

STATES OF JERSEY

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DRAFT PLANT HEALTH (JERSEY) LAW 200

**Lodged au Greffe on 14th January 2003
by the Economic Development Committee**

STATES GREFFE



Jersey

DRAFT PLANT HEALTH (JERSEY) LAW 200

European Convention on Human Rights

The President of the Economic Development Committee has made the following statement –

In the view of the Economic Development Committee the provisions of the Draft Plant Health (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy F.G. Voisin of St. Lawrence**

REPORT

The proposed Law replaces the present Destructive Insects and Pests (Jersey) Law 1960. Like the present Law the draft Law makes provision for the Island for the regulation of the import, export and movement of plant pests and harmful organisms, and harmful organisms, plants or plant products that can harbour or spread them.

The draft Law enables Orders to be made that confer a wider range of powers on inspectors and cover a wider range of matters, in keeping with the equivalent provisions of the United Kingdom (which in turn reflect various European Council Directives).

Financial and manpower implications

This draft Law has no additional financial or manpower implications for the 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 8th January 2003 the Economic Development Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Economic Development Committee the provisions of the Draft Plant Health (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law replaces the present Destructive Insects and Pests (Jersey) Law 1960. Like that Law, the draft Law makes provision for the Island for the regulation of the import, export and movement of plant pests and things that can harbour or spread them.

However, the draft Law enables Orders to be made that confer a wider range of powers on inspectors and cover a wider range of matters, in keeping with the equivalent provisions of the United Kingdom (which in turn reflect various European Council Directives).

The draft Law has seventeen Articles.

Article 1 contains the definitions for the draft Law and a standard provision on cross-references within the draft Law and references to legislation.

Article 2 states the object of the draft Law, that is, to prevent the development and spread of plant pests.

Article 3 outlines the duties of the Economic Development Committee under the draft Law.

Article 4 is a general provision relating to the making of Orders, while *Article 5* sets out in detail what subjects may be dealt with by Orders and what powers they may confer to deal with plant pests.

Article 6 provides, like the Law that is to be repealed, that the States may compensate the owners of crops for damage done to, or the destruction of, their crops in pursuance of the powers under the draft Law.

Article 7 prohibits the making of false or misleading statements in connection with the draft Law.

Article 8 provides for warrants to be issued for the entry and search of premises in the investigation of certain offences or to find evidence of plant pests, carry out surveys of the Island, or do other things, in aid of the draft Law. Entry and search are to be proportionate in manner, and, where the premises involved are residential, normally with notice unless the giving of notice would defeat the object of the entry.

Article 9 requires customs officers to co-operate with inspectors under the draft Law where inspectors request them to do so in certain cases and, in turn, requires persons to comply with requirements made by customs officers when the latter are acting under the draft Law.

Article 10 makes it clear that the draft Law is not intended to affect the operation of the Customs and Excise (Jersey) Law 1999.

Article 11 makes it an offence to obstruct inspectors, customs officers or police officers when they are acting under the draft Law.

Article 12 makes it clear that inspectors, customs officers and police officers and the States and the Committee (and its members and officers) do not incur civil liability for acts that are carried out in good faith in execution of the draft Law.

Article 13 deals with the liability of members of limited liability partnerships and officers of bodies corporate for the offences of their partnerships or bodies corporate. It also deals with the aiding and abetting of offences.

Article 14 sets out a right of appeal to the Royal Court against certain administrative acts.

Article 15 saves acts done under the Destructive Insects and Pests (Jersey) Law 1960 if they could have been done under the draft Law.

Article 16 repeals the Destructive Insects and Pests (Jersey) Law 1960.

Article 17 sets out the short title of the draft Law and provides for its commencement on a day appointed by the States.

Note –

Where a penalty is expressed in the proposed Law as a fine not exceeding a specified level “on the standard scale”, this is a reference to the scale set out in the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993. The maximum penalties for each level in that scale are, currently –

Level 1 £50

Level 2	£500
Level 3	£2,000
Level 4	£5,000.



Jersey

DRAFT PLANT HEALTH (JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
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<u>3</u>	<u>Duties of Committee</u>
<u>4</u>	<u>Orders generally</u>
<u>5</u>	<u>Subject matter of Orders in detail</u>
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<u>7</u>	<u>False statements</u>
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<u>11</u>	<u>Obstruction of officers</u>
<u>12</u>	<u>Limitation of civil liability</u>
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<u>14</u>	<u>Appeals</u>
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<u>17</u>	<u>Citation and commencement</u>



Jersey

DRAFT PLANT HEALTH (JERSEY) LAW 200

A LAW to control the spread of pests and diseases of plants and trees.

