

**DRAFT FEES (MISCELLANEOUS AMENDMENTS AND
VALIDATION) (JERSEY) LAW 199**

**Lodged au Greffe on 6th July 1999
by the Finance and Economics Committee**



STATES OF JERSEY

STATES GREFFE

Report

Early in 1998, the Public Services Committee purported to impose substantial increases in car parking charges in multi-storey car parks. The Attorney General was asked for an opinion on whether the Committee had exceeded its powers under the Road Traffic (Jersey) Law 1956, to fix car parking charges by Order.

It will be recalled that the Committee had stated publicly that the increases were intended, in part, to pay for the school bus service. Previously, the bus service had been provided by, and funded from the vote of, the Education Committee. For the financial year 1998, responsibility for providing the service was "given" to the Public Services Committee but while the expenditure vote for it was taken out of the Education Committee's estimates, in the 1998 budget, no other provision was made for it in Public Services or any other Committee estimates. Faced with a shortfall in income, therefore, the Committee decided to balance its books by making extra revenue from the car parks.

The essential question posed was whether the Public Services Committee could lawfully impose what amounted to a tax on car park users to pay for the school bus service.

The Attorney General's advice was that there was doubt about the legality of the increase because a Committee of the States cannot impose a tax or (which is really the same thing) raise general revenue without specific statutory authority to do so. No such authority was to be found in the Road Traffic Law. In the absence of such authority, the Committee could only fix charges at a level sufficient to cover the costs of providing the service charged for, that is, the car parks. By publicly announcing that the increased charges were not fixed on that basis, the Committee had exceeded its powers, even though, as it later turned out, the Committee could have justified the increases solely on a proper estimate of the cost of providing the car parks. Acting on the advice, the Committee revoked the original Order and made a new one fixing charges at the same levels but this time using the correct formula for setting them. This Order is therefore valid.

Subsequently, the Attorney General's advice was confirmed in an opinion from Counsel in England experienced in the field of administrative Law.

It was realised that because the legal advice applied to all Committees, it was essential to ensure that no other potential validity problems might arise with other charges. A small working group, comprising a Legal Adviser in the Law Officers' Department, the Law Draftsman and a representative from the States Treasury was therefore set up. It was instructed to investigate how many similar problem areas there might be, to find ways to rectify them and to propose new fee fixing powers for insertion into the Laws concerned to ensure that, where necessary, the Committees would have power to fix revenue raising fees and charges in the future.

All Committees which could be affected were invited to review charges imposed by them by Order and to identify any potential difficulties to the working group. The working group considered the Committees' responses and decided in each case whether or not a potential problem existed. Some Committees were slow in responding and, to date, some still have not completed their reviews. It was decided that the process ought not to be delayed until after all reviews were completed.

Having concluded that validation legislation was the only sure solution in those cases where fees and charges looked potentially vulnerable to challenge, the working group prepared the necessary drafts, which also included the suggested form for the new wider fee charging powers. The drafts were then sent to and approved by the Committees concerned. They have also been submitted demi-officially to the Home Office.

Though, as mentioned, not all Committees have yet completed their reviews, the draft Law, and the related draft Post Office (Amendment No. 2) (Jersey) Law (P.89/99) and Telecommunications (Amendment No. 3) (Jersey) Law (P.90/99) probably cover most, and certainly the most serious, potential problem areas.

The draft Law relates to activities undertaken by the Jersey Financial Services Commission, which were previously undertaken by the Finance and Economics Committee. Historically, some of the fees raised from the registration of companies, etc. have exceeded the costs to the Commission (or the Committee before it) and have therefore contributed to the revenues of the Island from finance sector activities. The Finance and Economics Committee wishes to ensure that this state of affairs can continue.

Similarly, the Telecommunications Board and Committee for Postal Administration have fixed their tariffs so as to make a profit rather than just to cover the costs of the provision of services. Indeed, as Trading Committees, the States have expected these Committees to make profits so as to contribute to the annual income of the States.

The three draft Laws are intended to ensure that fees and charges can be fixed with a view to making a profit, if that is the decision of the Committee. As all the fees and charges are fixed by Order, the States will retain ultimate control over the level of charges by means of the power to annul an Order.

All three of these Laws would have the same result in relation to the various different Laws they amend. They will validate any past and present charges made under them by Order, which could have been open to challenge on the grounds outlined above, and, for the future, enable the relevant Committee to impose charges under those Laws at a level which is higher than necessary to meet the cost of the service provided.

Explanatory Note

The purpose of this draft Law is to -

- (a) amend various Laws administered by the Jersey Financial Services Commission on behalf of the Finance and Economics Committee to empower the Committee to make Orders prescribing fees which raise income in excess of that required by the Committee and the Commission to discharge their respective functions under those Laws (*Article 1 and First Schedule*); and
- (b) validate the imposition and recovery of any such fees pursuant to Orders made before the coming into force of this Law (*Article 2 and the Second Schedule*).

