

STATES OF JERSEY



DRAFT DRAINAGE (AMENDMENT) (JERSEY) LAW 201-

Lodged au Greffe on 15th January 2014
by the Minister for Transport and Technical Services

STATES GREFFE



Jersey

DRAFT DRAINAGE (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 Transport and Technical Services has made the following statement –

In the view of the Minister for Transport and Technical Services, the provisions of the Draft Drainage (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy K.C. Lewis of St. Saviour**

Minister for Transport and Technical Services

Dated: 13th January 2014

REPORT

Background

Under the Drainage (Jersey) Law 2005, the Minister for Transport and Technical Services acts as the sewerage undertaker and flood defence authority for Jersey.

Under Part 3 of the 2005 Law, the Minister is responsible for, *inter alia*, the granting and administration of Consents in respect of premises on the Island that discharge trade effluent to the Public sewerage network. The Transport and Technical Services Department also discharges trade effluent to the network, and therefore under the current regime the Minister, as he would do in respect of discharges by Third Parties, issues a Trade Effluent Consent for these operations. In that situation, the Minister is exercising both a regulatory and operational function.

However, in contrast to other environmental legislation enacted in Jersey, the 2005 Law does not provide for separate regimes in circumstances where the administering Department performs a dual role of both Regulator and Operator. For example, the Water Pollution (Jersey) Law 2000 provides for the issuing of “discharge certificates” in respect of “in-house” discharges by the Minister for Planning and Environment into controlled waters, as opposed to the granting of “discharge permits” in respect of such discharges by Third Parties. It is considered that an equivalent distinction now needs to be incorporated into Part 3 of the Drainage (Jersey) Law 2005, which is the main reason for this Draft Law.

The Draft Amendment Law

This relatively short, but important, Amendment is required to the Drainage (Jersey) Law 2005 in order to provide for a separate consenting regime under Part 3 of the 2005 Law in respect of discharges of trade effluent into the public sewerage network by the Transport and Technical Services Department itself. Since the Department will in those circumstances be acting as both Regulator and Operator, the Draft Law incorporates appropriate provisions to ensure that transparent and independent ‘checks and balances’ will apply in relation to such discharges.

Accordingly, the Amendment Law provides that discharges by the Minister for Transport and Technical Services will, in future, be subject to a discharge certification regime rather than the current discharge consenting regime. However, discharge consents will continue to apply to “external” trade effluent discharging by Third Parties.

If enacted, the Amendment Law will provide that –

- (i) There will be a requirement for the Minister for Transport and Technical Services to have to publicly advertise his proposals to issue or vary Trade Effluent Discharge Certificates in respect of trade effluent discharges by his Department into the public sewerage network.
- (ii) There will be an opportunity for members of the public, etc., to object to those proposals.
- (iii) The Minister for Transport and Technical Services will be under a duty to consider any objections received before issuing or varying a Trade Effluent Certificate.
- (iv) Moreover, objectors will have the right to seek a review of the proposals by the Royal Court.

- (v) In any event, H.M. Attorney General will be able, at any time, to seek a review by the Royal Court of the Minister's decision to issue or vary a Trade Effluent Certificate, with a further right of appeal to the Court of Appeal.
- (vi) The Minister for Transport and Technical Services will be under a duty to make relevant information relating to Trade Effluent Certificates available to the public. In particular –
 - Proposals for the issuing or varying of Trade Effluent Certificates
 - Objections or representations received following the advertising of those proposals
 - Results of samples taken in accordance with the Conditions of Trade Effluent Certificates
- (vii) Finally, it will be a criminal offence for the Minister for Transport and Technical Services to introduce trade effluent into the public sewerage network without a Trade Effluent Certificate (or to do so in breach of the Conditions thereby imposed).

There is also a provision in the Amendment Law for a 12 month 'grace period' to enable the Department to prepare, advertise and issue the requisite Trade Effluent Certificates. Basically, during that interim period, the existing Trade Effluent Consenting regime will remain in force.

