

STATES OF JERSEY

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DRAFT BURIALS AND EXHUMATIONS (JERSEY) LAW 200

**Lodged au Greffe on 25th November 2003
by the Legislation Committee**

STATES GREFFE



Jersey

DRAFT BURIALS AND EXHUMATIONS (JERSEY) LAW 200

European Convention on Human Rights

The President of the Legislation Committee has made the following statement –

In the view of the Legislation Committee the provisions of the Draft Burials and Exhumations (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy R.G. Le Hérissier of St. Saviour**

REPORT

Background

In the mid 1990s the then Medical Officer of Health reported to the Health and Social Services Committee his concern that whilst the disposal of bodies by cremation was adequately regulated in Jersey, there was no statutory provision regulating disposal by burial, and in particular nothing to prevent the burial of bodies on private land. The matter was referred to the Legislation Committee who initially felt that there was sufficient provision at customary law, but the Medical Officer of Health's later concerns in which he highlighted the lack of restrictions on exhumation, persuaded the Committee that there was a need for legislation.

In 1997 a Burials and Exhumations Working Party was set up by the Comité des Connétables to develop the policy and provide initial instructions for the Law Draftsman. The Working Party was chaired by the then Connétable of St. Mary, Edwin Godel and consisted also of Connétable Quenault of St. Brelade Rev. M. Halliwell the then Vice Dean (representing the Dean), and Mr. Robin Clapham, the then Superintendent of Cemeteries of the Parish of St. Helier, with Mrs. Sue de Gruchy as Secretary. Considerable research was undertaken both as to the existing position at customary law and as to the matters any new Law should contain.

It should be noted that the United Kingdom law on burials can only be gleaned from fragments of mainly Victorian legislation and there is no comprehensive statutory provision on the lines of this Law. In particular, the lack of restriction on where people can be buried has caused the U.K. authorities some problems recently.

Recommendations of the Working Party

In 1999 the Working Party recommended a new Law to regulate the practice of burial and where burial may take place, in particular to prevent burials in green field sites or in people's gardens. The new Law was to designate burial sites where all burials had to take place and set out the rights and duties of burial authorities responsible for them, it being later agreed that these detailed matters should be contained in subordinate legislation. The Law was also to require the parishes to provide adequate burial sites for parishioners and to dispose of deceased persons where no suitable arrangements have been made, and to provide for a central register of burials to be kept. This would assist with family history researches and ensure full records were kept of where people were buried in the Island. The Law was further to regulate exhumations and the removal of bodies from Jersey. Plans to regulate the disposal of ashes were later abandoned as being unworkable.

The requirement for a central register of burials has also been discounted as, more recently, the Marriage and Civil Status (Jersey) Law 2001 was agreed by the States and has been brought into force. This Law, and its subordinate legislation, now provide for the place of burial to be recorded in the death register and a copy of all entries must be delivered to the Superintendent Registrar every 3 months by Parish registrars. It has been suggested that this provision be expanded to cover the date, place and means of all disposals.

In the course of consulting with interested persons during the preparation of the draft Law, most notably the Deputy Viscount, the draft was expanded to create a duty to dispose of a body, to outlaw the keeping of bodies in glass cases or cupboards. Provision was also included preventing burial prior to registration or the issue of the Viscount's permit. The draft was also expanded to enable the Medical Officer of Health to issue directions where a body creates a risk to health and to regulate the bringing of bodies into and the removal of bodies from Jersey. There has also been consultation with the Harbour Master concerning burials at sea, the Greffier of the Ecclesiastical Court, the Superintendent Registrar and the Health and Social Services and Etat Civil Committees.

Since the members of the Working Party have at various times moved on from their positions, responsibility for the Law reverted to the Comité des Connétables itself who then referred the final draft back to the Legislation Committee.

