affecting the interests of justice, civil rights and liberties, matters of public interest, the enactment of legislation and law revision and reform.

PART 2

ADMINISTRATION OF THE LAW SOCIETY

Article 9 requires the Law Society to hold an annual general meeting.

It also provides that at any general meeting, each ordinary member shall have one vote on any matter, and that questions shall be decided by a simple majority. The only exception to the latter principle is that a majority of two-thirds will be required for the making of bye-laws.

Article 10 provides that the Committee of The Law Society shall be the executive body of the Society. It will consist of the President, the Secretary, the Treasurer, the Librarian and such other Committee members as bye-laws may stipulate.

Each Committee member will have one vote on every issue, and decisions will be by simple majority.

Article 11 provides for the election of Committee members at annual general meetings. Unless bye-laws provide for a longer term, they will hold office until the next annual general meeting, but may be re-elected.

Article 12 provides for the vacation of office by Committee members, and the filling of extraordinary vacancies. In particular, the Law Society may at a general meeting remove any Committee member from office.

Article 13 confers on the Law Society the powers that are reasonably necessary for or incidental to the attainment of its objects.

Article 14 requires the Law Society to apply its assets and income in furtherance of its objects or for any other purposes that are required or authorized by law.

It also provides that the Society's assets and income may not be distributed amongst members without the prior approval of the Royal Court.

Article 15 requires the Committee to keep proper accounts.

Article 16 empowers the Law Society to make bye-laws for the internal management of its affairs.

In particular, the Society must make bye-laws requiring members to maintain adequate insurance against professional liabilities.

Article 17 provides that bye-laws may only be made at a general meeting, and by a resolution of at least two-thirds of those who, being entitled to vote, do so personally or by proxy.

It also provides that bye-laws will have effect only if approved by the Royal Court.

PART 3

DISCIPLINE

Article 18 requires the Law Society, at a general meeting, to appoint a standing disciplinary panel. This will consist of 7 ordinary members who are in private practice and are each of not less than 10 years' standing, and 4 lay persons.

Committee members, the Bâtonnier and the President of the Chambre des Ecrivains are not eligible for appointment.

The ordinary members of the Law Society who are to serve on the disciplinary panel will be appointed by the Society in general meeting.

The lay members will be appointed by the States, on the recommendation of the Jersey Appointments Commission and after consultation by the Commission with the Law Society.

Article 19 provides that members of the disciplinary panel will be appointed for terms of 5 years. They will not be eligible for re-appointment, but will have security of tenure during their terms.

Article 20 provides that 3 members of the disciplinary panel, selected in accordance with Article 22 (*q.v.*) shall constitute a disciplinary committee for the purposes of the Law.

It also enables a disciplinary committee to continue to sit if a member becomes unable to act, as long as its numbers are not reduced below 2 members (one of whom is an ordinary member and one of whom is a lay member).

Article 21 requires the following action to be taken promptly, if the Law Society receives a complaint alleging that a practitioner is guilty of professional misconduct –

- (a) the President of the Society must have the complaint put in writing (providing assistance, if necessary, to enable the complainant to do so); and
- (b) the President must then select a disciplinary committee from the disciplinary panel, refer the complaint to that disciplinary committee and send a copy to the Attorney General.

A disciplinary committee must consist of 2 practitioners and one lay member of the disciplinary panel. One of the practitioners must be named as the chairman of the disciplinary committee.

The President need not appoint a disciplinary committee if satisfied that the complaint does not relate to professional misconduct, or that it is vexatious, frivolous or trivial. However, in that event the complainant and

the Attorney General must be informed promptly in writing of the refusal and of the reasons. If the Attorney General does not agree with the refusal, he or she may then refer the complaint directly to the Royal Court.

Article 22 requires a disciplinary committee to deal promptly with a complaint that is referred to it by the President of the Law Society.

The disciplinary committee must send a copy of the complaint to the practitioner against whom it is made. If the practitioner is an advocate, it must also send a copy to the Bâtonnier. In the case of a solicitor, a copy must be given to the President of the Chambre des Ecrivains.

The disciplinary committee will sit in private. The complainant and the practitioner will be entitled to attend and be heard. The Bâtonnier, or President of the Chambre des Ecrivains, and the Attorney General will also be entitled to be heard if they wish to do so.

If the complainant and the practitioner both agree, the disciplinary committee may refer the complaint to a mediator.

Article 23 provides that after considering the complaint, the disciplinary committee must (subject to any mediation) do one of 3 things –

- (a) it may dismiss the complaint;
- (b) if it is satisfied that the practitioner is guilty of professional misconduct, but that the matter can be properly dealt with by a public reprimand or a private rebuke, it may administer a reprimand or a rebuke accordingly; or
- (c) it may refer the matter to the Attorney General without making a finding.

The disciplinary committee must inform the complainant, the practitioner and the Secretary of the Law Society of its decision.

The complainant and the Attorney General will each have a right of appeal to the Royal Court in a case in which a disciplinary committee decides not to refer a complaint to the Attorney General. The practitioner will have a right of appeal against a public reprimand or a private rebuke.

