

STATES OF JERSEY



DRAFT PRICE AND CHARGE INDICATORS (JERSEY) LAW 200-

**Lodged au Greffe on 5th June 2007
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT PRICE AND CHARGE INDICATORS (JERSEY) LAW 200-

European Convention on Human Rights

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

In the view of the Minister for Economic Development the provisions of the Draft Price and Charge Indicators (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

The Minister for Economic Development has responsibility for consumer protection legislative policy in the Island. The proposed introduction of a Goods and Services Tax (GST) in 2008 will result in a tax element to the retail prices charged to consumers for those goods and services. The question of how GST will be charged and indicated to consumers was considered by the States on 18th April 2007 during the debate on the GST Law.

There was some concern that what is actually a consumer protection issue, was in danger of clouding the general principles behind the need to introduce the GST Law.

At that sitting the Minister promised to attempt to bring to the States before the summer recess a Law which focuses only on the price marking issue. The Draft Prices and Charges (Jersey) Law 200- achieves that objective.

The main provision is that price indications should be inclusive of any goods and services tax which would be charged on a retail supply. However, the Draft Law provides for the States to make Regulations that would deal with many aspects of price displays to consumers. If this enabling Law is passed by the States then there will be a presumption in favour of inclusive pricing. The Minister will then propose Regulations with the detail and any possible exceptions. In the longer term it is envisaged that additional Regulations would be proposed for the introduction of the further consumer protection measures of inclusive unit pricing.

This would ensure that Jersey follows consumer protection provisions in existence throughout Europe and many other places in the world.

There are no financial or manpower implications for the States arising from the adoption of this Draft Law. (The additional work will be undertaken within Economic Development's existing resources.)

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires 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). On 4th June 2007 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Price and Charge Indicators (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law would enable the States, by Regulations, to require prices to be indicated for goods, and charges indicated for services, when they are offered for sale by retail. As a general rule, the price or charge would include any goods and services tax chargeable on the supply of the goods or services, although the States would have the power to make exceptions to the rule.

Article 1 is the interpretation provision.

Article 2 is the power for the States to make Regulations requiring the price of goods, or the charge for services, to be indicated when they are offered for sale by retail.

Paragraph (1) creates the power.

Paragraph (2) elaborates upon what may be included in the Regulations.

The Regulations can specify the way in which a price or charge is to be indicated. For example, they might require that the indication is clearly legible. If the indication relates to goods and is not affixed to them, they might require that it is displayed close to the goods, for example, on the shelf on which the goods are themselves displayed.

The Regulations can require that the price for goods or the charge for services is displayed by reference to a unit of measurement. An example of this might be to display the price of bottles of shampoo per 100ml of product, as well as the price per bottle. This would enable a purchaser to compare the respective cost of bottles of shampoo of different sizes.

The Regulations can require that prices and charges are not displayed in an inappropriate manner and can require amounts to be rounded up or down. For example, a price per 100ml for a product might be 10.085 pence. The Regulations may require this to be rounded to 10.1 pence.

The Regulations can make any failure to comply with the requirements in them an offence liable to a fine of up to level 3 on the standard scale (£2,000).

Paragraph (3) creates a general rule that a requirement to indicate a price or charge is to indicate the price or charge inclusive of any goods and services tax ("GST") which would be charged on their supply. However, there may be circumstances where inclusive marking is inappropriate, in which event paragraph (4) enables the States to make exceptions and, if wished, impose alternative requirements. For example, if a seller supplies both the retail and the wholesale trade, it might be most helpful to customers if the price of goods is indicated both inclusive of GST and exclusive of GST.

Paragraph (5) stipulates provisions that must be included in the Regulations in the event that non-compliance with them is made an offence.

Firstly, it provides that the person whose action or inaction causes the commission of the offence may be prosecuted for it, even though the requirement is imposed on another person, such as the retailer.

Secondly, it creates a defence. A person will not be guilty of an offence if its commission was due to a mistake, reliance on incorrect information, the act or inaction of another person, an accident, or another cause beyond the person's control, as long as the person took reasonable precautions and exercised due diligence to avoid the commission of the offence. If an accused intends to raise the defence on the ground that he or she was supplied with incorrect information or that the offence was due to another person's act or inaction, the accused must supply the person prosecuting with information about the identification of the person who supplied the information or whose action or inaction caused the offence. This information must be supplied at least 7 days before the proceedings for the offence commence. If it is not, the accused can only rely on the defence if the court so allows.

