

STATES OF JERSEY

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DRAFT DISEASES OF ANIMALS (AMENDMENT No. 6) (JERSEY) LAW 200

**Lodged au Greffe on 8th February 2005
by the Environment and Public Services Committee**

STATES GREFFE



Jersey

DRAFT DISEASES OF ANIMALS (AMENDMENT No. 6) (JERSEY) LAW 200

European Convention on Human Rights

The President of the Environment and Public Services Committee has made the following statement –
In the view of the Environment and Public Services Committee the provisions of the Draft Diseases of Animals (Amendment No. 6) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

A further amendment to the Diseases of Animals (Jersey) Law 1956 is required in order to be able to introduce legislation in the Island equivalent to Regulation (EC) No. 999/2001 of the European Parliament and of the Council of 22nd May 2001 laying down the rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (e.g. BSE).

This draft Law is intended to enhance the enforcement provisions of the Diseases of Animals (Jersey) Law 1956 by increasing the powers of inspectors with respect to the inspection and seizure of animals, carcasses and prohibited substances and creating offences of failing to give assistance and information and giving false information to persons enforcing the Law. Various general provisions connected with offences under the Law are also included. These amendments came about as a result of an initiative to help prevent the spread of BSE. It had been hoped to provide for a ban on the feeding of certain animal proteins to livestock, and to ban their use as a fertiliser by the swift means of an Order under the 1956 Law. However, it was discovered that the means of enforcing the ban under this Law were ineffective and the Committee has had to propose other legislative means to achieve the same effect by means of Community Regulations imposing a ban on feeding (P.27/2005) and an amendment to the Fertilisers and Feeding Stuffs (Jersey) Law 1950 (P.28/2005). At the same time the Committee is bringing forward these amendments to the 1956 Law, which are of general application, so that in future it will be possible for the Committee to act quickly and more economically, by means of an Order under the 1956 Law.

The original Agriculture and Fisheries Committee's Act requesting these changes to legislation is dated 10th January 2002 and was submitted to the Law Draftsman's Office on 9th January 2003. Thereafter, it took some months to consider the complexities of the legislative framework and to take advice from the Law Officers' Department, resulting in the proposal for 3 separate pieces of legislation. Final drafts were sent out in March 2004, but delay since has been occasioned by the proposed transfer of functions to the Environment and Public Services Committee, which did not in the event take place until November 2004.

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

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 3rd February 2005 the Environment and Public Services Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Environment and Public Services Committee the provisions of the Draft Diseases of Animals (Amendment No. 6) (Jersey) Law 2000 are compatible with the Convention Rights.

Explanatory Note

This draft Law enhances the enforcement provisions of the Diseases of Animals (Jersey) Law 1956 so as to –

- (a) increase the powers of inspectors exercising the power of entry under Article 32 of that Law with respect to matters such as inspection and seizure of animals, carcasses and prohibited substances and to provide for the service of notices requiring certain things to be done in connection with various powers under the Law (*Article 2*);
- (b) create new offences of failing to give assistance or information and giving false information, and to include standard provisions in respect of secondary parties and corporate liability (*Article 3*);
- (c) include new provision with respect to offences committed due to the fault of another person and to provide a defence of due diligence (*Article 4*).



Jersey

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Arrangement

Article

- 1 Interpretation
- 2 Articles 32A and 32B inserted
- 3 Article 36 amended
- 4 Article 36A inserted
- 5 Citation and commencement



Jersey

DRAFT DISEASES OF ANIMALS (AMENDMENT No. 6) (JERSEY) LAW 200

A LAW to amend further the Diseases of Animals (Jersey) Law 1956.

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

In this Law “principal Law” means the Diseases of Animals (Jersey) Law 1956^[1]

2 Articles 32A and 32B inserted

After Article 32 of the principal Law^[2] there shall be inserted the following Articles –

“32A Further powers of inspectors

- (1) An inspector may make such enquiries and carry out such investigations as the inspector considers necessary for any purpose connected with the administration or enforcement of this Law or any Order.
- (2) Where an inspector exercises a power of entry under Article 32, the inspector may–
 - (a) ascertain whether any diseased animal or any substance is being or has been kept on the premises;
 - (b) examine any animal, carcase or substance;
 - (c) make such tests and take such samples as the inspector considers necessary;
 - (d) mark for identification purposes any animal, carcase or substance;
 - (e) serve a notice prohibiting or regulating the movement of any animal, carcase or substance or to require its disposal in accordance with any Order;
 - (f) serve a notice under Article 32B(1) or (2) or carry out or cause to be carried out the requirements of such a notice under Article 32B(3);
 - (g) seize any animal, carcase or substance or serve a notice in connection with the seizure;
 - (h) slaughter any animal in accordance with Article 7 or serve a notice in connector

with such slaughter;

- (i) serve a notice requiring any cleansing and disinfection in accordance with any Order, or carry out or cause to be carried out such cleaning and disinfection;
- (j) examine and take copies of any record, including any computer record; and
- (k) ascertain whether there is or has been any contravention of this Law or any Order or whether there is any evidence of any such contravention.