Article 24 deals with appeals from decisions of disciplinary committees to the Royal Court.

On an appeal under this Article, the complainant, the Attorney General and the practitioner concerned would be entitled to be heard.

On hearing the appeal, the Royal Court may confirm or reverse the decision of the disciplinary committee. If it is satisfied that the practitioner is guilty of professional misconduct, it may deal with the matter as the disciplinary committee could have done on such a finding, or in any way that the Royal Court itself could have done if the complaint had been referred to it by the disciplinary committee.

It may in any event make an order as to the costs of the proceedings before the Royal Court.

The practitioner concerned and the Attorney General will have a further right of appeal to the Court of Appeal against the Royal Court's decision. The complainant will not have this further right of appeal, but he or she would be entitled as a respondent to be heard in reply on any such appeal to the Court of Appeal.

Article 25 provides that the Attorney General, on receiving a complaint from a disciplinary committee, may refer it to the Royal Court.

This Article also enables the Attorney General to refer a complaint directly to the Royal Court if the President of the Law Society has refused to refer it to a disciplinary committee.

Article 26 provides for the hearing of a complaint that is referred to the Royal Court by the Attorney General.

The Attorney General will present the case and the practitioner concerned is entitled to be heard in response. The complainant will also be entitled to be present.

If the complainant and the practitioner agree, the Royal Court may refer the matter to a mediator.

If the hearing proceeds, and the Royal Court is not satisfied that professional misconduct is proved, it must dismiss the complaint.

If it is satisfied that the practitioner is guilty of professional misconduct, the Royal Court may deal with the matter in one of the following ways, as it considers appropriate –

- (a) by private rebuke;

- (b) by public reprimand;
- (c) by a fine;
- (d) by suspending the practitioner from practice for not more than 6 months; or
- (e) by ordering that the name of the practitioner be removed from the roll of advocates or solicitors.

The Royal Court may also make an order as to the costs of the proceedings before it.

Pending its decision, the Royal Court may suspend the practitioner from practice in an appropriate case.

The practitioner and the Attorney General will have a right of appeal to the Court of Appeal against a decision by the Royal Court.

Article 27 empowers the Committee of The Law Society, for the purposes of investigating a complaint, to require an advocate or solicitor to produce documents.

Article 28 empowers disciplinary committees to summon witnesses and to take evidence on oath or affirmation. It also requires the Law Society to reimburse witnesses for their reasonable expenses.

Article 29 provides that professional fines and costs awarded to the Attorney General in disciplinary proceedings under the draft Law shall be debts due to the States, and may be recovered accordingly by the Treasurer of the States.

Article 30 prohibits practitioners from employing, without the prior approval of the Committee of The Law Society, advocates and solicitors whose names have been removed from the rolls for misconduct or who are for the time being suspended from practice. Before giving its approval, the Committee must consult the Attorney General.

Article 31 protects from criminal and civil liability persons who exercise their functions under the draft Law in good faith.

Article 32 provides that nothing in Part 3 limits the Royal Court's inherent jurisdiction to exercise disciplinary control over legal practitioners.

PART 4

OTHER PROVISIONS

Article 33 brings forward from Article 6 of the Loi (1961) sur l'exercice de la profession de droit à Jersey the provisions relating to the election of the Bâtonnier as head of the Bar by the ordinary members of the Law Society who are advocates of the Royal Court.

Article 34 relates to the power of the Royal Court to make Rules of Court relating to proceedings before disciplinary committees.

Article 35 provides for the publication of bye-laws, and for their purchase on payment of a reasonable fee to be fixed by the Committee of The Law Society.

Article 36 consequentially repeals provisions in the Advocates and Solicitors (Jersey) Law 1997 establishing a Disciplinary Committee for solicitors.

Article 37 contains transitional provisions. Until the Law Society first elects Committee members after the draft Law comes into force, the present Committee of the Society will continue in office. Until the first appointments by the Law Society to the disciplinary panel, the Committee will make such appointments. Notwithstanding the repeal of the provisions in the Advocates and Solicitors (Jersey) Law 1997 relating to discipline, complaints that are still pending under that Law when the draft Law comes into force will be disposed of under the 1997 Law.

Article 38 provides for the manner in which the draft Law may be cited, and for its commencement. The Law will commence on a date to be appointed by the States, except for the requirement for practising Jersey lawyers to join the Law Society. That requirement will come into force 3 months after the appointed date.