The introduction of this Amendment Law will bring the Drainage (Jersey) Law 2005 into line with other environmental legislation in the Island.

Financial and manpower implications

The Amendment Law, when enacted, will not have any financial or manpower implications for the States.

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 Note on the draft Drainage (Amendment) (Jersey) Law 201-

1. This note has been prepared in respect of the draft Drainage (Amendment) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ Opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).
2. The draft Law amends the Drainage (Jersey) Law 2005 (“**the principal Law**”) mainly to specifically prohibit trade effluent from being discharged from trade premises that are vested in or operated by the Minister for Transport and Technical Services unless the Minister has issued a trade effluent discharge certificate for that purpose. Before issuing such a certificate, the Minister is required to give notice of the proposed discharge and take into consideration any representations made on the proposals. Provisions requiring a trade effluent discharge consent are already contained in Part 3 of the principal Law, but are now expressed not to apply in respect of trade premises vested in or operated by the Minister.
3. Article 10 of the ECHR – Freedom of speech
4. Article 10 of the ECHR is engaged by the introduction of Article 27B into the principal Law, which deals with the public notice of the Minister’s proposals for discharge of effluent.
5. Article 10 of the ECHR provides the following –
 - “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”
6. Article 10 of the ECHR therefore recognizes that “everyone has the right to freedom of expression”, and that this right includes “freedom to hold opinions and to receive and impart information and ideas without interference”. This principle in Article 10 of the ECHR is provided for in Article 27B of the principal Law, which gives a person the opportunity to make representations in respect of a proposal within a specific timeframe. Accordingly, no human rights concerns are raised by that Article.

Article 8 of the ECHR – The right to privacy

7. Article 8 of the ECHR, which deals with the right to privacy, is engaged by certain provisions of the draft Law.

8. Article 8 of the ECHR provides the following –
- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”.
9. Article 8 of the ECHR is engaged by –
- (1) the power of the Minister to receive representations with regard to a proposal for the Minister to issue or vary a trade effluent discharge certificate in respect of premises vested in or operated by the Minister (being inserted as Article 27B of the principal Law by *Article 5* of the draft Law);
 - (2) the power of the Minister to permit access to information in the Minister’s possession that is relevant to representations made to the Minister and other matters under Part 3A of the principal Law (being inserted as Article 27E of the principal Law by *Article 5* of the draft Law);
 - (3) the admissibility in evidence of information that is provided by or obtained from any person under any condition of a trade effluent discharge certificate (provided by the amendment to Article 46 of the principal Law being introduced by *Article 9* of the draft Law).
10. The information received, shared and admissible under Articles 27B, 27E and 46 of the principal Law may include personal data which would constitute a means of identifying a person making a representation and concerns his or her private life. The protection of personal data is of fundamental importance to a person’s enjoyment of private and family life and, as a result, its disclosure to the public or to a third party will constitute an interference with private life under Article 8 of the ECHR.
11. Any interference with the Article 8(1) right must be justified under Article 8(2) of the ECHR, meaning that it must be: (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out in Article 8(2); and (c) necessary in a democratic society. ‘Necessity’ requires the identification of a pressing social need¹ and the existence of “*relevant and sufficient*” reasons to justify the interference at issue². A measure will only be proportionate to the legitimate aim if supported by sufficiently persuasive reasons³. In general, public interest in disclosure must outweigh the individual’s right to privacy, having regard to the aim pursued and the safeguards surrounding its use.
12. The nature of the interference constituted by the draft Law would be deemed to be ‘*in accordance with the law*’; the provisions of the draft Law have a basis in domestic law and can be viewed as sufficiently precise and accessible, therefore being foreseeable⁴. The rationale for the provisions being introduced into the principal Law by the draft Law is to ensure that the Minister is able to receive all relevant information that will allow the Minister to decide the appropriate action required with regard to the discharge of effluent for trade premises vested in or

¹ *Dudgeon -v- UK* (1981) 4 EHRR 149 (para. 53).