- (3) No person except an inspector shall remove or otherwise interfere with any mark applied under paragraph (2)(d).
- (4) If the Bailiff or a Jurat is satisfied that there is reasonable ground for an inspector to exercise the power of entry under Article 32 and either—
 - (a) that admission to the premises has been refused, or a refusal is expected, and that notice of the intention to apply for a warrant has been given to the occupier; or
 - (b) that an application for admission, or the giving of such a notice, would defeat the purpose of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is absent,

the Bailiff or Jurat, as the case may be, may issue a warrant authorizing an inspector to enter the premises if need be by reasonable force.

- (5) If an inspector enters any premises by virtue of a warrant issued under this Article the inspector shall at the time of entry —
 - (a) if the occupier is on the premises, serve a copy of the warrant on that person; or
 - (b) in any other case leave a copy of the warrant in a conspicuous place on the premises.
- (6) The occupier of premises entered by an inspector under Article 32, or by virtue of a warrant issued under this Article, and the occupier's employees and any person on the premises who is or has been in possession or charge of any animal, carcase or substance that is or has been on the premises shall —
 - (a) provide such reasonable facilities and reasonable assistance to the inspector and comply with such reasonable requirements as the inspector considers necessary for any purpose connected with the administration or enforcement of this Law or any Order; and
 - (b) if required by an inspector, give such information as he or she possesses as to —
 - (i) any animal, carcase or substance which is or has been on the premises,
 - (ii) any animal or carcase with which any animal, carcase or substance that is or has been on the premises may have come into contact, and
 - (iii) the location, transport and movement of any animal, carcase or substance that is or has been in his or her possession or charge.

- (7) An inspector entering any premises under Article 32, or by virtue of a warrant issued under this Article, may be accompanied by such other persons as the inspector considers necessary to give adequate assistance.
- (8) If such premises are unoccupied the inspector shall leave them as effectively secured against unauthorized entry as they were prior to entry.
- (9) A person on whom a notice under this Article is served shall comply with the notice at his or her own expense and if the person fails to so comply, an inspector may arrange for the notice to be complied with at the person's expense.

- (10) In this Article —

'substance' means any substance the possession, transportation, sale or supply of which is prohibited by an Order for the purpose of preventing the spread of disease;

'premises' means any place with respect to which an inspector has a power of entry under Article 32.

32B Disposal and recall of prohibited substances

- (1) Where an inspector finds any substance that is possessed, transported, sold or supplied in contravention of any Order the inspector may serve a notice on the person in possession of the substance requiring the person to dispose of it and any other substance with which it has come into contact, in such manner and within such period as may be specified in the notice.
- (2) An inspector may serve on any person who has sold or supplied any substance the sale or supply of which is prohibited by an Order a notice requiring that person to collect at the person's own expense that substance from the person to whom it was sold or supplied, or from any other person to whom it may have subsequently been sold or supplied, and to transport it to such place and within such time as may be specified in the notice.
- (3) If any person on whom a notice is served under paragraph (1) or (2) contravenes the notice an inspector may, without prejudice to any proceedings arising out of such default, carry out or cause to be carried out the requirements of the notice, and the amount of any expenses reasonably incurred by the inspector in doing so shall be recoverable by the Committee from the person on whom the notice was served."

3 Article 36 amended

In Article 36 of the principal Law^[3] –

- (a) after paragraph (1)(b) there shall be inserted the following subparagraphs –

“(ba) if he fails to give to any person acting in the execution of this Law any assistance or information which that person may reasonably require for the purpose of carrying out any functions under this Law; or

(bb) if he furnishes to any person acting in the execution of this Law any information which he knows to be false or misleading; or”;

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

“(1A) Nothing in paragraph (1)(ba) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate the person.”; and

- (c) after paragraph (2) there shall be added the following paragraphs–

“(3) A 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.

(4) 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.

(5) Where the affairs of a body corporate are managed by its members, paragraph (4) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.”.

4 Article 36A inserted

After Article 36 there shall be inserted the following Article^[4] –

“36A Offences due to fault of another person and defence of due diligence

- (1) Where the commission by any person of an offence under this Law is due to the act or default of some other person, that other person shall be guilty of the offence.
- (2) A person may be charged with and convicted of the offence by virtue of paragraph (1) whether or not proceedings are taken against another person.
- (3) In any proceedings for an offence under this Law, it shall, subject to paragraph (4), be a defence for the person charged with the offence to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence personally or by a person under his or her control.
- (4) If in any case the defence provided by paragraph (3) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless –
 - (a) at least 7 clear days before the hearing; and
 - (b) where he or she has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance,
the person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.
- (5) In paragraph (4) any reference to appearing before a court shall be construed as including a reference to being brought before a court.”.

5 Citation and commencement

This Law may be cited as the Diseases of Animals (Amendment No. 6) (Jersey) Law 2009 and shall come into force on the seventh day following its registration.

[1] *Tome VIII, page 533, Volume 1994-1995, page 307 and Volume 2000, page 897.*

[2] *Tome VIII, page 555.*

[3] *Tome VIII, page 558.*

[4] *Tome VIII, page 559.*