Jersey

DRAFT THE LAW SOCIETY OF JERSEY LAW 200

Arrangement

Article

1 Interpretation

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Jersey

DRAFT THE LAW SOCIETY OF JERSEY LAW 200

A LAW to incorporate The Law Society of Jersey; to provide for its administration and for the disciplinary control of advocates and solicitors of the Royal Court; and for connected purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

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

“advocate” means an advocate of the Royal Court;

“bye-laws” means bye-laws made under Article 16 by The Law Society of Jersey;

“Committee” means the Committee of The Law Society of Jersey to which Article 10 refers;

“Committee member” means the President, Secretary, Treasurer, Librarian or any other member of the Committee;

“disciplinary committee” means a disciplinary committee selected in accordance with Article 21(1);

“disciplinary panel” means the disciplinary panel to which Article 18 refers;

“Law Society” and “Society” mean The Law Society of Jersey to which Article 2 refers;

“officer”, in relation to the Law Society, means the President, Secretary, Treasurer or Librarian;

“ordinary member” means a member of the Law Society to whom Article 4(1) refers;

“practitioner” means an advocate or solicitor;

“practitioner of at least 10 years’ standing” means a person –

(a) who is a practitioner; and

(b) who has been a practitioner for at least 10 years, whether or not continuously;

“President” means the President of the Law Society to whom Article 10(2)(a) refers;

“solicitor” means a solicitor of the Royal Court;

“special resolution” means a resolution that is passed by a majority of not fewer than two-thirds of the persons who, being entitled to do so, vote in person or by proxy;

“this Law” includes the bye-laws.

(2) For the purposes of this Law –

- (a) in the case of an election, a candidate has a simple majority if he or she receives more votes than any other candidate; and
 - (b) in the case of any other question arising for decision “a simple majority” means the majority of the votes cast,
- being in either case the votes of persons who, being entitled to do so, vote in person or by proxy.

PART 1

THE LAW SOCIETY OF JERSEY

2 Incorporation of The Law Society of Jersey

- (1) On the commencement of this Law, the association of persons now called The Law Society of Jersey shall become a body corporate with perpetual succession and a common seal and may –
 - (a) sue and be sued in its corporate name; and
 - (b) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.
- (2) The name of the body corporate shall continue to be The Law Society of Jersey.

3 Membership of the Law Society

- (1) From the commencement of this Law, the Law Society shall consist of –
 - (a) its existing members; and
 - (b) each person who subsequently becomes a member in accordance with this Law.
- (2) No person shall practise law as an advocate or solicitor unless he or she is an ordinary member of the Law Society.
- (3) A person who contravenes paragraph (2) shall be guilty of an offence and liable to a fine.

4 Classes of members

- (1) A practitioner who intends to practise law and is not suspended from practice shall be entitled, on his or her application, to be admitted as an ordinary member.
- (2) The bye-laws may provide for other classes of members.

5 Termination of membership

- (1) A person shall cease to be an ordinary member –
 - (a) on resigning, by notice in writing delivered to the Secretary; or
 - (b) on transferring, in accordance with the bye-laws, to any other class of membership provided for in the bye-laws.
- (2) A person shall cease to be an ordinary member on ceasing to be a practitioner.
- (3) The bye-laws may provide for the termination of the membership of a person who is not an ordinary member.
- (4) The bye-laws may prescribe the period of notice to be given by any member before his or her resignation has effect.

6 Suspension of membership

- (1) While an ordinary member is suspended from practice as an advocate or solicitor, his or her membership of the Law Society shall be automatically suspended by operation of this paragraph.
- (2) The bye-laws may provide –
 - (a) for the suspension from membership of an ordinary member while any money is due by the member under this Law to the Law Society; and
 - (b) for the suspension from membership of a person who is not an ordinary member.
- (3) A person whose membership is suspended shall not be regarded as a member for the purposes of this Law.
- (4) Paragraph (3) of this Article does not affect a person's liability under Article 7(1).

7 Liability of members

- (1) A person shall be liable to contribute towards the Law Society's assets and liabilities the amounts due by the person to it under this Law.
- (2) However, no one shall be liable, by reason only of being a member or former member of the Law Society, to contribute any other amount personally to the assets and liabilities of the Society.

8 Objects of the Law Society

The objects of the Law Society shall be –

- (a) to encourage and promote the upholding of the rule of law;
- (b) to promote high standards of professional conduct among practitioners;
- (c) to regulate, foster and protect the interests of its members and the practice of law in Jersey;
- (d) to encourage and promote the study of law;
- (e) to make representations, as appropriate, on any matter affecting –
 - (i) the administration of the law, the judicial system or the legal profession,
 - (ii) civil rights or liberties or matters of public interest, or
 - (iii) the enactment of legislation or the review or reform of existing laws; and
- (f) to do everything that is reasonably incidental or conducive to the attainment of those objects.

PART 2

ADMINISTRATION OF THE LAW SOCIETY

9 Meetings of the Law Society

- (1) The Law Society shall hold an annual general meeting in every year.
- (2) The Law Society may hold other general meetings.
- (3) At a general meeting –
 - (a) each ordinary member shall have one vote on each question arising for decision; and
 - (b) each question shall be decided by a simple majority.

- (4) Paragraph (3) of this Article is subject to –
 - (a) the provisions of Article 16(3) relating to an equality of votes on a question; and
 - (b) Article 17(1) (under which the power of the Law Society to make byelaws is exercisable only by special resolution).