Draft Laws, in similar terms, amending the Post Office (Jersey) Law 1969 (P.89/99) and the Telecommunications (Jersey) Law 1972 (P.90/99) have also been lodged "au Greffe".

**FEES (MISCELLANEOUS AMENDMENTS AND VALIDATION)
(JERSEY) LAW 199**

A LAW to amend certain enactments with regard to the imposition of fees and to validate fees previously imposed under those enactments; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

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

ARTICLE 1

Miscellaneous amendments

The enactments specified in the First Schedule to this Law shall be amended in accordance with the provisions of that Schedule.

ARTICLE 2

Validation

The imposition and recovery of fees pursuant to Orders made under the provisions of the enactments specified in the Second Schedule to this Law before the coming into force of this Law is validated and is to be taken to have been lawfully imposed and recovered.

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ARTICLE 3

Short title

This Law may be cited as the Fees (Miscellaneous Amendments and Validation) (Jersey) Law 199 .

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199*

FIRST SCHEDULE

(Article 1)

AMENDMENT OF ENACTMENTS

Collective Investment Funds (Jersey) Law 1988¹

After paragraph (1) of Article 17 there shall be inserted the following paragraph -

“(1A) In prescribing fees for the purposes of this Law, the Committee may take into consideration such matters as it thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Committee and the Commission in discharging their respective functions under this Law.”.

Banking Business (Jersey) Law 1991²

After paragraph (1) of Article 48 there shall be inserted the following paragraph -

“(1A) In prescribing fees for the purposes of this Law, the Committee may take into consideration such matters as it thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Committee and the Commission in discharging their respective functions under this Law.”.

Companies (Jersey) Law 1991³

After paragraph (1A) of Article 219 there shall be inserted the following paragraph -

¹ Volume 1988-1989, page 156, and Volume 1998, page 262.

² Volume 1990-1991, page 540.

³ Volume 1990-1991, page 1067, and Volume 1998, page 272.

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“(1B) In prescribing fees for the purposes of this Law, the Committee may take into consideration such matters as it thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Committee and the Commission in discharging their respective functions under this Law.”.

Limited Partnerships (Jersey) Law 1994⁴

After paragraph (1) of Article 38 there shall be inserted the following paragraph -

“(1A) In prescribing fees for the purposes of this Law, the Committee may take into consideration such matters as it thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Committee and the Commission in discharging their respective functions under this Law.”.

Insurance Business (Jersey) Law 1996⁵

After paragraph (1) of Article 38 there shall be inserted the following paragraph -

“(1A) In prescribing fees for the purposes of this Law, the Committee may take into consideration such matters as it thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Committee and the Commission in discharging their respective functions under this Law.”.

⁴ Volume 1994-1995, page 199, and Volume 1998, page 274.

⁵ Volume 1996-1997, page 128, and Volume 1998, page 277.

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Limited Liability Partnerships (Jersey) Law 1997⁶

After paragraph (1) of Article 46 there shall be inserted the following paragraph -

“(1A) In prescribing fees for the purposes of this Law, the Committee may take into consideration such matters as it thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Committee and the Commission in discharging their respective functions under this Law.”.

Investment Business (Jersey) Law 1998⁷

After paragraph (1) of Article 39 there shall be inserted the following paragraph -

“(1A) In prescribing fees for the purposes of this Law, the Committee may take into consideration such matters as it thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Committee and the Commission in discharging their respective functions under this Law.”.

⁶ Volume 1996-1997, page 546, and Volume 1998, page 278.

⁷ Volume 1998, page 573.

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SECOND SCHEDULE

(Article 2)

VALIDATION

<i>Enactments</i>	<i>Provisions under which fees imposed</i>
Collective Investment Funds (Jersey) Law 1988 ⁸	Articles 5, 6 and 17
Banking Business (Jersey) Law 1991 ⁹	Articles 8 and 48
Companies (Jersey) Law 1991 ¹⁰	Articles 201 and 219
Limited Partnerships (Jersey) Law 1994 ¹¹	Articles 31 and 38
Insurance Business (Jersey) Law 1996 ¹²	Articles 5 and 38
Limited Liability Partnerships (Jersey) Law 1997 ¹³	Articles 37 and 46
Investment Business (Jersey) Law 1998 ¹⁴	Articles 7, 8 and 39

⁸ Volume 1988-1989, pages 141, 142 and 156, and Volume 1998, pages 262, 263, 390, 391 and 392.

⁹ Volume 1990-1991, pages 495 and 540, and Volume 1998, pages 267 and 685.

¹⁰ Volume 1990-1991, pages 1057 and 1067, and Volume 1998, pages 271 and 272.

¹¹ Volume 1994-1995, pages 196 and 199, and Volume 1998, pages 273 and 274.

¹² Volume 1996-1997, pages 91 and 128, and Volume 1998, pages 276 and 277.

¹³ Volume 1996-1997, pages 541 and 546, and Volume 1998, pages 277 and 278.

¹⁴ Volume 1998, pages 522, 523 and 573.