

# STATES OF JERSEY

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## **DRAFT BURIALS AND EXHUMATIONS (AMENDMENT) (JERSEY) LAW 200**

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**Lodged au Greffe on 19th December 2007  
by the Chief Minister**

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**STATES GREFFE**





Jersey

# **DRAFT BURIALS AND EXHUMATIONS (AMENDMENT) (JERSEY) LAW 200**

## **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Burials and Exhumations (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

## REPORT

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The Burials and Exhumations (Jersey) Law 2004 (“the 2004 Law”) was registered in the Royal Court on 3rd September 2004, but has yet to be brought into force. This is due, in part, to the fact that Regulations necessary to carry the Law into effect have yet to be finalized. Furthermore, in working on the draft Regulations, it has become clear that some adjustments of the 2004 Law are either necessary or desirable. The purpose of this draft Law is to effect those amendments.

The amendments cover the following matters.

### *Charging of fees by burial authorities*

Article 2(1) of the 2004 Law empowers the States by Regulations to designate not only burial grounds, but a burial authority for each such burial ground. Such Regulations may, pursuant to Article 2(3) of the 2004 Law make provision with respect to the management, regulation and control of any burial ground and provide for burial authorities to issue directions. Under Article 11(2)(b) of the 2004 Law, such Regulations may prescribe fees to be paid in respect of any matter arising under, provided for or authorized under the Law.

Burial authorities have always been able to charge fees, but Articles 2 and 11, rather than enable burial authorities to continue to do so, would result in a régime of fees in fixed amounts prescribed by the States. Rigid control of this sort was not intended. The draft Law therefore amends Articles 2 and 11 to make it clear that such Regulations will be able to provide for burial authorities to charge their own fees in respect of such matters as are prescribed in the Regulations.

### *Inspection and maintenance of burial grounds*

Article 3 of the 2004 Law empowers a health inspector at any reasonable hour to inspect any burial ground to ascertain whether Regulations under the Law have been complied with.

The draft Law widens the scope of Article 3 so that any officer in an administration of the States for which the Minister for Health and Social Services is assigned responsibility will have such a power of inspection in order to ascertain whether the burial ground is being maintained so as to minimise any risk to health, safety or welfare of persons visiting it. The amendment also strengthens enforcement powers by empowering the officer to serve on the relevant burial authority a notice requiring steps to be taken to minimise such risk. If a burial authority fails to comply with such a notice, the Minister for Health and Social Services is empowered to take appropriate steps and recover the expenses involved from the burial authority.

### *Burials at sea – consent of the Harbour Master*

Article 8(2)(b) of the 2004 Law makes it an offence to bury a body at sea without the consent of the Harbour Master. Running parallel with the need to obtain the consent of the Harbour Master under the 2004 Law is a requirement under section 5 of the Food and Environment Act 1985, as extended to Jersey by the Food and Environment Act 1985 (Jersey) Order 1987 (“the 1985 Act”) to obtain a licence from the Minister for Planning and Environment before any article may be deposited in the sea.

In order to avoid unnecessary duplication, the draft Law replaces the requirement in Article 8(2)(b) to obtain the consent of the Harbour Master with a requirement only to obtain a licence from the Minister for Planning and Environment under section 5 of the 1985 Act.

### *Conclusion*

The amendments in the draft Law are essentially corrective adjustments of the 2004 Law. They do not involve substantive changes of policy from that put forward when the Law was passed by the States.

