

STATES OF JERSEY

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DRAFT LEGAL DEPOSIT (JERSEY) LAW 200-

Lodged au Greffe on 5th July 2006
by the Minister for Education, Sport and Culture

STATES GREFFE



Jersey

DRAFT LEGAL DEPOSIT (JERSEY) LAW 200-

European Convention on Human Rights

The Minister for Education, Sport and Culture has made the following statement –

In the view of the Minister for Education, Sport and Culture the provisions of the Draft Legal Deposit (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator M.E. Vibert**

REPORT

Background

Objective 2.2 of the Cultural Strategy approved by the States in October 2005 recommends that the States of Jersey establish a legal deposit law. Legal Deposit Laws exist in most countries. They are designed to ensure that copies of all material published in a country are deposited in its national library. This law will ensure that copies of works that are published in Jersey are preserved and become part of Jersey's cultural heritage for the benefit of present and future generations.

The proposed Law applies to any work that is published in the printed medium and also those in any other as defined by Regulations.

Implications of legal deposit law in Jersey:

For publishers

Should the law be enacted, publishers would carry the cost of depositing one copy of each publication. This includes all States Departments and other official bodies. However, there is an advantage for all publishers in that the copy is made available to the public and is preserved as part of Jersey's published heritage. The Library will continue to purchase additional copies of locally published material within the normal library stock policy and procedure.

Financial implications for Jersey Library

It is impossible to predict the volume of future local publishing. At current rates, it is envisaged that the workload, equipment and storage associated with the deposit materials will be managed within the existing library allocation.

Other legislation that may impact upon legal deposit

Draft Copyright (Jersey) Law 200-. This draft Law permits librarians from the prescribed library to copy material, both print and non-print, in certain circumstances. This permission is essential to ensure the preservation of some legal deposit materials.

Planning implications

There are no planning implications.

Staffing implications

It is not envisaged that this legislation will require additional staff.

Human Rights Compliance

A letter from the States of Jersey principal Legal Adviser (28th March 2006) confirms that the draft Law is Human Rights compliant.

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 Minister 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 12th May 2006 the Minister for Education, Sport and Culture made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Education, Sport and Culture the provisions of the Draft Legal Deposit (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law would require a person who publishes a work in Jersey to deposit a copy with the Jersey Library. It will apply to any work that is published in the printed medium. This is defined as meaning –

- (a) a book (including a pamphlet, magazine or newspaper);
- (b) a sheet of music;
- (c) a map, plan, chart or table; or
- (d) a part of any such work.

The Law also enables the States to prescribe any other medium of publication – for example, on-line publication – for the purposes of the Law; and to define what constitutes the “deposit” of works in such a medium. A person who publishes a work in such a manner in Jersey will then be liable to deposit a copy accordingly with the Library.

In prescribing on-line publication as a medium, the States may define what constitutes on-line publication in Jersey.

The Law is set out in the following way:

PART 1

INTRODUCTORY PROVISIONS

Article 1 defines expressions that are used in the Law.

Article 2 declares that the object of the Law is to ensure that copies of works published in Jersey become part of the island’s cultural heritage.

Article 3 provides that the Law applies to all works in the printed medium.

It also provides that the Law will apply to works published in any other prescribed medium.

PART 2

DEPOSIT OF WORKS PUBLISHED IN JERSEY

Article 4 provides that the Jersey Library is to be the repository for deposited copies of published works.

Article 5 imposes a statutory duty on a person who publishes a work in Jersey to which the Law applies to deposit a copy with the Library at his or her own expense.

The work must be deposited within one month after its publication in Jersey.

Article 6 contains exceptions from the requirement to deposit a copy of a published work with the Library.

The requirement will not apply to a work that is substantially the same in its content as one that has already been published in the same medium since the Law has come into force.

It will not apply to a work either if the States by Regulations declare that the requirement is not to apply to it.