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 –

“the Committee” means the Economic Development Committee;

“crop” includes any crop that is the subject of agriculture, arboriculture, forestry or horticulture, whether or not grown for reward, and includes trees, shrubs and bushes, seeds and plants, and any part of those things;

“customs officer” has the same meaning as in the Customs and Excise (Jersey) Law 1999;^[1]

“inspector” means any person authorized by the Committee in writing to be an inspector for the purposes of this Law;

“Order” means Order made under this Law;

“plant” includes any flora (including trees and other plants) and any part of any flora, whether the part is living or dead and whether or not the part has been processed in any way;

“plant pest” means pests of, and harmful organisms liable to infect, plants, whether those pests or organisms are from the animal or plant kingdom, or are viruses, mycoplasmas or other pathogens, and whether or not they have been genetically modified;

“premises” includes an aircraft, vehicle and vessel;

“sell” includes sell, offer for sale, advertise for sale, give, distribute and transfer, whether for reward or not;

“significant thing” means anything that is potentially harmful to plants, including anything animate or inanimate that may harbour or spread any plant pest;

“thing” includes any living thing.

(2) 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.

(3) 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.

- (4) 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.

2 Object of this Law

The object of this Law is the prevention and control of the development and spread of plant pests within the Island and their spread to and from the Island.

3 Duties of Committee

- (1) The Committee is responsible generally for the implementation of this Law and any Order made under this Law.
- (2) The Committee shall carry out surveys of the Island in furtherance of the object of this Law.
- (3) Paragraph (2) does not limit the generality of paragraph (1).

4 Orders generally

- (1) 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 prescribing any matter that may be prescribed under this Law by Order.
- (2) An Order may –
 - (a) make different provision in relation to different cases or circumstances;
 - (b) make provision by reference to, and may incorporate (by reference, annexation or otherwise), any Community provision to such extent and subject to such exceptions, adaptations and modifications as may be specified in the Order; and
 - (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Committee to be necessary or expedient for the purposes of the Order.
- (3) In paragraph (2)(b), “Community provision” has the same meaning as it has in the European Communities Legislation (Implementation) (Jersey) Law 1996^[2] and the reference in that sub-paragraph to such a provision is a reference to such a provision only to the extent that the provision relates to any matter on which an Order may be made under the provisions of this Law other than that sub-paragraph.
- (4) The Subordinate Legislation (Jersey) Law 1960^[3] shall apply to Orders.

5 Subject matter of Orders in detail

- (1) The Committee may make Orders regulating or prohibiting for the purposes of this Law –
 - (a) the import, export, movement, sale and keeping of plants, and of plant pests and other significant things;
 - (b) the doing of anything to or with plant pests and other significant things, including treating or modifying them, experimenting with them or doing anything else to or with them; or
 - (c) the sowing, planting, cultivation, destruction, or disposal, of plants or crops.
- (2) An Order may, for the purposes of this Law, authorize or require the taking of action, or the giving of orders to take action, to reduce or avoid the dangers posed by plant pests and other significant things.

- (3) However, such action does not include the entering of premises.
- (4) An Order may authorize or require an inspector or any other person to do any of the following things, or may authorize an inspector to require any person to do any of the following things, for the purposes of this Law –
 - (a) to treat, remove, return, place in quarantine or destroy, take to a specified place, or otherwise dispose of any plant, crop, plant pest or other significant thing;
 - (b) to open, treat or place in quarantine any container or premises; or
 - (c) to implement, or act in accordance with, a programme for the reduction or elimination of the presence or effects of, or for the reduction or elimination of the risk of the presence or effects of, a plant pest on plants, crops, land or premises.
- (5) An Order may authorize an inspector to act as follows for the purposes of this Law –
 - (a) to require a person to do something, or not to do something, in relation to the import, export or movement of plants, and of plant pests and other significant things;
 - (b) to inspect, examine, mark or photograph any premises, plant, crop or other thing;
 - (c) to require a person to produce any document, record, plant or other thing at a specified time and at a specified place;
 - (d) to require a person to answer any question or provide any information, but not so as incriminate himself; or
 - (e) to take samples for analysis or other purposes, examine anything and take copies.
- (6) An Order may, for the purposes of this Law –
 - (a) prescribe fees payable for any authorization, licence, certificate, plant passport, approval or registration, or any inspection or other service, provided under this Law or an Order, including fees in respect of anything done by an inspector or another person, whether or not it is done at the request of the person required to pay the fee, and may make provision for the recovery of such fees or the refusal of any service if a fee prescribed for the service is not paid;
 - (b) make provision for the seizure, retention or forfeiture of any plant, crop, plant pest or other thing in respect of which an offence has been committed under this Law or an Order;
 - (c) require the giving of notice of any act, activity, event or occurrence;
 - (d) require records to be kept and to be available for inspection;
 - (e) make provision with respect to certificates and other documents and with respect to registration and appeals;
 - (f) make provision with respect to the issue of licences or authorities to do what otherwise would be a breach of this Law or any Order;
 - (g) prescribe the manner of service of any notice, requirement or other document for the purposes of this Law or an Order;
 - (h) require anything to be done only with specified approval or only if certain conditions are met;
 - (i) leave anything to be determined, specified, required, approved or authorized, or otherwise done, by an inspector or another person; or
 - (j) provide that a person who is guilty of an offence against any of its provisions shall be liable on summary conviction to imprisonment not exceeding three months, or not exceeding a lesser period, or to a fine not exceeding level 4 on the standard scale,^[4] or not exceeding a lesser amount, or to both such imprisonment and such fine.
- (7) Paragraphs (4) - (6) do not limit the generality of paragraphs (1) and (2).

