

STATES OF JERSEY



DRAFT EXPLOSIVES (AMENDMENT) (JERSEY) LAW 201-

Lodged au Greffe on 26th February 2018
by the Minister for Home Affairs

STATES GREFFE



Jersey

DRAFT EXPLOSIVES (AMENDMENT) (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Minister for Home Affairs, the provisions of the Draft Explosives (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy K.L. Moore of St. Peter**

Minister for Home Affairs

Dated: 22nd February 2018

REPORT

Introduction

In May 2014, the Minister for Home Affairs approved for lodging *au Greffe* the Draft Explosives (Jersey) Law 201-. The purpose of the Law was to update Jersey's explosives legislation (the previous Law dated back to 1970) through introducing a new definition of explosives (aligned with that as defined elsewhere in the British Isles) by reference to the UN Recommendations on the Transport of Dangerous Goods.

The Draft Law was adopted by the States Assembly on 3rd July 2014. The Law was granted Royal Assent on 8th October 2014 and registered by the Royal Court on 17th October 2014. Article 82 provided that the Law would come into force by Appointed Day Act(s).

During the initial drafting process for the Law, it was agreed by the Minister for Home Affairs that improved and more robust Regulations for fireworks should be established, under the primary Law, in order to exercise control over their type, amount, storage, transport and use, similar to arrangements already in existence elsewhere in the British Isles.

Articles 44 to 53 of the Law accordingly provide for Fireworks Regulations to be made by the States Assembly which allow for the enhanced protection of persons, animals and property. Given the extent of these Regulations, the entry into force of the primary Law was postponed until the Regulations had been drafted and were ready to be lodged *au Greffe*.

Work to draft these new Regulations for fireworks has been ongoing since 2017 and, during this process, it was recognised that further amendments would also be required to the Explosives Law, principally to provide an enabling power for the States Assembly to make Regulations for all types of pyrotechnic articles, as defined in the amendments, which includes fireworks.

Summary of key amendments to the Law

In view of the principles and Regulations already set elsewhere in the British Isles and EU, it was established that it would be necessary to redefine the term 'firework' in the primary Law to 'pyrotechnic article' as this encompasses those pyrotechnical articles such as marine flares and vehicle airbags, which would have fallen outside of any new Regulations made within the existing Law definition.

Further research established that the meaning of explosive also required amending, in particular to clarify that pyrotechnical articles are explosives for the purpose of the Law. In order to provide for similar future scenarios, this amendment allows the Minister by Order to designate any article, substance or preparation as an explosive or class of explosive for the purpose of the Law and/or the new Regulations (see Article 4 of the amendment).

As Members will be aware, firework displays are no longer confined to the traditional 5th November celebrations; often displays are requested for religious events, and for events such as the Battle of Flowers, Royal Jubilees, or for New Year celebrations. Events such as these occasionally lead to complaints being received by the authorities regarding the use of fireworks without permission being granted, or being used without giving notice to those who may be affected. In order to place some control over this, Article 8 of the amendment seeks to amend the Law to specify times when

fireworks or other pyrotechnical articles may be supplied or used, and when public displays may be operated. The amendment also permits the Minister to prescribe by Order other times during which fireworks or pyrotechnical articles may be supplied or used, or other times during which fireworks displays may be operated.

As was outlined in the [Report](#) accompanying the 2014 Law, the new Regulations will propose that the Parish Connétable be the licensing authority for displays in their Parish. As such, it was seen as appropriate to provide authority for the Honorary Police in each Parish to deal with minor offences at Parish Hall level. Article 15 of the amendment therefore seeks to amend the Law to provide that where a person (who is charged with any offence under the proposed Pyrotechnical Articles Regulations) accepts the decision of a Centenier at a Parish Hall Enquiry, that Centenier may impose a fine of level 1 on the standard scale (£200). If a person did not accept the decision of the Centenier, the matter would then be dealt with by the Courts. The 2014 Law already provides for offences that would, from the outset, fall outside the jurisdiction of a Parish Hall Enquiry.

