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by the Finance and Economics Committee**



STATES OF JERSEY

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European Convention on Human Rights

The Vice-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 Holidays and Bank Holidays (Amendment No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Deputy D.R. Maltwood of St. Mary**

REPORT

The Amendment to the Public Holidays and Bank Holidays (Jersey) Law 1951 has been prepared in order to modify the provisions which allow banks to open or close during public and bank holidays where the Finance and Economics Committee considers it expedient to do so in view of particular circumstances.

Shortcomings in the legislation were first brought to light when a number of local banks were planning to remain open over the Millennium weekend in the event of unforeseen difficulties arising with the Automated Teller Machines (ATMs or Cashpoints) on the changeover to the year 2000.

The existing Bank Holidays (Jersey) Law 1951 gave authority to the Bailiff, on the recommendation of the Finance and Economics Committee, to direct that banks should remain open. However it was found that 'Sundays' were not bank holidays within the meaning of the Law.

A problem was then found in respect of the definition of 'normal banking hours', which had originally been defined in Article 1 of the Banking Business (Jersey) Law 1991 by reference to the *Loi (1931) sur les heures d'ouverture et de fermeture des Maisons de Banques*. The 1931 *Loi* had been repealed by the 1991 Law but no consequential amendment made to Article 1 of the 1951 Law. Consequently the definition of normal banking hour was meaningless.

Article 4Ab of the existing 1951 Law gave the Bailiff the powers of Direction, i.e. banks **shall** remain open. It follows that the direction is clearly **mandatory and would apply to banks generally** and not to one or more specified banks.

Finally, there was no enforcement mechanism in relation to a direction by the Bailiff. No offence was created by Statute.

The proposed amendment before the House, which has been circularised to the Jersey Bankers Association, who support the proposals, is drafted to correct these anomalies.

This draft Law has no implications for the financial or manpower resources of the States.

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 7th August 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 Holidays and Bank Holidays (Amendment No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

The purpose of this Law is to revise the provisions of the Public Holidays and Bank Holidays (Jersey) Law 1951 concerned with the opening and closing of banks.

Article 2 substitutes in the 1951 Law a new definition of “normal banking hours”, the current definition referring to legislation that has been repealed. It also inserts a new interpretation provision to clarify the meaning of “open” and “closed” in relation to banks for the purposes of the Law.

Article 3 substitutes new Articles 3, 4 and 4A for those Articles currently in the 1951 Law. Article 3 replaces a similar provision in the 1951 Law whereby banks are not to open to the public on bank holidays. The principal change is to remove the power of the Bailiff to direct that banks should be closed on a business day or open on a bank holiday in an emergency. His power to direct, on the recommendation of the Finance and Economics Committee, that banks be closed during normal banking hours or remain open during a bank holiday or outside normal banking hours where it is considered expedient is also removed. The new Article 4 instead enables the Finance and Economics Committee to make orders where it considers it expedient to do so, to require or permit a bank to be open on non-business days or outside normal banking hours, or to be closed during normal banking hours. Article 4A makes it an offence to contravene Article 3 or 4, punishable by an unlimited fine. There are also standard provisions concerning offences by corporate bodies, etc and secondary parties.

Article 4 makes a consequential amendment to exclude banks from the ambit of the Shops (Sunday Trading) (Jersey) Law 1960 to avoid an overlap with respect to the regulation of the opening and closing of banks.

Article 5 provides for the citation of the Law and for it to come into force on the 7th day after being registered.

PUBLIC HOLIDAYS AND BANK HOLIDAYS (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to amend further the Public Holidays and Bank Holidays (Jersey) Law 1951; 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 -

ARTICLE 1

In this Law “principal Law” means the Public Holidays and Bank Holidays (Jersey) Law 1951, as amended.^[1]

ARTICLE 2

In Article 1 of the principal Law¹ -

- (a) the existing Article shall be re-numbered as paragraph (1) of that Article;
- (b) in paragraph (1) for the definition of “normal banking hours” there shall be substituted the following definition -

“ ‘normal banking hours’, in relation to a bank, means the hours of any business day during which that bank is normally open.”; and

- (c) after paragraph (1) there shall be inserted the following paragraph-

“(2) In this Law references to “open” or “closed” in relation to a bank are references to the opening or closing as the case may be of that part of the premises occupied by that bank to which the public are normally admitted for the transaction of banking business with the public.”.

ARTICLE 3

For Article 3, 4 and 4A of the principal Law^[2] there shall be substituted the following Articles -

“ARTICLE 3

BANKS TO BE CLOSED ON BANK HOLIDAYS

Subject to the provisions of any Order made under Article 4 of this Law, a bank shall not open on a bank holiday.

ARTICLE 4

ORDERS WITH RESPECT TO THE OPENING AND CLOSING OF BANKS

- (1) The Finance and Economics Committee may by Order, where it considers it expedient to do so in view

of particular circumstances, require or permit any bank -

- (a) to be open -
 - (i) on a bank holiday or any other day that is not a business day; or
 - (ii) on a business day outside normal banking hours; or
- (b) to be closed during normal banking hours,

for such period of time as may be specified in the Order.

(2) Orders made under this Article may make different provision for different cases or circumstances.

(3) The Subordinate Legislation (Jersey) Law 1960, as amended,^[3] shall apply to Orders made under this Article.

ARTICLE 4A

OFFENCES

- (1) A person who -
 - (a) contravenes Article 3 of this Law; or
 - (b) contravenes or fails to comply with any provision of an Order made under Article 4 of this Law,

shall be guilty of an offence and liable to a fine.

(2) Where an offence under this Law committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) of this Article shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.”.

ARTICLE 4

Amendment to Shops (Sunday Trading) (Jersey) Law 1960

In the definition of “shop” in Article 1 of the Shops (Sunday Trading) (Jersey) Law 1960, as amended,^[4] after the words “carried on” there shall be inserted the words “other than premises used as a bank”.

ARTICLE 5

Citation and commencement

This Law may be cited as the Public Holidays and Bank Holidays (Amendment No. 2) (Jersey) Law 200 and shall

come into force on the seventh day following its registration.

[1] Tome VIII, page 9.

[2] Tome VIII, page 10.

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

[4] Tome VIII, page 835.