

STATES OF JERSEY



DRAFT ANNUAL BUSINESS PLAN 2010 (P.117/2009): SIXTH AMENDMENT (P.117/2009 Amd.(6)) – COMMENTS

**Presented to the States on 21st September 2009
by the Council of Ministers**

STATES GREFFE

COMMENTS

The Council of Ministers opposes the amendment.

The amendment seeks to change the legislation programme by substituting the development of a new Plant Varieties (Jersey) Law with a new Financial Services Ombudsman Law.

Intellectual property

Opportunities arising from the development of Jersey's intellectual property laws, particularly when linked to e commerce, are seen as a major potential contributor to Jersey's economy in the future. The development of intellectual property law is therefore a high priority for economic development.

Improving Jersey's attractiveness as a jurisdiction for intellectual property related business will mean achieving compliance with international conventions and agreements in the relevant areas. Two areas are particularly important, the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS), which is administered by the World Trade Organisation, and the Paris Convention for the Protection of Industrial Property. The intention is to enable Jersey to ask the U.K. government to extend ratification of the TRIPS part of the WTO and the Paris Convention to include Jersey. It is recognised, however, that the extension of TRIPS may be difficult to achieve and that there are some matters to resolve around appropriate registration systems, particularly for Patents and Registered Designs, for Jersey to adopt the Paris Convention. However, it is believed that it is important for Jersey to keep its options open in respect of TRIPS and the Paris Convention.

The TRIPS Agreement (Article 27(3)(b)) requires Members to "provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof." Jersey's model of intellectual property protection is closely related to that in the U.K. which provides protection for new varieties of plant under the Plant Varieties Act of 1997. Plant Varieties are not patentable under U.K. and European Law. Jersey currently reregisters patents that have been granted in the U.K. and as such it would not also be possible to protect plant varieties through the patent system as it currently operates in Jersey.

Article 1(3) of the Paris Convention states that "industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour".

A general scheme of protection for new varieties of plant does not presently exist in Jersey. Consequently Jersey cannot comply with the TRIPS Agreement and Paris convention.

This not only means that plant varieties that are important to Jersey are not protected in Jersey, but also that other countries have no obligation to recognise and protect Jersey's plant varieties and other areas of intellectual property that are important to Jersey.

The absence of protection for plant varieties could therefore have much wider effects than might be felt in the horticultural and agricultural sectors. Jersey would become a less attractive place for businesses in other sectors that own valuable intellectual property that could otherwise be held in and managed from Jersey and supporting industries such as legal services and web hosting may also be affected if there is less confidence in the Islands ability to protect intellectual property and secure protection for that intellectual property in other countries than would otherwise be the case.

A modern and effective legislative framework is important not only to the individuals and businesses that create intellectual property but also to the service industries that support such businesses. Jersey has a clear strategic objective of diversifying its economy. If Economic Development is to achieve its objectives to grow intellectual property business and related industries it is important that the Plant Varieties Law is not substituted for something else.

Ombudsman

It is a matter of record that both the previous Minister and the current Minister for Economic Development support the principle of robust consumer protection and the department is currently considering the various options that exist for delivering a robust and cost effective financial ombudsman scheme. Key to making such a scheme robust will be ensuring value for money and exploratory discussions are being held with the States of Guernsey to determine whether a pan Channel Island approach might deliver this.

Clearly this is a complex area and the outcome of this review must not be rushed or predetermined as being one where the industry is automatically expected to pay. Such a scenario will only see the risk that this cost is passed onto consumers in the form of higher premiums, tariffs and charges which goes against what Economic Development and the Council of Ministers is trying to achieve. In addition, Jersey is already considered in many quarters as being an expensive place to do business and given the current economic climate it would be quite wrong to import a scheme that will make our premier industry less competitive while predominantly benefiting non-residents, such as that which was implemented in the Isle of Man. Justification for this expense will have to be rigorously challenged and much more work needs to be done to develop a scheme that is fit for purpose within the Jersey environment.

Changing priorities in addition to more general competing pressures for limited resources have undeniably, but justifiably, delayed completion of the work to review the need for a financial ombudsman. Nevertheless the department has made provision for assessment of a scheme to begin and a report considering the most favourable options will be brought to the States in due course. Key to taking it forward will be a thorough understanding of the financial implications and ensuring that the States is not saddled with a scheme that costs more to administer than it delivers by way of value to Islanders. This is an area which the Deputy's amendment has failed to recognise and approval of the Amendment as it stands would require the department to make an equivalent manpower and service cut elsewhere in the order of £500,000.

Financial impact

No financial implications are recognised by the Deputy however the department has identified that it is likely that any Jersey scheme would be at least double the size of the Isle of Man scheme, to reflect Jersey's much larger financial services sector.

Five full-time employees, a panel of 10 off-Island ombudsmen and the costs of premises, accommodation and travel all indicate that the scheme would cost at least £500,000 a year to operate.

Projecting forward to 2011 when such a scheme might come into effect it is likely that the scale of costs will have increased even further.

Approval of the Amendment would require the department to make an equivalent manpower and service cut elsewhere.