All other amendments are minor changes to wording, and further explanations of these changes can be found in the draftsman's Explanatory Note.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for Home Affairs, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

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

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Notes on the Draft Explosives (Amendment) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Explosives (Amendment) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law will amend the Explosives (Jersey) Law 2014 (the “principal Law”), primarily to provide power for the States to make Regulations in respect of all types of pyrotechnic articles. It also makes provision for the fire service to charge for giving advice in relation to fireworks, and grants to Centeniers the power to impose fines at parish hall enquiries for minor offending behaviour.

The draft Law engages certain provisions of the ECHR, which are addressed in turn.

Article 1 of Protocol No. 1 – Right to the peaceful enjoyment of possessions

Article 1 of Protocol 1 of the ECHR (“A1P1”) is a qualified right guaranteeing a person’s right to his or her property; one’s possessions may only be interfered with where such is in accordance with the law and for the ‘general interest’. The measure must also be proportionate to the aim pursued. States have a considerable margin of appreciation in determining the existence of a problem of general public concern and in implementing measures designed to meet it.

The draft Law has the potential to engage A1P1 in all provisions made in, and under it, that restrict the use of “explosives”, a class of property in the principal Law that the draft Law amends to include “pyrotechnic articles”. A1P1 is also engaged by some of the powers given to inspectors in respect of explosives (which now includes pyrotechnic articles) and with regard to their seizure and forfeiture in Part 12 of the principal Law.

A pyrotechnic article is an article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions, unless it falls into one of the categories described in paragraphs (b) to (f) of the new definition (Article 2(c) of the draft Law). The draft Law amends the principal Law such that “firework” means a pyrotechnic article intended for entertainment purposes and “explosive” includes pyrotechnic articles.

Furthermore, Article 8 of the draft Law amends the principal Law to grant a power to the Minister to prescribe by Order times during which fireworks or other pyrotechnic materials may be supplied or used or other times during which fireworks displays may be operated where pyrotechnic articles Regulations specify times during which pyrotechnic articles may be supplied or used, or public fireworks displays operated (new Article 44(4A)).

Licensing and regulating the use of pyrotechnic articles amounts to an interference with possessions (i.e. the pyrotechnic articles) for the purposes of A1P1. However, there is no difficulty in establishing that the controls in the principal Law, as extended to all types of pyrotechnic articles by the draft Law, pursue and are proportionate in principle to the general interest of protecting public safety.

The powers of an inspector under the Law to take a sample of an explosive (Article 6(c) of the principal Law) and of a designated inspector to seize an explosive (Article 68 of the principal Law) or to dispose of an explosive (Article 69 of the principal Law), and the power of a designated inspector or the Royal Court to order the forfeiture of explosives (Article 70 of the principal Law), may amount to deprivations of property that interfere with A1P1. However, these powers should be justified as proportionate in the circumstances and in view of the safeguards applied to them. In particular, it is noted that a designated inspector's powers of seizure and disposal may only be exercised where he or she reasonably suspects or believes that the explosives are defective and constitute a danger to persons or property, which would operate to prevent excessive use of any seizure or forfeiture power. Once more, given the pressing social need to ensure public safety, such powers are proportionate to the general interest.

Therefore, the draft Law's widening of the scope of the term "explosives" in the principal Law to include pyrotechnic articles, and the draft Law's extension of provisions of the principal Law relating to controlling the use of fireworks so as to be exercisable in respect of all pyrotechnic articles, is compatible with A1P1.

Article 8 – Right to respect for private and family life

Article 8 of the ECHR ("A8") provides that everyone has the right to respect for his private and family life, his home and his correspondence. As a qualified right, interferences with A8 may be justified where they are in accordance with the law, in pursuit of a legitimate aim and necessary in a democratic society. The legitimate aims in relation to A8 are, among other things, that interference is necessary in the interests of public safety.

The principal Law contains powers of inspection in Part 12 which engage the A8 right to respect for private and home life. Any interference with A8, pursuant to an exercise of those powers, would be deemed to be in accordance with the law and would be regarded as being in pursuit of the legitimate aim of protecting public safety. Inspection powers would also be considered "necessary" for the purposes of A8(2) as they are an essential means of obtaining evidence of offences, the prosecution of which is necessary for enforcing a system of controls aimed at ensuring public safety. Part 12 also contains a number of safeguards against excessive interference with the A8 right through the exercise of the inspection power, for example the clear definition of the powers of inspectors, restrictions on the times that searches can be made, a specification as to who can accompany inspectors, and the requirement for a warrant in some cases. On this basis, the powers of inspectors are compatible with A8 in principle.