Article 7 provides that if the work is published in Jersey in more than one medium, and one of them is the printed medium, the copy that is to be deposited must be in the printed medium.

However, the Chief Librarian may in a particular case require the publisher to deposit it in any other medium in which it is so published.

Article 8 requires the deposited copy to be of the same quality as the best copies of the work published in that medium in Jersey.

Article 9 requires the Chief Librarian to keep deposited copies safely.

It also authorizes the Chief Librarian to copy, adapt or dispose of material contained in a deposited copy, if it is necessary or desirable to do so to preserve the deposited copy or to store it in a more suitable way.

It also prohibits the removal of a deposited copy from the Library's premises otherwise than for such purposes.

Article 10 requires the Chief Librarian to make deposited copies available for reference purposes within the Library's premises.

PART 3

EXEMPTIONS FROM LIABILITY

Article 11 exempts a publisher who complies with a duty to deposit a copy of a work with the Library from any liability for breach of contract that he or she might otherwise incur by doing so.

Article 12 exempts a publisher who complies with the duty to deposit from any liability for infringement of copyright that he or she might otherwise incur by doing so.

It also exempts the Minister for Education, Sport and Culture and persons acting on behalf of the Library from liability, for infringement of copyright by reason of copying any material in a deposited copy of a work or copying any on-line material for the purpose of the Law.

Article 13 exempts a publisher who complies with the duty to deposit a work from any liability for infringement of a patent that he or she might otherwise incur by doing so.

Article 14 exempts publishers, the Minister and persons acting on behalf of the Library from liability in damages, and from criminal liability, for defamation in respect of acts required or authorized to be done for the purpose of the Law. In the case of the Minister, the exemptions are subject to limitations where he or she knows that a publication contains a defamatory statement, or knows of circumstances from which that fact ought to have been known, and there has been a reasonable opportunity to take preventative steps. In respect of the copying of on-line material, the exemptions will in any case apply only in circumstances prescribed by the States by Regulations.

PART 4

OTHER PROVISIONS

Article 15 provides for the Attorney General to obtain an injunction in the Royal Court, to enforce compliance with the duty to deposit a copy of a published work with the Library, where a person has failed to carry out that duty.

Article 16 enables the States to make Regulations for the following purposes –

- (a) declaring that works in a medium other than the printed medium must be deposited under the Law;
- (b) declaring that the duty to deposit a copy of a work shall not apply to particular categories of works;
- (c) defining circumstances in which works in an on-line medium are to be regarded as being published in Jersey;
- (e) prescribing the manner of deposit of works in a medium other than the printed medium;
- (f) for the purposes of Article 14; and
- (g) authorizing the Chief Librarian to waive a requirement to deposit a copy of a work.

Article 17 provides for the manner in which the Law may be cited, and for it to come into force on a day to be appointed by the States, by Act.



Jersey

DRAFT LEGAL DEPOSIT (JERSEY) LAW 200-

Arrangement

Article

PART 1

INTRODUCTORY PROVISIONS

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PART 2

DEPOSIT OF WORKS PUBLISHED IN JERSEY

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PART 3

EXEMPTIONS FROM LIABILITY

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Jersey

DRAFT LEGAL DEPOSIT (JERSEY) LAW 200-

A LAW to require the deposit in the Jersey Library of copies of works that are published in Jersey; to provide for their preservation as part of the cultural heritage of Jersey; and for related matters.

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 –

PART 1

INTRODUCTORY PROVISIONS

1 Interpretation

- (1) In this Law, unless the context otherwise requires –
- “book” includes a pamphlet, magazine or newspaper;
 - “deposited copy” refers to a copy of a work, and means a copy that is deposited under Article 5;
 - “Library” and “Jersey Library” mean the public library service of Jersey;
 - “medium” means any medium of publication, including in particular any form of on-line or off-line publication;
 - “Minister” means the Minister for Education, Sport and Culture;
 - “work in the printed medium” means –
 - (a) a book;
 - (b) a sheet of music;
 - (c) a map, plan, chart or table; or
 - (d) a part of any work to which any of sub-paragraphs (a), (b) and (c) refers.
- (2) In this Law, unless the context otherwise requires –
- (a) where Regulations define the circumstances in which the act of publishing a work otherwise than in the printed medium is to be treated as occurring in Jersey, a reference to the publishing of the work in Jersey shall be construed accordingly; and
 - (b) where Regulations prescribe the manner of deposit of a work that is not in the printed medium, a reference to the depositing of a copy of the work is to its deposit in that manner.

