

# STATES OF JERSEY

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## **DRAFT PRIVILEGES AND IMMUNITIES (DIPLOMATIC, CONSULAR, ETC.) (AMENDMENT) (JERSEY) LAW 200-**

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Lodged au Greffe on 11th May 2004  
by the Legislation Committee

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STATES GREFFE





Jersey

## **DRAFT PRIVILEGES AND IMMUNITIES (DIPLOMATIC, CONSULAR, ETC.) (AMENDMENT) (JERSEY) LAW 200-**

### **REPORT**

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In January 2002 the Island Authorities notified the Department for Constitutional Affairs that it was their wish that the United Kingdom's ratification of the European Agreement relating to persons participating in proceedings of the European Court of Human Rights and the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe be extended to the Bailiwick. The Agreement and Protocol confer certain privileges and immunities upon, among others, the Judges of the European Court of Human Rights ("ECHR"). To give effect to the Agreement and Protocol in Jersey, it is necessary to confer similar privileges and immunities to those conferred in the United Kingdom.

The means of conferring privileges and immunities upon certain persons or organisations is the Privileges and Immunities (Diplomatic and Consular, etc.) (Jersey) Law 1998 ("the principal Law").

Article 12 of the Law provides that the States may by Regulation confer privileges and immunities upon certain organisations and in particular Article 12(5)(a) of the Law provides that the States may by Regulations secure that *"the organisation to which they relate is one in respect of which an Order in Council made pursuant to Section 1 or 4 of the International Organisations Act, 1968 of the United Kingdom is in force"*.

The U.K. Order which confers privileges and immunities on ECHR Judges was made under Section 5 of the International Organisations Act, 1968, which provides that privileges and immunities may be conferred by Order in Council upon classes of persons belonging to international tribunals.

Unfortunately for reasons which are now unclear, the 1998 Law was drafted in such a way that it is not possible for the States to make Regulations in respect of a class of person in respect of whom an Order in Council made pursuant to Section 5 of the Act is in force. In addition, Article 12 of the Law and Section 5 of the Act are incompatible to the extent that the Act refers to conferring immunities and privileges on *"classes of person"* whereas Article 12 refers to *"organisations"*. This matter came to light when law drafting instructions were provided for the purposes of implementing the Agreement and Protocol referred to above.

The amendments which are proposed would allow the States to confer privileges and immunities of a similar nature and on persons in similar categories to those mentioned in Section 5 of the Act.

The privileges which will be conferred by the Regulations made under the new Article 12A will not exceed those granted, by Order in Council, in the United Kingdom.

The Legislation Committee accordingly proposes this amending legislation.

#### **Financial/Manpower implications**

It is not considered that there are any financial or manpower implications for the States in the event that this legislation is passed.

#### **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 Committee 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 6th May 2004 the Legislation Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Legislation Committee the provisions of the Draft Privileges and Immunities (Diplomatic, Consular, etc.) (Jersey) Law 200- are compatible with the Convention Rights.



## **Explanatory Note**

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This Law amends the Privileges and Immunities (Diplomatic, Consular, etc.) (Jersey) Law 1998 so as to enable the States to make Regulations conferring privileges, immunities and facilities on judges or members of international tribunals, registrars or other officers of international tribunals, parties to proceedings before an international tribunal, agents, advisers or advocates for such parties and witnesses or assessors in proceedings before an international tribunal.

The power to make Regulations is limited in two ways. Firstly, they can only be made in respect of persons for whom an Order in Council is in force under section 5 of the International Organisations Act 1968. Secondly, the privileges, immunities and facilities cannot exceed those conferred by such an Order in Council.





Jersey

## **DRAFT PRIVILEGES AND IMMUNITIES (DIPLOMATIC, CONSULAR, ETC.) (AMENDMENT) (JERSEY) LAW 200-**

A LAW to amend the Privileges and Immunities (Diplomatic, Consular, etc.) (Jersey) Law 1998.<sup>[1]</sup>

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*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 –

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### **1 Interpretation**

In this Law “principal Law” means the Privileges and Immunities (Diplomatic, Consular, etc.) (Jersey) Law 1998.<sup>[2]</sup>

### **2 Part VA inserted**

After Part V of the principal Law<sup>[3]</sup> there shall be inserted the following Part –

## **“PART VA**

### **PRIVILEGES AND IMMUNITIES RELATING TO INTERNATIONAL PROCEEDINGS**

#### **12A Privileges and immunities of international judiciary and related persons**

- (1) Subject to paragraph (2), the States may by Regulations confer privileges, immunities and facilities on any class of persons in respect of whom an Order in Council may be made pursuant to section 5 of the International Organisations Act 1968 of the United Kingdom.
- (2) Regulations made under paragraph (1) shall be so framed as to secure that–
  - (a) the class of persons to whom they relate are persons in respect of whom an Order in Council made pursuant to section 5 of the International Organisations Act 1968 of the United Kingdom is in force;
  - (b) the privileges, immunities and facilities conferred by them on a class of persons shall not be greater in extent than those which, at the time the Regulations take effect, are conferred on that class of persons by an Order in Council made under the International Organisations Act 1968 of the United Kingdom; and

- (c) no privilege or immunity is conferred on any person as the representative of the States of Jersey, or as a member of the staff of such a representative.”.

### **3 Citation and commencement**

This Law may be cited as the Privileges and Immunities (Diplomatic, Consular, etc.) (Amendment) (Jersey) Law 200- and shall come into force on the seventh day following its registration.



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[1] *Volume 1998, page 19.*

[2] *Volume 1998, page 19.*

[3] *Volume 1998, page 31.*