The draft Law, by extending the provisions of the principal Law to cover all pyrotechnic articles, simply operates in this context to expand the scope of articles in respect to which the inspection powers may be exercised. The inspection powers in the principal Law are compatible in principle with the A8 and, accordingly, the amendments in the draft Law do not affect the ECHR assessment of the principal Law's Part 12 provisions.

Article 6 – Right to a fair trial

Article 6 of the ECHR (“A6”) provides that in the determination of a person’s civil rights and obligations or of any criminal charge against that person, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 15 of the draft Law amends Article 52 of the principal Law to provide that where person who is charged with any offence under the pyrotechnic articles Regulations accepts the decision of a Centenier having jurisdiction in the matter, then that Centenier may impose summarily a fine of level 1 on the standard scale. Within the meaning of A6, even a minor financial penalty will attract the necessary protections under A6 where the penalty is deemed to have a clear deterrent and punitive purpose. As such, the amended Article 52 must provide a right to an independent and impartial court or tribunal established by law.

Any person charged with an offence under the pyrotechnic articles Regulations may elect not to accept the decision of the Centenier, and in such cases the charge would be dealt with in the usual way by the Royal Court. As such, the A6 requirement that everyone be entitled to a hearing by an independent and impartial tribunal established by law is satisfied.

Explanatory Note

This Law amends the Explosives (Jersey) Law 2014, principally to provide power for the States to make Regulations in respect of all types of pyrotechnic articles, as defined, which includes fireworks.

Article 1 defines “principal Law”, an expression used in this Law as the Explosives (Jersey) Law 2014.

Article 2 amends Article 1 of the principal Law to re-define “firework”, define “pyrotechnic article” and substitute for the definition “Fireworks Regulations” the definition “Pyrotechnic Articles Regulations”, which are Regulations that may be made under Article 44 of the principal Law.

Article 3 replaces all references in the principal Law to “Fireworks Regulations” with references to “Pyrotechnic Articles Regulations”.

Article 4 amends Article 2 of the principal Law to clarify that pyrotechnic articles are explosives for the purpose of that Law and to provide power for the Minister to designate any article, substance or preparation as an explosive or a class of explosive for the purposes of the Pyrotechnic Articles Regulations.

Article 5, amends Article 3 of the principal Law to provide that Parts 2, 3, 4, 5, 6, 7 and 8 of the principal Law shall apply to pyrotechnic articles (which include fireworks) if and to the extent that the States, by Pyrotechnic Articles Regulations, apply them.

Article 6 amends Article 38 of the principal Law so that the restriction on importing explosives shall not apply in relation to explosives that are fireworks or other pyrotechnic articles, in the case of which the Minister may grant an export licence authorizing export from Jersey to any or all of the other Channel Islands.

Article 7 amends the heading to Part 9 of the principal Law so that it now refers to both fireworks and pyrotechnic articles. Part 9 contains the power to make Regulations in respect of fireworks and other pyrotechnic articles.

Article 8 amends Article 44 of the principal Law to enable the States to make Regulations in relation to fireworks and other pyrotechnic articles.

Article 8 also amends Article 44 of the principal Law to provide that if Pyrotechnic Articles Regulations specify times during which fireworks or other pyrotechnic articles may be supplied or used or times during which public fireworks displays may be operated, those Regulations may permit the Minister to prescribe by Order other times during which fireworks or other pyrotechnic materials may be supplied or used or other times during which fireworks displays may be operated.

Article 9 amends Article 45 of the principal Law so that the power to make Regulations that include provision prohibiting persons from acquiring or supplying, or being in possession of, fireworks to persons who have not attained the age of 18 years is extended so as to be exercisable in respect of all pyrotechnic articles.