10 The Committee of The Law Society

- (1) There shall continue to be a Committee of The Law Society, which shall be the executive body of the Law Society and shall administer its affairs in its name and on its behalf.
- (2) From the commencement of this Law, the Committee shall consist of the following persons –
 - (a) the President of the Law Society;
 - (b) the Secretary of the Society;
 - (c) the Treasurer of the Society;
 - (d) the Librarian; and
 - (e) such other Committee members as the bye-laws may specify.
- (3) The President, the Secretary, the Treasurer and the Librarian are the officers of the Law Society.
- (4) A person shall be eligible to be a Committee member if, but only if –
 - (a) he or she is an ordinary member of the Law Society; or
 - (b) he or she is a member of any other class, and the bye-laws provide that members of that class are eligible to be Committee members.
- (5) At a meeting of the Committee –
 - (a) each Committee member shall have one vote on any question arising for decision; and
 - (b) each question shall be decided by a simple majority.
- (6) Paragraph (5) of this Article is subject to the provisions of Article 16(3) relating to an equality of votes on a question.
- (7) If the number of persons who are Committee members is for the time being fewer than 4, the Committee may only act for the purposes of having a vacancy filled.
- (8) However, the powers of the Committee are not otherwise affected by a vacancy in its membership.
- (9) The Committee may appoint any of its members to exercise and perform the functions, powers and duties under this Law of any officer while that officer is for the time being unable to act.
- (10) Subject to the other provisions of this Law, the Committee may regulate its own procedure.

11 Election of Committee members

- (1) The members of the Committee shall be elected by the Law Society at an annual general meeting.
- (2) Unless the bye-laws provide for a longer term of office, a Committee member shall hold office until the annual general meeting next following the one at which the member is elected.
- (3) Unless the bye-laws provide otherwise, a Committee member shall be eligible for re-election.
- (4) This Article is subject to Article 12.

12 Vacation of office

- (1) A Committee member shall cease to hold office –
 - (a) on resigning, by notice in writing delivered to the Committee;

- (b) on ceasing to be eligible to be a Committee member;
 - (c) on being suspended from practice as an advocate or solicitor;
 - (d) on becoming bankrupt;
 - (e) on the appointment of a curator of the member's property and affairs under the Mental Health (Jersey) Law 1969;^[1]
 - (f) on being received into guardianship under the Mental Health (Jersey) Law 1969;^[2] or
 - (g) on being removed by the Law Society at a general meeting.
- (2) If a Committee member ceases to hold office before the expiry of the member's term, the Law Society may at a general meeting elect another person to fill the vacancy.
- (3) A person who is elected to fill such a vacancy shall hold office, subject to the other provisions of this Law, for the remainder of the term of the Committee member whom he or she replaces.

13 Powers of the Law Society

- (1) In furtherance of its objects, the Law Society may –
- (a) enter into contracts;
 - (b) acquire property (gratuitously or onerously, or beneficially or on trust);
 - (c) dispose of its property in any manner (gratuitously or onerously, beneficially or on trust);
 - (d) create, execute or perform trusts;
 - (e) operate bank accounts;
 - (f) invest in stocks, funds, shares, securities and other investments;
 - (g) borrow or lend money, with or without having given or taken security;
 - (h) guarantee the performance of obligations by other persons; and
 - (i) participate in joint ventures with other persons.
- (2) The Law Society may provide for the payment of compensation to persons who suffer or are likely to suffer loss or hardship in consequence of the fault of a member or of a partner or employee of a member of the Society.
- (3) The Law Society may –
- (a) provide and maintain a law library; and
 - (b) publish, sell and distribute books, pamphlets, papers and other information for the purposes of stimulating interest in and promoting its objects.
- (4) In furtherance of its objects, the Law Society may retain the services of any person (whether or not a member) and employ staff on such terms and conditions (including provision for pensions or gratuities) as it may agree.
- (5) The Law Society shall have such other powers as are reasonably necessary for or incidental to the attainment of its objects.

14 Application of assets

- (1) The assets and income of the Law Society may be applied only in furtherance of its objects, or for such other purposes as are for the time being authorized or required by any enactment or rule of law.
- (2) The assets and income of the Law Society shall not be distributed directly or indirectly amongst its members without the prior approval of the Royal Court.
- (3) Paragraph (2) does not apply to the payment of remuneration by the Law Society to any of its members for services rendered by the member to it at its request.

15 Accounts

- (1) The Committee shall keep full and accurate accounts of all money received and spent by the Law Society, and of its assets and liabilities.
- (2) The accounts shall give a fair view of the Law Society's affairs and explain its transactions.
- (3) The bye-laws may provide for the auditing of the Law Society's accounts.