² *Olsson -v- Sweden* (1988) 11 EHRR 259 (para. 68)

³ *Dudgeon -v- UK* (1981) 4 EHRR 149 (para. 54)

⁴ *Malone -v- the United Kingdom*, 2nd August 1984, §§ 66–68, Series A No. 82

operated by the Minister, and to be able to collect associated information for the performance of his functions. In supporting these objectives, the Law would fall neatly within the categories of justification in Article 8(2) of the ECHR of being “*in the interest of public safety*” as well as “*for the protection of health*”.

13. In terms of what is ‘*necessary in a democratic society*’, there must be a pressing social need for the interference in question⁵. In the present case, clearly the interest of public safety and the protection of public health is a pressing social need in Jersey and stringent regulation is ‘*necessary*’ for ensuring the availability of effluent discharge services that would not offend public health and safety. Information gathering and sharing powers are “*necessary*” in order to obtain evidence of compliance and contravention, thus complimenting the regulatory functions of the relevant public authorities. Taken as a whole, the proposed powers appear proportionate, when supported by the strength of rationale for maintaining effective regulation of the health and social services.
14. Identifying procedural safeguards which mitigate the exercise of powers interfering with private life is an important step in determining whether that interference is ‘*necessary in a democratic society*’⁶. Safeguards ensure that a state remains within its margin of appreciation in fixing the applicable regulatory framework⁷.
15. The safeguards afforded in the draft Law with regard to the receipt of information and information sharing powers are found in Article 27E(5), which provides the Minister with the discretion to refuse to make available information to be specified in Schedule 4 to the principal Law (which includes information relating to matters to which domestic or personal confidentiality attaches, and information which cannot be separated from information relating to matters to which domestic or personal confidentiality attaches).
16. The Data Protection (Jersey) Law 2005 also contains safeguards which allow for compliance with Article 8 of the ECHR and which the Minister would be required to comply with.
17. Further, in receiving or sharing personal information, the Minister is, by virtue of Article 7 of the Human Rights (Jersey) Law 2000, required to act in a manner which is compatible with the ECHR.

Article 6 right to a fair hearing

18. Article 6 of the ECHR is engaged by Article 27D of the principal Law (being introduced by Article 5 of the principal Law), which provides for the Minister to make an administrative decision to issue or vary, suspend or cancel a trade effluent discharge certificate and for the Minister’s decision to be subject to review by the Royal Court.
19. Article 6(1) of the ECHR provides that –

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private

⁵ *Dudgeon -v- UK* (1981) 4 EHRR 149 (para. 53)

⁶ Human Rights Practice R.17: March 2009, para. 8.061;

Miailhe -v- France (1993) 16 EHRR 332

⁷ *Connors -v- UK*, App. No. 66746/01; (2005) 40 EHRR 9 (para. 83)

life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”.

20. It was held in *Albert -v- Belgium*⁸ that access to an “*independent and impartial*” tribunal required under Article 6 of the ECHR may be granted in 2 ways: either the decision-making body itself (i.e. the Minister or officers of the Department of the Environment) complies with the requirement of Article 6(1), or the decision-making body is subject to control by a body which complies with the requirements of Article 6(1) and which has full jurisdiction. So, in effect, it is possible for decisions that affect civil rights to be made by administrative bodies that do not provide all the guarantees of Article 6(1), provided there is a right of review or appeal sufficient to render the proceedings as a whole compatible with Article 6(1)⁹.
21. The Royal Court has the power to confirm, reverse or vary the Minister’s decision to issue a trade effluent discharge certificate. In this case, the review by the Royal Court will no doubt satisfy the requirements of a fair hearing before an independent and impartial tribunal with full jurisdiction required by Article 6(1) of the ECHR. Further, the Royal Court is obliged under Article 7 of the Human Rights (Jersey) Law 2000 to exercise that discretion in a manner that is compatible with the ECHR, and therefore with the requirements of Article 6 of the ECHR.