2 Object of Law

The object of this Law is to ensure that copies of works to which this Law applies that are published in Jersey are preserved and become part of Jersey's cultural heritage for the benefit of present and future generations.

3 Application of Law

- (1) This Law applies to a work that is published in the printed medium.
- (2) This Law applies to a work that is published in a medium other than the printed medium, if the States by Regulations declare that the Law applies to a work published in that other medium.

PART 2

DEPOSIT OF WORKS PUBLISHED IN JERSEY

4 Jersey Library to be the repository for copies of works

The Jersey Library shall be the repository for copies of works that are to be deposited under this Law.

5 Copies of work published in Jersey to be deposited with Library

- (1) A person who publishes in Jersey a work to which this Law applies shall deposit a copy of the work with the Library.
- (2) The work shall be so deposited at the person's own expense.
- (3) The person must comply with paragraph (1) within one month after first publishing the work in Jersey.

6 Exceptions from the duty to deposit

- (1) Article 5 does not apply to a work that is substantially the same in its content as one that has been published in Jersey in the same medium after this Law has come into force.
- (2) Article 5 does not apply to a work if the States by Regulations declare that the Article does not apply to that work.

7 Medium in which copy to be deposited

- (1) If the work is published in Jersey in more than one medium, and one of them is the printed medium, the deposited copy shall be in the printed medium.
- (2) However, if the Chief Librarian informs the person who must deposit the copy that it is to be deposited in another medium in which it is published in Jersey, the copy shall instead be in that other medium.

8 Quality of deposited copy

The deposited copy shall be of the same quality as the best copies of the work (in the medium in which the copy is deposited) that have been published in Jersey.

9 Deposited copies to be kept safely

- (1) The Chief Librarian shall keep the deposited copy safely.
- (2) If it is necessary or desirable to do so in order to preserve the deposited copy, the Chief Librarian may –
 - (a) copy, adapt or dispose of any material contained in the deposited copy; or
 - (b) store the deposited copy in a more suitable way.
- (3) The Chief Librarian shall not allow the deposited copy to be removed from the Library's premises otherwise than for a purpose to which paragraph (2) refers.

10 Deposited copies to be available for reference

The Chief Librarian shall make the deposited copy available within the Library's premises for use for reference.

PART 3

EXEMPTIONS FROM LIABILITY

11 Exemption from liability for breach of contract

By depositing a copy of a work or any other item with the Library in compliance with Article 5 or Regulations made under this Law, a person does not commit a breach of any contract that relates to any part of the work or item and to which the person is a party.

12 Exemption from liability for infringement of copyright

- (1) By depositing a copy of a work or any other item with the Library in compliance with Article 5 or Regulations made under this Law, a person does not infringe any copyright in respect of any part of that work or item.
- (2) None of the persons specified in paragraph (4) infringes any copyright by reason of the copying under Article 9(2) of any material contained in a deposited copy.
- (3) None of the persons specified in paragraph (4) infringes any copyright by reason of the copying for the purpose of this Law of any on-line material.
- (4) The persons to whom this paragraph refers are –
 - (a) the Minister for Education, Sport and Culture; and
 - (b) a person acting on behalf of the Library.

13 Exemption from liability for infringement of patent

By depositing a copy of a work or any other item with the Library in compliance with Article 5 or Regulations made under this Law, a person does not infringe any patent in respect of any part of that work or item.