16 Bye-laws

- (1) The Law Society may make bye-laws for the internal management of its affairs.
- (2) In relation to the membership of the Law Society, the bye-laws may provide for the following matters –
 - (a) classes of members other than ordinary members;
 - (b) the duty of a member to inform the Society if he or she ceases to be or is suspended from practice as an advocate or solicitor, or ceases to practise as an advocate or solicitor;
 - (c) the setting of annual subscriptions to be paid to the Society by classes of members;
 - (d) the setting of levies to be paid to the Society by ordinary members;
 - (e) the suspension from membership of an ordinary member while any money is due by the member to the Society under this Law;
 - (f) the termination and suspension of the membership of persons who are not ordinary members; and
 - (g) the service of documents on members by any means other than personal service and the conclusiveness or otherwise of any such means of service as proof that it has been effected,and must provide that ordinary members shall be required to maintain adequate insurance cover, in amounts to be determined by or under the bye-laws according to the nature of their practices, against professional liabilities arising from practice.
- (3) In relation to general meetings of the Law Society and the meetings of the Committee, the bye-laws may provide for the following matters –
 - (a) when they are to be held, the ways in which they shall be convened, business that is to be transacted and notice that is to be given to members;
 - (b) quorums, and the persons who shall preside;
 - (c) proxy voting, by persons who are entitled to vote;
 - (d) in the case of an equality of votes, the decision of a question by the casting vote of the person presiding, or by lot;
 - (e) the methods of voting to be used, and the recording and counting of votes (including the conclusiveness of a count); and
 - (f) generally, the regulation of the procedures to be followed.
- (4) In relation to the Committee, the bye-laws may provide for the following matters –
 - (a) the number of Committee members to whom Article 10(2)(e) refers;
 - (b) the classes of members (other than ordinary members) who are eligible to be Committee members;
 - (c) longer terms of office of Committee members than those specified in Article 11(2);
 - (d) the continuance of Committee members in office (notwithstanding the expiry of their terms) until their successors take up office;
 - (e) circumstances in which Committee members are or are not eligible for re-election;

- (f) the manner in which candidates for election as Committee members shall be nominated;
 - (g) the co-opting by the Committee of other persons as Committee members;
 - (h) the appointment by the Committee of subcommittees, and the delegation by the Committee of functions and powers to them;
 - (i) duties of the Committee, Committee members and members of subcommittees; and
 - (j) generally, the regulation of the way in which the Committee is to administer the affairs of the Law Society.
- (5) In relation to the disciplinary control of practitioners, the bye-laws may provide for the following matters –
- (a) the prescription or adoption of any code or rules of professional conduct or etiquette; and
 - (b) the issuing by the Committee of directives in writing that relate to the professional conduct of practitioners and are binding on them.
- (6) The bye-laws may also provide –
- (a) for any other matter for which an Article provides that bye-laws may be made; and
 - (b) for any other matters that are reasonably necessary for or incidental to the purposes of this Law.
- (7) The bye-laws shall bind each member of the Law Society.
- (8) This Article is subject to Article 17.

17 Manner of making bye-laws

- (1) The powers of the Law Society under Article 16 shall be exercisable only by special resolution–
 - (a) at an annual general meeting; or
 - (b) at a general meeting that has been convened specially for the purpose.
- (2) No bye-law shall have effect unless and until it is approved by the Royal Court.

PART 3

DISCIPLINE

18 The disciplinary panel of the Law Society

- (1) There shall be a disciplinary panel which shall consist of –
 - (a) 7 ordinary members of the Law Society, appointed to the disciplinary panel by the Society at a general meeting; and
 - (b) 4 other fit and proper persons, appointed to the disciplinary panel as lay members by the States, on the recommendation of the Jersey Appointments Commission established with the approval of the Act of the States of 28th May 2002, after consultation by that Commission with the Society.
- (2) An ordinary member of the Law Society shall be eligible for appointment to the disciplinary panel if, but only if, he or she–
 - (a) is in private practice; and
 - (b) is a practitioner of at least 10 years' standing.
- (3) However, Committee members, the Bâtonnier and the President of the Chambre des Ecrivains shall not be eligible for appointment to the disciplinary panel.

- (4) A person shall be eligible for appointment to the disciplinary panel as a lay member if, but only if, he or she –
 - (a) is not an advocate or solicitor; and
 - (b) is not admitted in any other jurisdiction as a legal practitioner.

19 Tenure of members of disciplinary panel

- (1) A member of the disciplinary panel shall hold office for a term of 5 years to be specified in the member's appointment.
- (2) The member shall not be eligible for re-appointment.
- (3) The member may continue in office, after the expiry of his or her term, for the purposes of completing any proceeding that the member has begun to hear.
- (4) However, a member of the disciplinary panel shall in any event cease to hold office –
 - (a) on resigning, by notice in writing delivered to the person or body by whom he or she was appointed;
 - (b) on ceasing (otherwise than by reason of paragraph (2)) to be eligible to hold that office;
 - (c) if he or she is an ordinary member of the Law Society, on being suspended from practice as an advocate or solicitor;
 - (d) on becoming bankrupt;
 - (e) on the appointment of a curator of the member's property and affairs under the Mental Health (Jersey) Law 1969;^[3]
 - (f) on being received into guardianship under the Mental Health (Jersey) Law 1969;^[4] or
 - (g) on being removed from office by the Royal Court, on grounds of misconduct proved to its satisfaction.
- (5) A member of the disciplinary panel shall not be removed from office for any other reason before the expiry of the member's term.

