

STATES OF JERSEY



DRAFT INSURANCE BUSINESS (AMENDMENT No. 7) (JERSEY) LAW 201-

Lodged au Greffe on 15th April 2014
by the Chief Minister

STATES GREFFE



Jersey

DRAFT INSURANCE BUSINESS (AMENDMENT No. 7) (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Chief Minister, the provisions of the Draft Insurance Business (Amendment No. 7) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 11th April 2014

REPORT

Background and purpose

The Jersey Mutual Insurance Society (“**Jersey Mutual**”) was incorporated by an Act of the States Assembly in 1908. It currently benefits from the provision in Article 5(5)(d) of the Insurance Business (Jersey) Law 1991 (the “**IBJL**”) that exempts from the requirement to hold a permit: *“insurance business which is carried on under authority of an enactment other than [the IBJL] or the Companies (Jersey) Law 1991”*.

This exemption was commented on by the International Monetary Fund (“**IMF**”) in its 2008 assessment of the Island’s financial regulatory standards. The IMF recommended that: *“the scope of exemptions from the IBJL should be narrowed so that all insurers are required to be licensed and supervised by the JFSC.”*

Article 2 of the Draft Insurance Business (Amendment No. 7) (Jersey) Law 201- (the “**draft Law**”) will remove Jersey Mutual’s exemption by deleting Article 5(5)(d) of the IBJL. Jersey Mutual supports this decision and, indeed, has voluntarily become a permit-holder and is, accordingly, now subject to supervision by the Jersey Financial Services Commission (the “**Commission**”).

Although the exemption in Article 5(5)(d) – by virtue of the way it is drafted – could potentially be used by insurers other than Jersey Mutual, the Commission has no evidence to suggest that it is in fact so used by any other insurer. In any event, the exemption needs to be removed entirely to comply with the IMF’s recommendation.

Given that Jersey Mutual is believed to be only insurer relying upon the exemption, no public consultation on the draft Law has been considered necessary.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The Law Officers’ Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

The object of this Law is to amend the Insurance Business (Jersey) Law 1996 (“the principal Law”) by deleting Article 5(5)(d) to remove the exemption from the requirement for a permit which the Jersey Mutual Insurance Society, Incorporated has historically relied upon.

Article 1 sets out the definition of “principal Law” as the Insurance Business (Jersey) Law 1996.

Article 2 deletes Article 5(5)(d) of the principal Law.

Article 3 inserts Article 44A into the principal Law which provides that a person who, under the repealed provision (Article 5(5)(d)), was exempt from the provisions of Article 5(2) and (6) at any time during the 6 months immediately before the commencement day shall not be taken to have committed an offence under Article 5(4) by virtue of carrying on insurance business without a permit until the day 6 months after the commencement day of this Law or a specified day. If the person applies, before 6 months after the commencement day, for a permit to carry on insurance business under Article 6, the person shall not be taken to have committed an offence under Article 5(4) by virtue of carrying on insurance business without a permit until the day the application is finally determined (including as a result of an appeal to the Court under Article 9) or is withdrawn.

Article 44A(2) also provides that in relation to the period for which a person shall not be taken to have committed an offence under Article 5(4), the provisions of this Law apply (with the necessary modifications) to and in relation to the person as they apply to and in relation to a person who holds a permit to carry on insurance business.

Under Article 44A(4), the Commission may only specify a day if the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person shall not be taken to have committed an offence under Article 5(4) by reason only of carrying on insurance business without a permit; and the day is not more than 12 months after the commencement day of this Law.

Article 4 cites the Law as the Insurance Business (Amendment No. 7) (Jersey) Law 201- and provides for the Law to come into force 7 days after it is registered.



Jersey

DRAFT INSURANCE BUSINESS (AMENDMENT No. 7) (JERSEY) LAW 201-

A Law to amend further the Insurance Business (Jersey) Law 1996.

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 Insurance Business (Jersey) Law 1996¹.

2 Article 5 amended

Article 5(5)(d) of the principal Law shall be deleted.

3 Article 44A inserted

After Article 44 of the principal Law there shall be inserted the following Article –

“44A Transitional provision

(1) Despite anything in this Law, a person who, by virtue of the repealed provision, was exempt from the provisions of Article 5(2) and (6) at any time during the 6 months immediately before the commencement day shall not be taken to have committed an offence under Article 5(4) by virtue of carrying on insurance business without a permit during the period –

(a) on and from the commencement day until the day that is 6 months after the commencement day, or, if a day is specified under paragraph (4) in relation to the person, until that day; or

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- (b) if the person applies, before 6 months after the commencement day, for a permit to carry on insurance business under Article 6, on and from the commencement day until the day the application is finally determined (including as a result of an appeal to the Court under Article 9) or is withdrawn.
 - (2) In relation to the period for which, in accordance with paragraph (1), a person shall not be taken to have committed an offence under Article 5(4), the provisions of this Law shall apply (with the necessary modifications) to and in relation to the person as they apply to and in relation to a person who holds a permit to carry on insurance business.
 - (3) The Commission may, on the application of a person, by notice in writing to the person, specify in relation to the person a day for the purposes of paragraph (1)(a).
 - (4) The Commission may only specify a day under paragraph (3) if –
 - (a) the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person shall not be taken to have committed an offence under Article 5(4) by reason only of carrying on insurance business without a permit; and
 - (b) the day is not more than 12 months after the commencement day.
 - (5) In this Article –
 - ‘commencement day’ means the day on which the Insurance Business (Amendment No. 7) (Jersey) Law 201-² came into force;
 - ‘repealed provision’ means the provision repealed by Article 2 of the Insurance Business (Amendment No. 7) (Jersey) Law 201-.”

4 Citation and commencement

This Law may be cited as the Insurance Business (Amendment No. 7) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹ *chapter 13.425*
² *P.55/2014*