

# STATES OF JERSEY



## **DRAFT SUPPLY OF GOODS AND SERVICES (AMENDMENT) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 28th April 2010  
by the Minister for Economic Development**

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**STATES GREFFE**





Jersey

## **DRAFT SUPPLY OF GOODS AND SERVICES (AMENDMENT) (JERSEY) REGULATIONS 201-**

### **REPORT**

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Article 28 of the Supply of Goods and Services (Jersey) Law 2009 (“the Law”) sets out a warranty as to reasonable care and skill in the provision of services:

#### **“28 Warranty about care and skill**

In a contract for the supply of a service, if the supplier is acting in the course of a business, the supplier warrants that he or she will carry out the service with reasonable care and skill.”.

The Supply of Goods and Services (Jersey) Regulations 2010 (“the Regulations”) came into force on 27th January 2010. Regulation 3 of the Regulations provides:

#### **“3 Non-avoidance of certain implicit obligations: all contracts**

A term of a contract or agreement shall be void if it is a term that purports to exclude or restrict liability for breach of the obligations arising from –

- (a) ...
- (b) the supplier’s warranty under Article 28 of the Law, in the case of a contract for the supply of a service; or
- (c) ...”.

Regulation 3 therefore renders void any term of a contract for the supply of a service if the term restricts or excludes the operation of Article 28 of the Law.

It has recently been brought to the attention of the Economic Development Department that Regulation 3 goes further than the position in comparable jurisdictions, such as England and Wales, and Scotland. In these jurisdictions, there is no ‘blanket’ restriction on the exclusion of the implied warranty about care and skill because insurers will not give insurance to businesses to insure themselves against unlimited risks.

As Regulation 3 does not just relate to contracts where services are supplied to consumers, contracts for the supply of services by one business to another business are affected. Only certain limited kinds of contract are excluded, by Regulation 9, from the operation of the Regulations.

In its current form, Regulation 3 therefore has the potential to cause problems with the usual contractual provisions under which suppliers of professional services (e.g. accountants, auditors, architects, surveyors, lawyers) limit their liability to a specified monetary amount.

Since the aim of a contractual limitation of liability is to protect against claims in negligence, it is deemed prudent to amend Regulation 3 to assist, in particular, those professions where it is not possible to practise through an entity with limited liability.

The Amendment will therefore amend Regulation 3 in order to make it possible for contracts for the supply of a service to restrict or exclude the operation of Article 28 of the Law, but only to the extent that the restriction or exclusion is fair and reasonable.

### **Financial and manpower implications**

There are no financial or resource implications for the States arising from the adoption of these Draft Regulations.

## Explanatory Note

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Article 28 of the Supply of Goods and Services (Jersey) Law 2009 sets out a warranty as to reasonable care and skill in the provision of services:

**“28 Warranty about care and skill**

In a contract for the supply of a service, if the supplier is acting in the course of a business, the supplier warrants that he or she will carry out the service with reasonable care and skill.”.

Regulation 3 of the Supply of Goods and Services (Jersey) Regulations 2010 renders void any term of a contract for the supply of a service if the term restricts or excludes the operation of Article 28 of the Law.

The object of these Regulations is to reword Regulation 3 in order to make it possible for such a contract to restrict or exclude the operation of Article 28 of the Law, but only to the extent that the restriction or exclusion is fair and reasonable.





Jersey

## **DRAFT SUPPLY OF GOODS AND SERVICES (AMENDMENT) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 94 of the Supply of Goods and Services (Jersey) Law 2009<sup>1</sup>, have made the following Regulations –

### **1 Regulation 3 substituted**

For Regulation 3 of the Supply of Goods and Services (Jersey) Regulations 2010<sup>2</sup> there shall be substituted the following Regulation –

#### **“3 Certain implicit obligations: all contracts**

- (1) A term of a contract or agreement shall be void if it is a term that purports to exclude or restrict liability for breach of the obligations arising from –
  - (a) any of the seller’s warranties under Article 21 or 24 of the Law, in the case of a contract of sale of goods; or
  - (b) any of the supplier’s warranties under Article 32 of the Law, in the case of a hire-purchase agreement.
- (2) A term of a contract for the supply of a service shall, unless the term is fair and reasonable, have no effect if it is a term that purports to exclude or restrict liability for breach of the obligations arising from the supplier’s warranty under Article 28 of the Law.”.

### **2 Citation and commencement**

- (1) These Regulations may be cited as the Supply of Goods and Services (Amendment) (Jersey) Regulations 201-.
- (2) These Regulations shall come into force forthwith.

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- <sup>1</sup> *chapter 05.800*  
<sup>2</sup> *R&O.4/2010*