20 Disciplinary committees of the Law Society

- (1) Three members of the disciplinary panel, selected in accordance with Article 21(1), shall constitute a disciplinary committee for the purposes of this Law.
- (2) For the purposes of dealing with a matter under this Law –
 - (a) all 3 members of a disciplinary committee constituted for that purpose shall sit; and
 - (b) its chairman shall preside,but this paragraph is subject to paragraph (4).
- (3) The determination of any question before a disciplinary committee shall be according to the opinion of the majority of its members.
- (4) If –
 - (a) a disciplinary committee has commenced dealing with a matter; and
 - (b) before it determines the matter any member becomes unable to continue to act,the other members may continue to deal with and determine the matter, as long as their number is not fewer than two (of whom one is an ordinary member of the Law Society and the other is a lay member of the disciplinary panel).

21 Action on receipt of complaints

- (1) If the Law Society receives a complaint alleging that a practitioner is guilty of professional misconduct, the President shall promptly take the following action –
 - (a) if the complaint is not made in writing, the President shall cause it to be stated in writing;
 - (b) the President shall then select from the disciplinary panel a disciplinary committee consisting of 2 persons who are ordinary members of the Society and one person who is a lay member of the panel;
 - (c) the President shall name as the chairman of the disciplinary committee one of the ordinary members so selected;
 - (d) the President shall then refer the complaint to the disciplinary committee; and
 - (e) the President shall also send a copy of the complaint to the Attorney General.
- (2) For the purposes of paragraph (1)(a)–
 - (a) the President may require the complainant to state the complaint in writing; or
 - (b) the President may cause it to be stated in writing on the complainant's behalf, as the President thinks fit, having regard to the complainant's circumstances.
- (3) Notwithstanding paragraph (1), if the President is satisfied that a complaint does not relate to professional misconduct or is vexatious, frivolous or trivial, he or she may refuse to appoint a disciplinary committee and to refer the complaint to it.
- (4) In that event, the President shall promptly inform the complainant and the Attorney General in writing of the decision, stating the reasons for the refusal.

22 Consideration of complaint by a disciplinary committee

- (1) When the President refers a complaint to a disciplinary committee, it shall consider the matter promptly in accordance with this Article.
- (2) The disciplinary committee shall first send written copies of the complaint to the following persons –
 - (a) the practitioner to whom it relates;
 - (b) the Bâtonnier, if the complaint relates to an advocate; and
 - (c) the President of the Chambre des Ecrivains, if the complaint relates to a solicitor.
- (3) The disciplinary committee shall sit privately.
- (4) The disciplinary committee shall give the complainant and the practitioner an opportunity to be heard, to call evidence and to cross-examine witnesses.
- (5) The disciplinary committee shall also give the following persons an opportunity to be heard–
 - (a) the Bâtonnier, if the practitioner is an advocate;
 - (b) the President of the Chambre des Ecrivains, if the practitioner is a solicitor; and
 - (c) the Attorney General.
- (6) With the consent of the complainant and the practitioner, the disciplinary committee may at any time before the complaint is determined refer the matter to a mediator appointed by it.

23 Determination of complaint by a disciplinary committee

- (1) Subject to Article 22(6), the disciplinary committee shall on hearing a complaint deal with the matter in one of the following ways, as it thinks fit –
 - (a) by dismissing it;

- (b) if it is satisfied that the complaint is proved and that it constitutes professional misconduct by the practitioner, but that it can properly be dealt with either by way of a public reprimand or a private rebuke, by so reprimanding or rebuking the practitioner; or
 - (c) by referring the complaint to the Attorney General without making a finding.
- (2) The disciplinary committee shall inform –
- (a) the complainant, the practitioner, the Attorney General and the Secretary; and
 - (b) the Bâtonnier or the President of the Chambre des Ecrivains, if he or she has been heard on the matter,
- in writing of its decision and reasons, but except in the case of a public reprimand it shall not publish them in any other way.
- (3) There shall be a right of appeal, in accordance with Article 24, against a decision of the disciplinary committee to which sub-paragraph (a) or subparagraph (b) of paragraph (1) refers.

24 Appeals against decision of a disciplinary committee

- (1) The following persons shall have a right of appeal to the Royal Court under this Law –
- (a) a complainant, against a decision by a disciplinary committee either to dismiss the complaint or to deal with it either by publicly reprimanding or privately rebuking the practitioner to whom it relates;
 - (b) the Attorney General, against a decision to which sub-paragraph (a) refers; and
 - (c) a practitioner against whom a complaint is made, against a decision by a disciplinary committee to publicly reprimand or privately rebuke the practitioner.
- (2) The appeal shall be lodged within one month after the disciplinary committee complies with Article 23(2), or within such further time as the Royal Court may allow.
- (3) On hearing the appeal, the Royal Court –
- (a) may confirm or reverse the decision of the disciplinary committee; and
 - (b) make any order as to the costs of the proceedings before the Royal Court that it thinks fit.
- (4) If the Royal Court –
- (a) reverses a decision by a disciplinary committee dismissing a complaint; and
 - (b) although satisfied that the complaint is proved and that it constitutes professional misconduct by the practitioner to whom it relates, nevertheless considers that a private rebuke or a public reprimand is an adequate sanction,
- it may impose such a sanction on the practitioner to whom the complaint relates.
- (5) If the Royal Court –
- (a) reverses a decision by a disciplinary committee dismissing a complaint; or
 - (b) confirms a finding by a disciplinary committee that a complaint is proved and, being satisfied that it constitutes professional misconduct by the practitioner to whom it relates, considers that a neither a private rebuke nor a public reprimand is an adequate sanction,
- the Royal Court may deal with the matter in such of the ways specified in paragraphs (8) and (9) of Article 26 as it thinks fit.
- (6) The practitioner and the Attorney General, but not the complainant, shall have a right of appeal to the Court of Appeal against a decision or order of the Royal Court under this Article.