14 Exemption from liability for defamation

- (1) If a person deposits a copy of a work or any other item with the Library in compliance with Article 5

- or Regulations made under this Law, the person is not liable in damages, or subject to any criminal liability, for defamation arising out of the doing by any person of any act that is required or authorized to be done under this Law in respect of that copy or other item.
- (2) However, paragraph (1) does not apply –
 - (a) where the person knows that the deposited copy or other item contains a defamatory statement; or
 - (b) in the case of liability for damages, where the person knows of facts or circumstances from which the person ought to know that the copy or other item contains a defamatory statement, and the person has had a reasonable opportunity since obtaining that knowledge to inform the Chief Librarian, and has not done so.
 - (3) If a person deposits a copy of a work or any other item with the Library in compliance with Article 5 or Regulations made under this Law, none of the persons specified in Article 12(4) is liable in damages, or subject to any criminal liability, for defamation arising out of the doing by any person of any act that is required or authorized to be done under this Law in respect of that copy or other item.
 - (4) However, paragraph (3) does not apply to the liability of the Minister–
 - (a) where he or she knows that the deposited copy or other item contains a defamatory statement; or
 - (b) in the case of liability for damages, where the Minister knows of facts or circumstances from which he or she ought to know that the copy or other item contains a defamatory statement, and the Minister has had a reasonable opportunity since obtaining that knowledge to prevent the doing of the act in respect of that copy or other item.
 - (5) If a work or any other item is published on-line, this paragraph applies to a copy of the work or other item (as the case requires) where –
 - (a) the work or other item is of a description specified in Regulations;
 - (b) the publication of the work or other item on-line, or a person publishing it on-line, is connected with Jersey in a manner specified in Regulations; and
 - (c) where Regulations prescribe conditions for the copying of such a work or item from on-line material, the copy of the work or other item is made from on-line material, in accordance with those conditions, by a person acting on behalf of the Library.
 - (6) If paragraph (5) applies to a copy of a work or other item, no person is liable in damages, or subject to any criminal liability, for defamation arising out of the doing by any person of any act that is required or authorized to be done under this Law in respect of that copy or other item.
 - (7) If paragraph (5) applies to a copy of a work or other item, paragraphs (3) and (4) apply to the liability of the Minister in damages, and his or her criminal liability, for defamation, arising out of the doing by any person of any act that is required or authorized to be done under this Law in respect of that copy or other item.
 - (8) Nothing in this Article imposes liability on a person.

PART 4

OTHER PROVISIONS

15 Compliance

If a person fails to comply with Article 5, the Attorney General may apply to the Royal Court for an injunction to enforce compliance by the person with that Article.

16 Regulations

The States may make Regulations for any of the following purposes –

- (a) declaring under Article 3(2) that this Law applies to a work published in a medium specified in the Regulations;
- (b) where a work is published in an on-line medium, defining the circumstances in which the act of publishing is to be treated as occurring in Jersey;
- (c) prescribing a manner of depositing under Article 5 a copy of a work that is published in a medium other than the printed medium;
- (d) where a copy of a work that is published in a medium other than the printed medium must be deposited under Article 5, requiring the person by whom it is published to deliver to the Library such information or data (whether in tangible form or other form) as the Regulations may prescribe, explaining how access may be obtained to the work;
- (e) prescribing a time limit for compliance with a requirement to which sub-paragraph (d) refers;
- (f) declaring under Article 6(2) that Article 5 does not apply to a work specified in the Regulations;
- (g) for a matter to which Article 14(5) refers;
- (h) authorizing the Chief Librarian (either unconditionally or in circumstances specified in the Regulations) to waive the requirement for deposit of a work of a description specified in the Regulations;
- (i) for such other matters as are reasonably necessary or incidental to the purpose of this Law.

17 Citation and commencement

- (1) This Law may be cited as the Legal Deposit (Jersey) Law 200-.
- (2) This Law comes into force on such day as the States may by Act appoint.