Article 10 amends Article 46 of the principal Law so that the power to make Regulations that include provision prohibiting persons from supplying, acquiring, possessing or using fireworks of any description specified in the Regulations except during hours and days so specified is extended so as to be exercisable in respect of all pyrotechnic articles.

Article 11 amends Article 47 of the principal Law to that the power to make Regulations that include provision prohibiting certain persons from acquiring, possessing or supplying fireworks of certain descriptions is extended so as to be exercisable in respect of all pyrotechnic articles.

Article 12 amends Article 49 of the principal Law so that the power to make Regulations that include provision prohibiting certain persons from supplying, exposing for supply or possessing for supply any fireworks of a description so specified, unless they are licensed and the fireworks are supplied, exposed for supply or kept at premises that are so licensed, is extended so as to be exercisable in respect of all pyrotechnic articles.

Article 13 amends Article 50 of the principal Law so that the power to make Regulations that include provision for securing that appropriate information is given in relation to fireworks is extended so as to be exercisable in respect of all pyrotechnic articles.

Article 14 amends Article 51 of the principal Law so that the power to make Regulations specifying conditions relating to the satisfactory completion of courses of training about fireworks and provision as to who may provide the training in relation to fireworks is extended so as to be exercisable in respect of all pyrotechnic articles.

Article 15 amends Article 52 of the principal Law to provide that a person who is convicted of an offence under the Pyrotechnic Articles Regulations would be liable to imprisonment for a term of 2 years or to a fine (with no specified limit) or both.

Article 15 also amends Article 52 of the principal Law to provide that where a person who is charged with any offence under the Pyrotechnic Articles Regulations accepts the decision of a Centenier having jurisdiction in the matter, then that Centenier may impose a fine of £200 (being level 1 on the standard scale).

Article 16 amends Article 53 of the principal Law so that the defence available in respect of the supply of fireworks to young persons is extended to the supply of other pyrotechnic materials.

Article 17 amends Article 74 of the principal Law to enable the Minister to prescribe fees for the provision of technical or other advice by any person.

Article 18 gives the title of this Law and provides for it to come into force immediately after the coming into force of Part 9 of the principal Law. (That Law is not yet in force and will be brought into force on a day that the States by Act appoints.)



Jersey

DRAFT EXPLOSIVES (AMENDMENT) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT EXPLOSIVES (AMENDMENT) (JERSEY) LAW 201-

A **LAW** to amend the Explosives (Jersey) Law 2014.

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 Explosives (Jersey) Law 2014¹.

2 Article 1 amended

In Article 1 of the principal Law –

- (a) for the definition “fireworks” there shall be substituted the following definition –

“ ‘firework’ means a pyrotechnic article intended for entertainment purposes;”;

- (b) the definition “Fireworks Regulations” shall be deleted;

- (c) after the definition “public service vehicle” there shall be inserted the following definitions –

“ ‘pyrotechnic article’ means an article which contains explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions and which –

- (a) has not been supplied before the coming into force of the first Pyrotechnic Articles Regulations;

- (b) is not intended for non-commercial use by –

- (i) the armed forces,

- (ii) the States of Jersey Police Force,
 - (iii) the States of Jersey Fire and Rescue Service;
 - (c) is not intended for use in the aerospace industry;
 - (d) is not a percussion cap intended specifically for toys falling within the scope of Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ L 170, 30.6.2009, p. 1);
 - (e) is not an explosive falling within the scope of Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonization of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (OJ L 96, 29.3.2014, p. 1); and
 - (f) is not a projectile, propelling charge or blank ammunition used in portable firearms, other guns or artillery;
- ‘Pyrotechnic Articles Regulations’ means Regulations made under Article 44;”.

3 Amendment of references to “Fireworks Regulations”

In the principal Law, for the words “Fireworks Regulations” in every place where they appear there shall be substituted the words “Pyrotechnic Articles Regulations”.

4 Article 2 amended

In Article 2 of the principal Law –

- (a) in paragraph (2)(d), after the word “fireworks” there shall be inserted the words “and other pyrotechnic articles”;
- (b) for paragraph (9) there shall be substituted the following paragraph –
 - “(9) Without derogation from the preceding provisions of this Article, the Minister may by Order designate any article, substance or preparation as an explosive or a class of explosive for the purposes of this Law or the Pyrotechnic Articles Regulations, and may do so generally or particularly and for all purposes or for such purposes as may be specified in the Order.”.