25 Reference of complaint by Attorney General to Royal Court

The Attorney General may refer to the Royal Court –

- (a) a complaint which the President has refused to refer to a disciplinary committee, pursuant to Article 21(3); or
- (b) a complaint referred to the Attorney General under Article 23(1) by a disciplinary committee.

26 Consideration of complaint by Royal Court on Attorney General's reference

- (1) If the Attorney General refers a complaint to the Royal Court, it shall hold a hearing.
- (2) At the hearing, the Attorney General shall present the complaint to the Royal Court.
- (3) The Royal Court shall give the Attorney General and the practitioner an opportunity to be heard, to call evidence and to cross-examine witnesses.
- (4) The complainant shall be entitled to be present.
- (5) With the consent of the complainant and the practitioner, the Royal Court may at any time before the complaint is determined refer the matter to a mediator appointed by it.
- (6) Subject to paragraph (5), the Royal Court shall on hearing the matter decide whether or not the complaint is proved.
- (7) If the Royal Court is not satisfied –
 - (a) that the complaint is proved; and
 - (b) that it constitutes professional misconduct by the practitioner,it shall dismiss the complaint.
- (8) If the Royal Court is satisfied that the complaint is proved, and that it constitutes professional misconduct by the practitioner, it may deal with the matter in one of the following ways, as it thinks fit –
 - (a) by privately rebuking the practitioner;
 - (b) by reprimanding him or her publicly;
 - (c) by imposing a fine on the practitioner;
 - (d) by suspending him or her from practice as an advocate or solicitor for a specified period not exceeding 6 months; or
 - (e) by ordering that the name of the practitioner be removed from the roll of advocates or solicitors, as the case may be.
- (9) The Royal Court may make any order as to the costs of the proceedings before the Royal Court that it thinks fit.
- (10) The practitioner and the Attorney General, but not the complainant, shall have a right of appeal to the Court of Appeal against a decision or order of the Royal Court under this Article.

27 Investigation of complaints

- (1) For the purposes of investigating a complaint against a practitioner –
 - (a) the Committee of The Law Society may require the practitioner or a member of his or her firm to produce or deliver to it any relevant documents in the practitioner's custody or control; and
 - (b) the Committee may retain possession of those documents until its investigation and any disciplinary proceedings that arise from the investigation are completed.
- (2) A person who, without lawful excuse, fails to comply with a requirement made by the Committee under paragraph (1) shall be guilty of an offence and liable to a fine.
- (3) This Article does not limit –
 - (a) a right to decline to produce or deliver a document, to the Committee, on the ground of legal

professional privilege; or

(b) the rule against self-incrimination.

(4) The Committee shall not use a document obtained by it under this Article, or any information obtained by the Committee in consequence of its production or delivery under this Article, for any purpose except –

(a) the investigation of the complaint; or

(b) the purposes of any disciplinary or criminal proceedings that arise from the complaint.

28 Powers of disciplinary committees to take evidence

(1) A disciplinary committee may, by notice in writing signed by the person presiding, require a person –

(a) to attend and give evidence before it in a matter on which it is proceeding; and

(b) to produce to it any documents in the person's custody or control that relate to the subject matter of the proceedings.

(2) A disciplinary committee may require a person to give evidence on oath or under affirmation, and for that purpose any member of the disciplinary committee may administer an oath or take an affirmation.

(3) A person who, without lawful excuse –

(a) fails to comply with a requirement made by a disciplinary committee under paragraph (1); or

(b) on being required to do so under paragraph (2), refuses to take an oath or make an affirmation or to give evidence,

shall be guilty of an offence and liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 2 on the standard scale,^[5] or both.

(4) A person giving evidence (on oath or otherwise), or appearing before a disciplinary committee, shall have the same privileges and immunities as if he or she were giving evidence in or appearing before a court of law.

(5) A person who is required to attend and give evidence before a disciplinary committee, or to produce or deliver a document to it, shall be reimbursed by the Law Society for his or her reasonable expenses (including loss of earnings) in doing so.

29 Recovery of fines and costs

Any fine that is imposed on a practitioner under Article 24(5) or Article 26(8), or costs that are awarded to the Attorney General under this Part, shall constitute a debt due and payable to the States, and shall be enforceable by the Treasurer of the States in the same manner as an order for the payment of costs made by the Royal Court in a civil case.