6 Compensation

- (1) If a crop is destroyed, or its value reduced, by anything done in pursuance of this Law or an Order or

a requirement given under this Law or an Order, the States may, on the recommendation of the Committee, pay compensation out of the general revenues of the States to the owner of the crop.

- (2) The compensation shall not exceed the reduction in value of the crop or (in the case of the destruction of a crop) the value of the crop.
- (3) For the purposes of this Article, the value of a crop shall be taken to be the value that could reasonably have been expected, from the viewpoint of the time of the reduction in value or destruction, to be obtained had the crop later been harvested, and sold on the open market, in the normal course of events.

7 False statements

- (1) A person shall not knowingly or recklessly make any statement, or provide any information, that is false or misleading in a material particular –
 - (a) in any claim, application, plant passport, certificate, or other document under this Law or an Order;
 - (b) in connection with the grant of a licence, or with any registration or authorization, or with the issue of any document, under this Law or an Order; or
 - (c) in providing any information under this Law or an Order.
- (2) A person shall not re-use a plant passport or certificate, or alter a plant passport, certificate, licence or other document issued or used under this Law or an Order, or make or issue such a thing that appears to be so issued or used, without lawful authority so to do.
- (3) A person who contravenes this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or to both.

8 Entry and search of premises

- (1) If, on application made by an inspector or a police officer supported by information on oath, the Bailiff, a Jurat or a magistrate is satisfied on reasonable grounds of one or more of the following matters, he may issue a warrant authorizing any inspector, or any police officer, to enter any premises specified in the warrant within 28 days after the issue of the warrant –
 - (a) that an offence under this Law or an Order has been, or is being, committed and that there is evidence of the commission of the offence to be found on the premises;
 - (b) that a person has failed to comply with the requirements of a notice (including a direction, requirement, order or other instrument) under an Order, being a notice that has been served on him and requires something to be done, or not to be done, on the premises;
 - (c) that there is evidence of any plant pest, or other significant thing, on the premises (whether or not any offence has been committed in relation to that pest or thing);
 - (d) that, in order to carry out any survey of the Island, or any inspection of premises, in furtherance of the object of this Law, it is necessary to enter premises;
 - (e) that entry of the premises would be in furtherance of any purpose prescribed by Order as a purpose necessitating entry of premises, or giving a basis for power to enter premises;
 - (f) that entry of the premises would be in circumstances prescribed by Order as circumstances necessitating entry of premises, or giving a basis for power to enter premises.
- (2) An inspector or police officer who enters premises by authority of such a warrant –
 - (a) may, if so authorized by the warrant, use such force as is reasonably necessary to make that entry;
 - (b) may inspect, search, survey and test the premises or anything found on the premises, remove anything found on the premises, move any soil, or water, within the premises or move, take apart or remove any structure within the premises;

- (c) may test anything so removed and retain anything so removed that may be required in evidence in any civil or criminal proceedings;
 - (d) may do on those premises anything that he is authorized to do by this Law or an Order;
 - (e) may take with him such other persons as may be necessary, including, but not limited to, representatives of the European Commission;
 - (f) may take with him such equipment and vehicles as are necessary for the purpose of facilitating the exercise of his powers under this Law or under an Order;
 - (g) may require a person on the premises, at the time when the inspector or police officer is there, to provide such assistance as the inspector or police officer reasonably requires;
 - (h) may do such other thing as is prescribed by Order;
 - (i) shall, if the premises are residential premises, serve not less than 48 hours' written notice of the proposed entry on the occupier of the premises (unless the warrant permits entry to be made without the giving of such notice or to give such notice could reasonably be expected to defeat the purpose of the entry or to cause unreasonable delay);
 - (j) shall, if any person on the premises so requires, show proof of his authority as such an inspector or police officer and show the warrant authorizing the entry; and
 - (k) on leaving any unoccupied premises so entered, shall leave them as effectively secured against trespassers as he found them.
- (3) The power of entry under a warrant under this Article may only be exercised in a manner that is proportionate and otherwise reasonable.
 - (4) The power of entry under a warrant under this Article may be exercised at any time of day specified in the warrant or (if the warrant so provides) at any time of day.