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

⁸ *Albert Le Compte -v- Belgium* Series A No. 58 (1983) 5 EHRR 533

⁹ *Ibid* 3 at para. 6.106

Explanatory Note

This Law amends the Drainage (Jersey) Law 2005 (“principal Law”), mainly to prohibit trade effluent from being discharged from trade premises that are vested in or operated by the Minister for Transport and Technical Services (“the Minister”) unless the Minister has issued a trade effluent discharge certificate. Before issuing such a certificate the Minister is required to give notice of the proposed discharge and take into consideration any representations made on the proposals.

Article 1 defines “principal Law”, an expression used throughout this Law, as the Drainage (Jersey) Law 2005.

Article 2 amends Article 1 of the principal Law so as to introduce the definition “trade effluent discharge certificate” and extend the definition “vary” so that “vary” means to vary the terms and conditions of a trade effluent discharge consent (required for all trade premises other than those vested in or operated by the Minister) or a trade effluent discharge certificate (required for trade premises that are vested in or operated by the Minister).

Article 16 of the principal Law restricts discharges of certain matter into sewers and drains. The restriction does not apply to an act done or omission made in accordance with a trade effluent discharge consent. *Article 3* of this Law amends Article 16(6) of the principal Law so that the restriction also does not apply to an act done or an omission made in accordance with a trade effluent discharge certificate. The definition “petroleum spirit” contained in Article 16(2) is also amended to reflect the amended definition in the Petroleum (Jersey) Law 1984 and in section 23 of the Petroleum (Consolidation) Act 1928 (c.32) of the United Kingdom, resulting from a different testing method for petroleum spirit now being used.

Part 3 of the principal Law sets out the process for trade premises to be granted a trade effluent discharge consent from the Minister. This process currently applies in respect of effluent discharges from all trade premises, including those vested in or operated by the Minister. *Article 4* amends the sub-heading to Part 3 of the principal Law to make clear that Part 3 does not apply to trade premises vested in or operated by the Minister and inserts Article 19A which provides that Part 3 does not apply to such premises. Instead, Part 3A will apply in respect of such premises.

Article 5 inserts Part 3A, comprising Articles 27A to 27F, into the principal Law.

Article 27A(1) provides that Part 3A applies in respect of trade premises vested in or operated by the Minister. Article 27A(2) prohibits any person from causing or knowingly permitting trade effluent to be discharged from any trade premises vested in or operated by the Minister into a public sewer or public outfall, or into a sewer or drain that discharges directly or indirectly into any public sewer or public outfall, unless the discharge is authorized by a trade effluent discharge certificate issued by the Minister in accordance with Part 3A. By Article 27A(3), a person who contravenes Article 27A(2) will be guilty of an offence and liable to imprisonment for a term not exceeding 2 years and a fine.

Article 27B provides that if the Minister proposes to issue a trade effluent discharge certificate, or to vary a trade effluent discharge certificate, in respect of any trade premises vested in or operated by the Minister, the Minister must publish a notice in the Jersey Gazette. The notice must contain the information set out in that Article, including where and when a copy of the proposal will be available for inspection, and the time limit for anyone to make representations. Article 27B(2) requires the

Minister's proposal to contain the information referred to in Article 27C, together with any conditions that the Minister proposes to impose in respect of the discharge authorized by the certificate. Under Article 27B(3), the Minister may send a copy of the proposal to such persons he or she considers appropriate. Article 27B(4) to (6) describe how a person wishing to make representations, or review a decision, may do so, and Article 27B(6) requires the Minister to delay making a decision on the proposal until the time limits for making representations have elapsed, and to consider all representations when making his or her decision.

Article 27C sets out the information that must be included in the proposal. This information reflects the conditions that the Minister may impose when issuing a trade effluent discharge consent under Part 3 of the principal Law.

Article 27D requires the Minister to serve a copy of the trade effluent discharge certificate, within 14 days of issuing it, on any person to whom he or she sent a copy of the proposal and to every person who has made representations under Article 27B(4).