30 Prohibition of employment of practitioners removed from roll for misconduct, or suspended

(1) No practitioner shall in connection with his or her practice employ, retain or remunerate –

(a) a person whose name has been removed from the roll of advocates or solicitors, on grounds of misconduct, and has not been restored to that roll; or

(b) a practitioner who is suspended from practice as an advocate or solicitor,

without the prior approval of the Committee and in accordance with such conditions (if any) as it may specify in giving its approval.

(2) Before it gives any approval under this Article, the Committee shall consult the Attorney General.

(3) A practitioner who contravenes paragraph (1) shall be guilty of professional misconduct.

31 Protection of persons acting in good faith

No person shall incur criminal or civil liability in respect of any act or omission by the person in the exercise or intended exercise of any disciplinary function conferred on him or her by or under this Part unless it is proved that the act or omission was in bad faith.

32 Inherent jurisdiction of Royal Court

Nothing in this Law limits the inherent jurisdiction of the Royal Court to exercise disciplinary control over practitioners.

PART 4

OTHER PROVISIONS

33 Election of the Bâtonnier

The ordinary members who are advocates shall elect every 3 years one of their number as the Bâtonnier, to be their head and to oversee the interests of the Bar.

34 Rules of Court

The power to make Rules of Court under the Royal Court (Jersey) Law 1948^[6] shall include a power, subject to the other provisions of this Law, to make rules regulating and prescribing the procedures to be followed –

- (a) by disciplinary committees;
- (b) on references to the Royal Court by the Attorney General; and
- (c) on appeals to the Royal Court against decisions of disciplinary committees.

35 Availability of bye-laws

- (1) Article 3(1) of the Official Publications (Jersey) Law 1960^[7] shall apply to bye-laws as it applies to enactments mentioned in that paragraph and accordingly, as soon as may be after such bye-laws are made, the Secretary shall transmit a certified copy of them to the Greffier of the States.
- (2) A person may purchase a copy of the bye-laws on payment of a reasonable fee to be fixed by the Committee.

36 Repeals

The following enactments shall be repealed –

- (a) Article 6 of the Loi (1961) sur l'exercice de la profession de droit à Jersey;^[8]
- (b) Article 10 of the Advocates and Solicitors (Jersey) Law 1997, and the Second Schedule and paragraph 7 of the Third Schedule to that Law.^[9]

37 Transitional provisions

- (1) The persons who constitute the Committee of The Law Society of Jersey immediately before the commencement of this Law shall continue to constitute the Committee as its members, subject to Article 12, until the Law Society first elects Committee members under Article 11.
- (2) Until the Law Society at a general meeting appoints the members of the disciplinary panel to whom sub-paragraph (a) of Article 18(1) refers, the power of appointment of those members under that paragraph shall be exercised by the Committee.
- (3) Notwithstanding Article 19(1), but subject to the other provisions of that Article, a person appointed under paragraph (2) of this Article to be a member of the disciplinary panel shall only hold office until the Law Society exercises its power to make that appointment.
- (4) Notwithstanding the repeal of Article 10 and the Second Schedule of the Advocates and Solicitors (Jersey) Law 1997^[10] by Article 36 of this Law, if a complaint or other matter under Article 10 of that Law^[11] is pending but has not been determined before the commencement of this Law, it shall be determined as if this Law had not been enacted.

38 Citation and commencement

- (1) This Law may be cited as The Law Society of Jersey Law 200.
- (2) Except as provided in paragraph (3), this Law shall come into force on such date as the States may by Act appoint.
- (3) Paragraphs (2) and (3) of Article 3 shall come into force on the expiry of the period of 3 months following the date appointed by the States under paragraph (2) of this Article.

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- [1] *Volume 1968-1969, page 345, Volume 1970-1972, page 59, Volume 1994-1995, page 119, Volume 2001, page 298 and R&O 5838.*
- [2] *Volume 1968-1969, page 345, Volume 1970-1972, page 59, Volume 1994-1995, page 119, Volume 2001, page 298 and R&O 5838.*
- [3] *Volume 1968-1969, page 345, Volume 1970-1972, page 59, Volume 1994-1995, page 119, Volume 2001, page 298 and R&O 5838.*
- [4] *Volume 1968-1969, page 345, Volume 1970-1972, page 59, Volume 1994-1995, page 119, Volume 2001, page 298 and R&O 5838.*
- [5] *Volume 1992-1993, page 437.*
- [6] *Tome VII, page 502, Volume 1979-1981, page 195, Volume 1984-1985, page 175, Volume 1990-1991, pages 193 and 855, Volume 1992-1993, page 461, Volume 1996-1997, pages 147 and 667, Volume 1998, page 659 and Volume 2001, page 7.*
- [7] *Tome VIII, page 884 and Volume 2003, page 186.*
- [8] *Volume 1961-1962, page 441.*
- [9] *Volume 1996-1997, pages 578, 581 and 584.*
- [10] *Volume 1996-1997, pages 578 and 581.*
- [11] *Volume 1996-1997, page 578.*