9 Co-operation of customs officers

- (1) An inspector may request a customs officer (either orally or in writing) to prohibit by notice the removal of any plant, plant pest or other thing from customs control until it has been examined by an inspector and such request may identify the plant, plant pest or other thing in any way.
- (2) A request made orally under this Article shall be confirmed in writing.
- (3) Where a request has been made under paragraph (1), the customs officer shall, by notice in writing served on a person having the plant, plant pest or other thing in his possession or under his control, require that, until the plant, plant pest or other thing has been examined by an inspector, it shall not be removed from the place specified in the notice.
- (4) An inspector shall, without undue delay, examine any plant, plant pest or other thing in respect of which a notice has been served by a customs officer under this Article and shall advise that officer in writing of the terms of any notice issued by the inspector, and of any other action taken by the inspector, in accordance with this Law or an Order.
- (5) If a customs officer has served a notice under this Article prohibiting removal of any plant, plant pest or other thing, a person shall not remove anything to which the notice relates except with the written authority of a customs officer or an inspector.
- (6) A person who contravenes paragraph (5) shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.^[5]

10 Law does not affect Customs and Excise (Jersey) Law 1999

Nothing in this Law or an Order affects the operation of the Customs and Excise (Jersey) Law 1999.^[6]

11 Obstruction of officers

Any person who obstructs an inspector, a customs officer or a police officer in the exercise of his powers under this Law, or an inspector or a customs officer in the exercise of his powers under an Order, shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or to both.

12 Limitation of civil liability

- (1) A person or body 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 or an Order unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to –
 - (a) the States; and
 - (b) the Committee, any member of the Committee, or an inspector, customs officer or police officer, or any person who is, or is acting as, an officer, employee or agent of the Committee or performing any duty or exercising any power on behalf of the Committee.

13 General provisions as to offences

- (1) Where an offence under this Law (or an Order) 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.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) 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.
- (3) Any person who aids, abets, counsels or procures the commission of an offence under this Law (or an Order) shall also be guilty of an offence and liable in the same manner as a principal offender to the penalty provided for that offence.

14 Appeals

- (1) There shall be a right of appeal to the Royal Court against –
 - (a) a refusal, suspension or cancellation of any authority, registration or licence under an Order;
 - (b) a requirement under an Order; or
 - (c) any other act under this Law or an Order, being an act prescribed by Order for the purposes of this Article.
- (2) An appeal shall be brought within 21 days after the appellant is served with a written copy of the decision, requirement, or other act, against which the appeal is brought, or within any further time that the Royal Court may allow.
- (3) Unless the Royal Court so orders, the lodging of an appeal shall not operate to stay the effect of a decision, requirement or other act pending the determination of the appeal.
- (4) On hearing the appeal, the Royal Court may –

- (a) confirm, reverse or vary the decision, requirement, or other act, against which the appeal is brought; and
- (b) make any order as to the costs of the appeal as it thinks fit.

15 Saving

Anything that was done under the Destructive Insects and Pests (Jersey) Law 1960^[7] and could have been done under this Law shall be taken to have been done under this Law and to continue to have effect (if at all) under this Law for as long as it would have had effect had the Destructive Insects and Pests (Jersey) Law 1960^[8] not been repealed.

16 Repeal

The Destructive Insects and Pests (Jersey) Law 1960^[9] is repealed.

17 Citation and commencement

- (1) This Law may be cited as the Plant Health (Jersey) Law 200-.
- (2) This Law shall come into force on such day as the States may by Act appoint.

[1] *Volume 1999, page 537.*

[2] *Volume 1996-1997, page 3.*

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

[4] *Volume 1992-1993, page 437.*

[5] *Volume 1992-1993, page 437.*

[6] *Volume 1999, page 537, Volume 2000, page 11, Volume 2001, page 146 and Volume 2002, page 429.*

[7] *Tome VIII, page 887 and Volume 2001, page 6.*

[8] *Tome VIII, page 887 and Volume 2001, page 6.*

[9] *Tome VIII, page 887 and Volume 2001, page 6.*