Article 3 provides inspectors (being the trading standards officers) with the necessary powers to enforce the Regulations. An inspector can make test purchases. An inspector can enter premises (other than a dwelling) at a

reasonable hour. An inspector has no power to force an entry and, if asked, must produce evidence of his or her authority as an inspector. An inspector can inspect and take samples of goods, ask for documents to be produced and make copies of them, and seize and detain goods and documents for the purposes of their examination or for the purposes of a prosecution.

A person who wilfully obstructs an inspector exercising these powers or who, without reasonable cause, does not give an inspector assistance or information that he or she may reasonably require, commits an offence for which the penalty is imprisonment for up to 6 months and/or a fine of up to level 4 on the standard scale (£5,000).

A person who, intending to deceive, produces misleading or false information commits an offence for which the penalty is imprisonment for up to 12 months and/or an unlimited fine.

Article 4 imposes restrictions on the use of information obtained by inspectors under Article 3. The information can only be disclosed in 3 circumstances: with the consent of the person giving it; if the disclosure is to a Minister or States' employee for the purposes of the Law; for the purposes of proceedings for an offence under the Law or for the purposes of civil proceedings connected with the Law.

Article 5 makes it an offence to aid, abet, counsel or procure the commission of, or to conspire, attempt or incite another person to commit, an offence under this Law or the Regulations.

Article 6 makes provision as to the liability of an officer or member where an offence is committed by a body corporate or limited liability partnership.

Article 7 creates rights for a person whose goods or documents are seized under Article 3. The person may apply to the Royal Court for their release. The Court may order release if the goods or documents are no longer required for a criminal investigation or proceedings under the Law.

Article 8 creates rights for a person who suffers loss as a consequence of an inspector detaining goods under Article 3. The Minister for Economic Development is under an obligation to compensate the person if no offence has been committed under the Law in respect of the goods and if the detention of the goods was not attributable to any neglect or default by the person seeking compensation.

Article 9 cites the short title of the Law and provides for it to come into force 7 days after it is registered.



Jersey

DRAFT PRICE AND CHARGE INDICATORS (JERSEY) LAW 200-

Arrangement

Article

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Jersey

DRAFT PRICE AND CHARGE INDICATORS (JERSEY) LAW 200-

A LAW to enable the imposition of a requirement for prices to be indicated on or in relation to goods that are or may be for sale by retail, for charges to be indicated for services which may be provided, and for connected purposes.

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 –

“inspector” has the same meaning as in the Weights and Measures (Jersey) Law 1967^[1];

“Minister” means the Minister for Economic Development;

“Regulations” means Regulations made under Article 2.

2 Power to make Regulations requiring price and charge indicators

(1) The States may by Regulations require –

- (a) that prices are indicated on or in relation to goods which a person indicates are or may be for sale by retail, whether or not the goods are in existence when the person does so;
- (b) that charges are indicated for services which a person indicates are or may be provided, except services which the person indicates are or may be provided only for the purposes of business carried on by other persons;
- (c) that prices of such goods or charges for such services are not indicated in a manner which is inappropriate and that no part of a penny is specified in the amount of an indicated price or charge.

(2) Without prejudice to the generality of paragraph (1), Regulations made under this Article–

- (a) may make provision as to the manner in which any price or charge is to be indicated;
- (b) may require that the price or charge to be indicated on or in relation to any goods or services shall be, or shall include, a price or charge expressed by reference to such unit or units of measurement as may be specified in the Regulations;
- (c) may provide that a failure to comply with any requirement of the Regulations is an offence liable to a fine not exceeding level 3 on the standard scale.

- (3) Where a requirement imposed by Regulations made under this Article relates to goods or services on the supply of which goods and services tax is charged, the requirement shall be, subject to paragraph (4), that the price or charge indicated is inclusive of the tax.
- (4) Regulations made under this Article may make exceptions to the requirement in paragraph (3) and where an exception is made, may –
 - (a) require that the goods and services tax to be charged on the supply of the goods or services is indicated on or in relation to them or for them; and
 - (b) make provision as to the manner in which the tax is to be indicated.
- (5) Where Regulations made under this Article provide for a failure to comply with a requirement of the Regulations to be an offence, they shall also provide that –
 - (a) where the commission by a person of the offence is due to the act or default of some other person that other person shall be guilty of the offence and may be proceeded against and convicted of the offence pursuant to this sub-paragraph whether or not proceedings are taken against the first-mentioned person;
 - (b) in any proceedings for the offence under the Regulations it shall, subject to sub-paragraph (c) be a defence for the person charged to prove –
 - (i) that the commission of the offence was due to a mistake or to reliance on information supplied to him or her or to the act or default of another person, an accident or some other cause beyond his or her control, and
 - (ii) that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by him or her or by any person under his or her control;
 - (c) where, in any case, the defence provided by virtue of sub-paragraph (b) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he or she has served on the Attorney General a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