5 Article 3 amended

In Article 3(1) and (2) of the principal Law, for the word “fireworks” there shall be substituted the words “pyrotechnic articles”.

6 Article 38 amended

In Article 38(3) of the principal Law after the word “fireworks” there shall be added the words “or other pyrotechnic articles”.

7 Part 9 amended

In the heading to Part 9 of the principal Law, after the word “FIREWORKS”, there shall be added the words “AND OTHER PYROTECHNIC ARTICLES”.

8 Article 44 amended

In Article 44 of the principal Law –

- (a) in the heading and in paragraphs (1) and (2), after the word “fireworks” wherever they appear there shall be added the words “and other pyrotechnic articles”;
- (b) after paragraph (4) there shall be inserted the following paragraph –
 - “(4A) If Pyrotechnic Articles Regulations specify times during which –
 - (a) fireworks or other pyrotechnic articles may be supplied or used; or
 - (b) public fireworks displays may be operated,those Regulations may permit the Minister to prescribe by Order other times during which fireworks or other pyrotechnic articles may be supplied or used or other times during which fireworks displays may be operated.”.

9 Article 45 amended

In Article 45 of the principal Law –

- (a) in the heading after the word “fireworks” there shall be added the words “and other pyrotechnic articles”;
- (b) in paragraphs (1) and (2), after the word “fireworks” there shall be added the words “or other pyrotechnic articles”.

10 Article 46 amended

In Article 46 of the principal Law –

- (a) in the heading after the word “fireworks” there shall be added the words “and other pyrotechnic articles”;
- (b) in paragraphs (1) and (2), after the word “fireworks” there shall be added the words “or other pyrotechnic articles”.

11 Article 47 amended

In Article 47 of the principal Law –

- (a) in the heading after the word “fireworks” there shall be added the words “and other pyrotechnic articles”;
- (b) in paragraphs (1)(a) and (b), (2)(a) and (b) and (4)(a), (b) and (c), after the word “fireworks” there shall be added the words “or other pyrotechnic articles”.

12 Article 49 amended

In Article 49(1) and (3) of the principal Law, after the word “fireworks” wherever they appear there shall be added the words “or other pyrotechnic articles”.

13 Article 50 amended

In Article 50 of the principal Law –

- (a) in the heading after the word “fireworks” there shall be added the words “and other pyrotechnic articles”;
- (b) in paragraphs (1) and (2)(a), after the word “fireworks” wherever it appears there shall be added the words “or other pyrotechnic articles”.

14 Article 51 amended

In Article 51 of the principal Law, after the word “fireworks” there shall be added the words “or other pyrotechnic articles”.

15 Article 52 amended

In Article 52 of the principal Law –

- (a) in paragraph (a) the word “and” shall be deleted;
- (b) in paragraph (b) for the full stop there shall be substituted the word “; and”;
- (c) after paragraph (b) there shall be inserted the following paragraph –
 - “(c) that where a person who is charged with any offence under the Regulations accepts the decision of a Centenier having jurisdiction in the matter, then –
 - (i) that Centenier may impose a fine of level 1 on the standard scale,
 - (ii) that where any fine is levied by a Centenier in pursuance of the powers conferred by this Article, the Centenier shall give a receipt for it and as soon as reasonably practicable, inform the Chief Officer of the States of Jersey Police Force of the details of the fine.”.

16 Article 53 amended

In Article 53 of the principal Law, after the word “fireworks” there shall be added the words “or other pyrotechnic articles”.

17 Article 74 amended

In Article 74(1)(b), after the word “applications” there shall be inserted the words “or for the provision of technical or other advice by any suitably qualified person as specified in the Order”.

18 Citation and commencement

This Law may be cited as the Explosives (Amendment) (Jersey) Law 201- and shall come into force immediately after the coming into force of Part 9 of the Explosives (Jersey) Law 2014².

¹ *chapter 23.125*
² *chapter 23.125*