Article 27D(1) permits the Minister to issue, vary, suspend or cancel a trade effluent discharge certificate and Article 27D(4) provides that a certificate or a decision to vary a certificate takes effect from a date to be specified in the certificate or the variation, but not sooner than 21 days after the Minister has served a copy of it as required by the Article. Under Article 27D(3), the certificate must contain the conditions (if any) on which the discharge will be made. Articles 27D(5) and (6) permit any person who has made representations under Article 27B(4) in respect of the proposal to apply to the Court, on notice to the Minister, to review the decision within 21 days after being served with a written copy of the certificate (or within such further time as the Court may allow). Article 27D(7) gives the Attorney General power to apply to the Court at any time, on notice to the Minister, to review the decision. Article 27D(8) enables Rules of Court to be made to provide for the manner in which applications for review under this Article may be brought, heard and determined. Article 27D(9) provides that unless the Court orders to the contrary, an application for review under this Article will not operate to stay the effect of a trade effluent discharge certificate, or its variation, pending the determination of the application. Article 27D(10) provides that on hearing an application for review, the Court may confirm, reverse or vary the Minister's decision to issue or to vary a trade effluent discharge certificate and may make such order as to the costs as it thinks fit. Article 27D(11) gives the Attorney General power to appeal to the Court of Appeal against a decision of the Royal Court under this Article. Article 27D(12) provides that a person who contravenes any condition contained in a trade effluent discharge certificate issued under Part 3A is guilty of an offence and liable to imprisonment for a term not exceeding 2 years and a fine.

Article 27E requires the Minister to make available any information in his or her possession that is relevant to representations made in respect of trade effluent discharge proposals, certificates, variations of certificates, results of analyses of samples taken by the Minister or records kept as required under Article 27C. It provides the times when the information must be available and that copying facilities must also be made available. It gives power to the Minister to make an Order prescribing the charges for providing information or facilities for copying information. Article 27E(5) to (7) makes provision for certain material not to be made available, introduces Schedule 4 and gives power to the States to amend the Schedule by Regulations.

Article 27F makes savings provisions in respect of trade effluent discharge consents that have been issued before the coming into force of this Law for premises that will now fall under Part 3A so that they will remain valid for 12 months after the coming into force of this Law. Where there is no valid consent granted under Part 3 in force before the coming into force of this Law (whether or not an application has been made for a consent which is pending) the Minister is required to comply with the requirements of Part 3A in respect of those premises as soon as reasonably practicable and in any event, within 12 months of the coming into force of this law. No offence is committed under Article 27A of the Law in respect of the premises to which Article 27F(1) and (2) applies until the expiry of 12 months following the coming into force of this Law.

Article 6 amends Article 34 of the principal Law so as to extend powers of entry given to the Minister (or to a person appointed an authorized person by the Minister under Article 7 of the principal Law) so that those persons may also exercise powers of entry for the purposes of Part 3A.

Article 7 amends Article 43 of the principal law so that it is an offence to provide a false or misleading statement when required to give information to the Minister or to another person under a condition of a trade effluent discharge certificate.

Article 45 of the principal Law states that when offences committed by limited liability partnerships or bodies corporate are committed with the consent or connivance of, or attributable to any neglect on the part of a person who is a partner in the partnership or a director, secretary or other similar officer of the body corporate, then that person shall also be guilty of the offence. *Article 8* amends Article 45 so as to provide for this to be the case when an offence is committed by a separate limited partnership.

Article 9 amends Article 46 of the principal Law so as to provide that in any civil or criminal proceedings under the principal law, information that is provided by or obtained from any person under any condition of a trade effluent discharge certificate is admissible in evidence against that person.

Article 10 adds Schedule 4 to the Law. Schedule 4 sets out the information that does not need to be disclosed under Article 27E.

Article 11 gives the title to this Law and provides that it comes into force 7 days after it is registered in the Royal Court.



Jersey

DRAFT DRAINAGE (AMENDMENT) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT DRAINAGE (AMENDMENT) (JERSEY) LAW 201-

A LAW to amend the Drainage (Jersey) Law 2005

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 Drainage (Jersey) Law 2005¹.