### **Financial/manpower implications**

There are no financial or manpower implications for the States arising from the adoption of this Draft Law.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister 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). On 14th December 2007 the Chief Minister made the following statement before Second Reading of this *Projet* in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Burials and Exhumations (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

## Explanatory Note

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This draft Law makes the following amendments to the Burials and Exhumations (Jersey) Law 2004 –

- (a) it enables Regulations to provide for burial authorities to charge fees (*Article 3*);
- (b) it strengthens the provisions concerned with inspections of burial grounds by substituting a new provision enabling an officer of health and social services to inspect a burial ground to assess any risk to health, safety or welfare, to serve notices on the burial authority responsible requiring steps to be taken to minimise such risk and in the event of non-compliance for the Minister for Health and Social Services to take those steps at the burial authority's expense. The offence of obstruction is extended to cover a person carrying out the functions of the Minister as well as an officer carrying out an inspection (*Article 4*);
- (c) it removes the requirement for the Harbour Master to consent to burials at sea, it being already the responsibility of the Minister for Planning and Environment to issue licences under other legislation (*Articles 2 and 5*);
- (d) it provides for Regulations to authorize the charging of fees instead of prescribing fees (*Article 6*).





Jersey

# DRAFT BURIALS AND EXHUMATIONS (AMENDMENT) (JERSEY) LAW 200

## Arrangement

### Article

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<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 2 amended</u>
<u>4</u>	<u>Article 3 substituted</u>
<u>5</u>	<u>Article 8 amended</u>
<u>6</u>	<u>Article 11 amended</u>
<u>7</u>	<u>Citation and commencement</u>







Jersey

# DRAFT BURIALS AND EXHUMATIONS (AMENDMENT) (JERSEY) LAW 200

A LAW to amend the Burials and Exhumations (Jersey) Law 2004.

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*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 –

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## 1 Interpretation

In this Law “principal Law” means the Burials and Exhumations (Jersey) Law 2004<sup>[1]</sup>.

## 2 Article 1 amended

In Article 1 of the principal Law the definition “Harbour Master” shall be deleted.

## 3 Article 2 amended

For Article 2(3) of the principal Law there shall be substituted the following paragraphs–

- “(3) The States may by Regulations make provision with respect to the management, regulation and control of any burial ground.
- (4) Regulations under this Article may provide for burial authorities –
  - (a) to issue directions; and
  - (b) to charge fees,in respect of such matters as the Regulations may prescribe.”.

## 4 Article 3 substituted

For Article 3 of the principal Law there shall be substituted the following Article–

### “3 Inspection and maintenance of burials grounds

- (1) An officer in an administration of the States for which the Minister for Health and Social Services is assigned responsibility may at any reasonable hour inspect any burial ground

to ascertain whether it is being maintained so as to minimise any risk to the health, safety or welfare of persons visiting the burial ground.

- (2) If the officer considers that the burial ground does present such a risk to health, safety or welfare, he or she may serve on the burial authority responsible for maintaining the burial ground a notice requiring the burial authority to take such steps to minimise the risk as are specified in the notice within such period exceeding 21 days as is specified in the notice.
- (3) A burial authority served with a notice under this Article may, within 21 days of such service, appeal to the Royal Court on the grounds that the action taken by the officer was, in all the circumstances, unreasonable, and the Court may cancel, affirm or vary the notice.
- (4) If a burial authority fails to comply with the notice, unless an appeal is pending, the Minister for Health and Social Services may –
  - (a) take the steps specified in the notice; and
  - (b) recover from the burial, authority, as a debt due to the Minister, the expenses reasonably incurred by the Minister in doing so.
- (5) A person who obstructs an officer carrying out an inspection under paragraph (1) or a person carrying out the functions of the Minister under paragraph (4) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.”.

## **5 Article 8 amended**

For Article 8(2)(b) of the principal Law there shall be substituted the following sub-paragraph –

- “(b) at sea in accordance with a licence granted by the Minister for Planning and Environment under section 5 of the Food and Environment Act 1985 (as extended to Jersey by the Food and Environment Act 1985 (Jersey) Order 1987).”.

## **6 Article 11 amended**

In Article 11(2)(b) for the words “prescribe fees to be paid” there shall be substituted the words “authorize the charging of fees”.

## **7 Citation and commencement**

This Law may be cited as the Burials and Exhumations (Amendment) (Jersey) Law 200- and shall come into force on the same day that the Burials and Exhumations (Jersey) Law 2004 comes into force.

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[1]

L.22/2004