3 Powers of purchase and inspection

- (1) Inspectors may make purchases of goods and any contracts for services for the purpose of determining whether Regulations are being complied with.
- (2) An inspector may, at all reasonable times, and on production, if requested, of evidence of his or her authority, exercise the powers described in paragraph (3) for the purpose of determining whether an offence under Regulations has been committed.
- (3) The powers are –
 - (a) to inspect and take samples of any goods which are, or which the inspector has reasonable cause to believe are to be, offered or exposed for sale by retail and to enter any land or premises (other than premises used only as a private dwelling-house) for the purposes of such inspection or the taking of such samples;
 - (b) to require any person carrying on a business, or employed in or in connection with a business, of offering or exposing for sale by retail any goods or of providing services (other than services provided only for the purposes of business carried on by other persons), to produce any documents relating to the business;
 - (c) to make copies of documents produced under sub-paragraph (b);
 - (d) to seize and detain goods, if the inspector has reason to believe that their examination is likely to produce evidence of the commission of an offence under Regulations;

(e) to seize and detain any document or goods which the inspector has reason to believe may be required as evidence in proceedings for an offence under Regulations.

(4) A person who –

(a) wilfully obstructs an inspector acting under paragraphs (1) to (3);

(b) wilfully fails to comply with a requirement imposed under paragraph (3); or

(c) without reasonable cause, fails to give to an inspector acting under paragraphs (1) to (3) any other assistance or information which the inspector may reasonably require in the exercise of his or her powers under those paragraphs,

shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine of level 4 on the standard scale.

(5) A person who, with intent to deceive, produces or gives, in compliance with a requirement imposed under paragraph (3), a document or information which the person knows is or may be misleading, false or deceptive in a material particular shall be guilty of an offence and liable to imprisonment for a term of 12 months and to a fine.

(6) Nothing in paragraph (3) shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him or as authorizing the taking of possession of any such document as is mentioned in that paragraph which is in the possession of a legal adviser.

4 Restriction on disclosure of information obtained under Article 3

(1) This Article applies to information obtained in the course of exercising powers conferred by Article 3, apart from information that is in the public domain.

(2) No such information shall be disclosed except –

(a) with the consent of the person by whom or on whose behalf the information was given or supplied or, as the case may be, of the owner of the goods to which the information relates or of the documents from which the information is obtained;

(b) to any Minister or States' employee for the purpose of the exercise of any function under this Law;

(c) with a view to the institution of, or otherwise for the purposes of any investigation of, or criminal proceedings for, an offence under this Law or Regulations; or

(d) for the purposes of any civil proceedings under or connected with this Law.

(3) A person who contravenes paragraph (2) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

5 Offence of aiding, abetting, etc.

Any person who aids, abets, causes, counsels or procures the commission of, or conspires, attempts or incites another person to commit, an offence under this Law or Regulations shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

6 Offence committed by body corporate etc.

(1) Where an offence under this Law committed by a limited liability partnership or 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 person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body, or (in either case) any person purporting to act in any such capacity, the person shall be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

7 Appeal against detention of goods or documents

- (1) A person carrying on a business whose goods or documents are detained under Article 3 may apply to the Royal Court for an order requiring them to be released to him or her or another person.
- (2) The Royal Court shall only make an order for the release of goods or documents if it is satisfied that they are not, or are no longer, required in any investigation of or proceedings for an offence under this Law or Regulations.

8 Compensation where no fault

- (1) If an inspector detains goods under Article 3, the Minister is liable to pay compensation to any person having an interest in the goods in respect of any loss or damage caused by reason of the exercise of the power if, and only if –
 - (a) there has been no offence committed under this Law or under Regulations in relation to the goods; and
 - (b) the exercise of the power by the inspector is not attributable to any neglect or default by the person seeking compensation.
- (2) Any disputed question as to the right to or the amount of any compensation payable under this Article shall be determined by a single arbiter.
- (3) Subject to paragraph (4), the parties shall appoint an arbiter.
- (4) If the parties cannot agree on the appointment of an arbiter within a reasonable period, any party may apply to the Judicial Greffier who shall appoint an arbiter.

9 Citation and commencement

This Law may be cited as the Price and Charge Indicators (Jersey) Law 200- and shall come into force 7 days after it is registered.