2 Article 1 amended

In Article 1(1) of the principal Law –

- (a) after the definition “trade effluent” there shall be inserted the following definition –

“ ‘trade effluent discharge certificate’ means a trade effluent discharge certificate that is issued by the Minister under Part 3A;”;

- (b) for the definition “vary”, there shall be substituted the following definition –

“ ‘vary’, when used in respect of a trade effluent discharge consent or a trade effluent discharge certificate, means to vary a term or condition of the trade effluent discharge consent or the trade effluent discharge certificate, as the case may be;”.

3 Article 16 amended

In Article 16 of the principal Law –

- (a) for paragraph (2) there shall be substituted the following paragraph –

“(2) In this Article, ‘petroleum-spirit’ has the same meaning as in section 23 of the Petroleum (Consolidation) Act 1928 (c.32) of the United Kingdom.”.

(b) for paragraph (6) there shall be substituted the following paragraph –

“(6) Paragraph (1) does not apply to an act done or an omission made in accordance with a trade effluent discharge consent or a trade effluent discharge certificate.”.

4 Part 3 of Law not to apply to trade premises vested in or operated by the Minister

(1) In the Sub-heading to Part 3 of the principal Law after the words “TRADE EFFLUENT” there shall be added the words “EXCEPT TRADE EFFLUENT AT TRADE PREMISES VESTED IN OR OPERATED BY THE MINISTER”.

(2) Immediately before Article 20 there shall be inserted the following Article –

“19A Application of Part 3

This Part shall not apply in respect of trade effluent at any trade premises vested in or operated by the Minister.”.

5 Part 3A inserted

After Article 27 of the principal Law there shall be inserted the following Part –

“PART 3A

TRADE EFFLUENT AT TRADE PREMISES VESTED IN OR OPERATED BY THE MINISTER

27A Trade effluent discharge certificate required

(1) This Part applies in respect of trade effluent at any trade premises vested in or operated by the Minister.

(2) No person shall cause or knowingly permit trade effluent to be discharged from any trade premises vested in or operated by the Minister –

(a) into a public sewer or public outfall; or

(b) into a sewer, or drain, that discharges directly or indirectly into any public sewer or public outfall,

unless the discharge is authorized by a trade effluent discharge certificate issued by the Minister in accordance with this Part.

- (3) Any person who contravenes paragraph (2) shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding 2 years and a fine.

27B Public notice of Minister's proposals for discharge of effluent

- (1) If the Minister proposes to issue a trade effluent discharge certificate, or to vary a trade effluent discharge certificate, in respect of any trade premises vested in or operated by the Minister, the Minister shall publish a notice in the Jersey Gazette –
 - (a) stating that a copy of the proposal will be available for inspection free of charge at a place specified in the notice;
 - (b) specifying the period for which it will be available for inspection (being a period of not less than 21 days beginning after the notice is published in the Jersey Gazette);
 - (c) specifying times, during reasonable office hours, when it may be inspected; and
 - (d) explaining the effect of paragraphs (4) and (5),and the Minister shall make a copy of the proposal available accordingly for inspection.
- (2) The Minister's proposal to issue or vary a trade effluent discharge certificate shall contain the information referred to in Article 27C, together with any conditions that the Minister proposes to impose in respect of the discharge authorized by the certificate.
- (3) The Minister shall send a copy of the proposal to such persons as he or she considers appropriate.
- (4) Any person who wishes to make representations in respect of the proposal may do so by delivering them in writing to the Minister –
 - (a) at any time before the expiry of 7 days following the period for inspection; or
 - (b) within 21 days after receiving under paragraph (3) a copy of the proposal,whichever is the later date.
- (5) If a person who delivers such representations wishes to have the right under Article 27D(5) to apply to the Court to review a decision made by the Minister in respect of a trade effluent discharge certificate or a variation of such a certificate, the person shall also provide in writing, to the Minister, an address for service in Jersey.
- (6) The Minister –
 - (a) shall not proceed to make a decision on the proposal until the time limits for making representations under this Law have elapsed; and

- (b) in determining the proposal, shall consider all representations made under this Law in respect of the proposal.

