

# STATES OF JERSEY

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## **DRAFT DATA PROTECTION (AMENDMENT) (JERSEY) LAW 200-**

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**Lodged au Greffe on 15th March 2005  
by the Finance and Economics Committee**

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**STATES GREFFE**





Jersey

## **DRAFT DATA PROTECTION (AMENDMENT) (JERSEY) LAW 200-**

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

The President of the Finance and Economics Committee has made the following statement –

In the view of the Finance and Economics Committee the provisions of the Draft Data Protection (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

## **REPORT**

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Following the approval of the Data Protection (Jersey) Law 2005 there has been considerable successful consultation with interested parties in connection with the subordinate legislation necessary. However, this consultation has also revealed one major detail of potential incompatibility. This relates to a matter in relation to which the Trusts industry has, in the past, voiced serious concerns about the potential conflict between the new Data Protection (Jersey) Law 2005 and the Trusts (Jersey) Law 1984. Reassurances were given, at the time the primary law was approved, that this matter would be addressed in subordinate legislation. It was foreseen that the addition of Article 25 of the Trusts Law to the Regulation detailing exemptions from subject access (Data Protection (Subject Access Exemptions) (Jersey) Regulations 200-) would be the most effective and straightforward approach to this issue. Indeed, that approach was very much welcomed by the industry representatives.

It has transpired, however, that the Article of the Data Protection Law enabling the drafting of Regulations to exempt information from the subject information provisions (Article 38(1)) requires a minor technical amendment to ensure full compatibility with Article 25 of the Trusts Law.

Advice in this respect has been sought from the Attorney General who has now advised the Law Draftsman on appropriate wording to update Article 38(1) and subsequently include reference to Article 25 of the Trust (Jersey) Law 1984 within the Subject Access Exemptions Regulations. The opportunity has also been taken to include some other minor amendments.

These amendments to the Law are required at this stage in order to enable to drafting of subsequent Regulations to proceed in a manner compatible with the Law.

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 10th March 2005 the Finance and Economics Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Finance and Economics Committee the provisions of the Draft Data Protection (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

## **Explanatory Note**

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Article 38(1) of the Data Protection (Jersey) Law 2005 enables Regulations to be made exempting personal information from disclosure under certain provisions of that Law (the so-called subject information provisions).

Such an exemption is envisaged in cases where –

- (a) another enactment prohibits or restricts the disclosure;
- (b) Article 27(2) of the Data Protection (Jersey) Law 2005 would normally override that prohibition or restriction; and
- (c) the States nevertheless consider it necessary that the prohibition or restriction prevail in order to safeguard the interests of the person who is the subject of the personal information or the rights and freedoms of any other individual.

The object of the proposed Law is to make it clear that –

- (a) exemption Regulations may extend to situations where an enactment authorizes a person to withhold information, or a rule of customary law prohibits or restricts the disclosure of information or authorizes a person to withhold it; and
- (b) the enactment or rule of law concerned could be one of a jurisdiction outside Jersey.

At the same time, Article 27(2) is amended to keep its wording parallel to that of the revised Article 38(1) and a number of minor errors in other provisions are corrected.





Jersey

# DRAFT DATA PROTECTION (AMENDMENT) (JERSEY) LAW 200-

## Arrangement

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### Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 19 amended</u>
<u>3</u>	<u>Article 27 amended</u>
<u>4</u>	<u>Article 38 amended</u>
<u>5</u>	<u>Article 61 amended</u>
<u>6</u>	<u>Article 63 amended</u>
<u>7</u>	<u>Schedule 9 amended</u>
<u>8</u>	<u>Citation and commencement</u>







Jersey

## DRAFT DATA PROTECTION (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend the Data Protection (Jersey) Law 2005.

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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 Data Protection (Jersey) Law 2005.<sup>[1]</sup>

### 2 Article 19 amended

In Article 19(8) of the principal Law<sup>[2]</sup> for the words “such fee that has been paid” there shall be substituted the words “fee paid under this Article”.

### 3 Article 27 amended

For Article 27(2) of the principal Law<sup>[3]</sup> there shall be substituted the following paragraph –

“(2) Except as provided by or under this Part, the subject information provisions shall have effect notwithstanding any enactment or rule of law (whether an enactment or rule of law of Jersey or of another jurisdiction) prohibiting or restricting the disclosure, or authorizing the withholding, of information.”.

### 4 Article 38 amended

For Article 38(1) of the principal Law<sup>[4]</sup> there shall be substituted the following paragraph –

“(1) The States may by Regulations exempt from the subject information provisions personal data consisting of information –

- (a) the disclosure of which is prohibited or restricted, or
- (b) the withholding of which is authorized,

by or under any enactment or rule of law (whether an enactment or rule of law of Jersey or of another jurisdiction) to the extent that they consider it necessary, for safeguarding the interests of the data subject or the rights and freedoms of any other individual, that

the prohibition, restriction, or authority to withhold, prevail over the subject information provisions.”.

**5 Article 61 amended**

For Article 61(2) of the principal Law<sup>[5]</sup> there shall be substituted the following paragraph –

“(2) A person guilty of an offence under this Law shall be liable to a fine, except where this Law otherwise provides.”.

**6 Article 63 amended**

In Article 63(2) of the principal Law<sup>[6]</sup> for the words “This Law applies” there shall be substituted the words “The application of this Law extends”.

**7 Schedule 9 amended**

For paragraph 13 of Schedule 9 to the principal Law<sup>[7]</sup> there shall be substituted the following paragraph –

**“13 Offences**

A person who obstructs a person in the execution of a warrant or who fails without reasonable excuse to give the latter person such assistance as the latter person may reasonably require for the execution of the warrant commits an offence and shall be liable to a term of imprisonment of 6 months and to a fine.”.

**8 Citation and commencement**

This Law may be cited as the Data Protection (Amendment) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

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- [1] *Volume 2005, page 17.*
- [2] *Volume 2005, page 40.*
- [3] *Volume 2005, page 44.*
- [4] *Volume 2005, page 50.*
- [5] *Volume 2005, page 66.*
- [6] *Volume 2005, page 67.*
- [7] *Volume 2005, page 103.*