27C Trade effluent discharge proposal

A trade effluent discharge proposal shall include such of the following information as is relevant to the proposal –

- (a) the times at or between which it is proposed to discharge the trade effluent;
- (b) the location of the sewer, drain or outfall into which it is proposed to discharge the trade effluent, together with a plan that shows the route by which the trade effluent would be discharged from the trade premises;
- (c) the proposed volume of trade effluent to be discharged, and the highest rate at which it is proposed to be discharged;
- (d) whether it is proposed that cooling water will be excluded from the trade effluent;
- (e) how it is proposed to eliminate, before the trade effluent enters the sewer, drain or outfall, any constituents of the effluent that the Minister considers would (either alone or in combination with any matter with which the effluent is likely to come into contact while passing through any sewer, drain or outfall) injure any person or prejudicially affect or otherwise damage or obstruct any public sewer, public sewage disposal works or public outfall or render the treatment or disposal of sewage particularly difficult or expensive;
- (f) how it is proposed to eliminate acids and alkalis from the trade effluent before it is discharged;
- (g) how it is proposed that persons would be able to take samples of the trade effluent, and what provision is proposed in respect of the maintenance of inspection chambers, manholes or other sampling points that would enable persons to take readily, at any time, such samples;
- (h) the proposed provision and maintenance of any meters that are required to measure the volume of the trade effluent that is being discharged or the rate at which it is being discharged;
- (i) the proposed provision and maintenance of any apparatus that is required for determining the nature, composition or quality of the trade effluent that is being discharged;
- (j) the proposal for keeping proper records of the volume or rate of discharge, nature, composition or quality of the trade effluent and, in particular, proper records of readings of meters and other recording apparatus provided;
- (k) the proposal for the provision of one or more separate discharge points; and

- (1) the proposal for applying any treatments or processes, to minimize the risk of any prejudicial effects or injury to persons or damage to any public sewer, public sewage disposal works or public outfall because of the discharge of the trade effluent.

27D Trade effluent discharge certificate

- (1) The Minister may issue, vary, suspend or cancel a trade effluent discharge certificate.
- (2) Within 14 days after the Minister has issued or varied a trade effluent discharge certificate the Minister shall serve a written copy of the certificate on –
 - (a) any persons to whom he or she sent a copy of the proposal under Article 27(B)(3); and
 - (b) every person who has made representations under Article 27B(4).
- (3) The Minister shall specify in the trade effluent discharge certificate the conditions (if any) on which the discharge will be made.
- (4) A trade effluent discharge certificate or a decision to vary a trade effluent discharge certificate shall take effect from a date to be specified in the certificate or the variation, by the Minister (being not sooner than 21 days after the Minister complies with paragraph (1) in respect of his or her decision).
- (5) Where the Minister issues or varies a trade effluent discharge certificate, any person who –
 - (a) has made representations under Article 27B(4) in respect of the proposal to do so; and
 - (b) has provided an address for service in Jersey,may apply to the Court to review the decision.
- (6) An application under paragraph (5) shall be made –
 - (a) within 21 days after the applicant is served with a written copy of the trade effluent discharge certificate or its variation (or within such further time as the Court may allow); and
 - (b) on written notice to the Minister.
- (7) Where the Minister issues or varies a trade effluent discharge certificate, the Attorney General may apply to the Court at any time, on notice to the Minister, to review the decision.
- (8) Rules of Court may provide for the manner in which applications for review under this Article shall be brought, heard and determined.
- (9) Unless the Court so orders, the lodging of an application for review under this Article shall not operate to stay the effect of a trade effluent discharge certificate, or its variation, pending the determination of the application.

- (10) On hearing an application for review, the Court –
 - (a) may in its own judgment confirm, reverse or vary the Minister's decision to issue a trade effluent discharge certificate or to vary such a certificate; and
 - (b) may make such order as to the costs of the review as it thinks fit.
- (11) The Attorney General shall have a right of appeal to the Court of Appeal against a decision of the Royal Court under this Article.
- (12) A person who contravenes any condition contained in a trade effluent discharge certificate issued under this Part shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding 2 years and a fine.

27E Minister to permit access to information

- (1) The Minister shall make available such information as is in the Minister's possession that is relevant to the following matters –
 - (a) representations made to the Minister under Article 27B(4);
 - (b) proposals for and the issue, variation, suspension or cancellation of a trade effluent discharge certificate;
 - (c) the results of analyses of samples taken by the Minister; and
 - (d) records kept under Article 27C(j).
- (2) The information shall be available for inspection by any person during reasonable office hours, as soon as possible after it is requested and in any event within 28 days.
- (3) The Minister shall also provide facilities for copying the information.
- (4) The Minister may by Order prescribe reasonable charges for providing information and facilities for copying under this Article.
- (5) The Minister may refuse to make available under this Article any information specified in Schedule 4.
- (6) Where the Minister refuses any request for information under this Article, the Minister shall give the applicant a statement in writing of his or her reasons for so refusing.
- (7) The States may by Regulations amend Schedule 4.

27F Savings and transitional provisions

- (1) If immediately before the coming into force of this Part a valid trade effluent discharge consent granted by the Minister under Article 22 is in force in respect of any trade premises to which this Part applies, that consent shall continue in force until the earlier of the date on which it is suspended or revoked under Part 3 and the date which falls 12 months after the commencement of this Part.

- (2) Despite Article 19A, Part 3 shall continue to apply in respect of discharges from trade premises vested in or operated by the Minister until the date on which the Minister has issued a trade effluent discharge certificate under this Part in respect of those premises or the date which falls 12 months after the commencement of this Part.
- (3) Article 27A(2) and (3) shall not have effect in respect of any premises to which paragraph (1) or (2) applies until 12 months after the commencement of this Part.”.

6 Article 34 amended

In Article 34(4) of the principal Law, after the words “Part 3” there shall be inserted the words “or Part 3A”.

7 Article 43 amended

In Article 43 of the principal Law –

- (a) in paragraph (a) after the word “application” there shall be inserted the words “or proposal”; and
- (b) in paragraph (b) after the word “consent” there shall be inserted the words “, or a trade effluent discharge certificate,”.

8 Article 45 amended

For Article 45(2) of the principal Law there shall be substituted the following paragraph –

- “(2) If an offence under this Law committed by a limited liability partnership, a separate limited partnership or a 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 a 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.”.

9 Article 46 amended

In Article 46(2) of the principal Law after the word “consent” there shall be inserted the words “or trade effluent discharge certificate”.

10 Schedule 4 added

After Schedule 3 of the principal Law there shall be inserted the following Schedule –

“SCHEDULE 4

(Article 27E(5))

INFORMATION THAT NEED NOT BE DISCLOSED

1. The Minister shall not be obliged under Article 27E to make available any information –
 - (a) affecting the confidentiality of the deliberations of any public or parish authority;
 - (b) relating to international relations, national defence or public security;
 - (c) relating to matters that are under enquiry (whether or not the enquiry is of a disciplinary nature) or to documents that are still in draft form or to any internal communications of a public or parish authority;
 - (d) relating to matters that are or have been the subject of legal or other proceedings (whether actual or prospective) or to any investigations undertaken with a view to such proceedings;
 - (e) relating to matters to which commercial or industrial confidentiality attaches (including matters of that character relating to intellectual property);
 - (f) relating to matters to which domestic or personal confidentiality attaches;
 - (g) supplied to the Minister by a person who was not under a legal obligation to do so;
 - (h) if the Minister, reasonably, is not satisfied of the reliability of the information;
 - (i) that cannot be separated, for the purpose of making it available, from information specified in any of paragraphs (a) to (h) (inclusive); or
 - (j) if the request for information is manifestly unreasonable or is formulated in too general a manner.
2. In this Schedule, a reference to a public authority includes a reference to the Council of Ministers and any Minister.”.

11 Citation and commencement

This Law may be cited as the Drainage (Amendment) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹ *chapter 22.075*