The draft Law

A detailed explanation of each provision is contained in the draftsman's Explanatory Note. Article 2 enables the States to designate burial grounds and burial authorities for each ground. The Regulations will follow the existing position, for example, in the case of the parish cemeteries the Rector and Churchwardens will continue as burial authorities. Having the detail in Regulations will enable the designation of new sites and authorities without the need for primary legislation. Article 2 also requires burial authorities to maintain burial grounds and further provides for the detailed provisions governing the management of burial grounds, including matters such as

maintenance of graves and the grant of exclusive rights of burial, to be set out in Regulations. The Regulations will be enforced by officers of the Health and Social Services Committee who under Article 3 of the Law are given powers of inspection.

Article 4 requires the Connétable of each parish, so far as reasonably practical, to direct the burial authority for a specified burial ground in the parish to provide an adequate site for residents and those with a close connection with the parish to be buried there if the deceased or a person with a duty to dispose of the body has so requested. It is still open to burial authorities to accept other persons for burial and the rights of those with exclusive rights not only to be buried in a particular plot themselves but to request others to be buried there is unaffected by the new Law.

Article 5 addresses the duty to arrange the lawful disposal of a body. Because it was not possible to specify in general terms the most appropriate person to bear this duty in all cases, the duty is imposed jointly on – (a) the surviving spouse, (b) the nearest known relative, (c) the executor or administrator, (d) a person in lawful possession of the body and (e) in the case of a body brought into Jersey, the applicant for a permit. However the duty is discharged by any one of those persons arranging the disposal. If there is disagreement amongst any of them the Connétable of the relevant parish must step in to dispose of the body within a certain time, and he also bears a duty in other cases where no suitable arrangements have been made. ‘Lawful disposal’ means disposal in accordance with this Law or any other enactment and so covers burial, cremation or removing the body from Jersey, and also removal and use of a body for teaching anatomy, provided the relevant conditions are met. In all cases regard must be had to the deceased’s own wishes. A disposal is not lawful if the necessary formalities set out in Article 5(5) are not complied with.

Article 6 is designed to protect from any risk to health from a body that might spread infection or contamination and enables the Medical Officer of Health to give directions regarding the keeping of the body and preventing persons from coming unnecessarily in contact with it. Where it is being kept in circumstances that he considers are a risk to health the Medical Officer of Health may arrange for the disposal of a body forthwith. There are also Regulation-making powers to enable provision to be made with respect to other means of disposal, the period of time bodies may be retained after death on any premises and embalming or preservation.

Article 7 requires the person disposing of a body to pay the costs but if the costs are recoverable from the deceased’s estate or if its monetary value is insufficient, reasonable costs are recoverable from the relevant parish.

Article 8 makes it an offence without lawful authority to dispose of, destroy or mutilate a body or to bury it other than in a burial ground or at sea.

One of the Committee’s members, Deputy Guy de Faye, expressed his dissent from this provision to the extent that he considered that there should be the freedom for people to be buried on private land or other suitable sites that were not necessarily designated as burial grounds by the Regulations, with all the attendant duties and responsibilities. However the Comité des Connétables, when invited to reconsider the matter, maintained their view that this should not be permitted due to the significant difficulties it posed. These included the necessity to maintain a record of the site for the sake of future landowners, the lack of regulation leading to the possibility of pollution of the water table and of the body becoming exposed by erosion and the permanence of the site, including access rights to visit the grave and problems of maintenance of the grave and any memorial.

Article 9 prohibits exhumation of a body or a foetus from a burial ground unless certain conditions are met and there are also some restrictions with respect to cremated human remains. Article 10 requires the issue of a permit before a body can be brought into or removed from the Island. The general Regulation-making provisions are in Article 11.

Statement of financial and manpower implications

To a large extent this Law merely codifies the position at customary law, so resource implications are minimal. It is not expected that the inspection process will require an increase in resources for the Health and Social Services Committee.

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 20th November 2003 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 Burials and Exhumations (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law provides for the regulation of burials and exhumations, the designation of burial grounds and the disposal of bodies.

Article 1 contains the interpretation provisions.

Article 2 provides for the States to make Regulations designating certain places as burial grounds and for a person or body to be the burial authority for each burial ground so designated. The burial authorities have a duty to maintain their burial grounds. Regulations may provide for the management, regulation and control of burial grounds and such Regulations may provide for burial authorities to issue directions in respect of such matters as the Regulations may prescribe. *Article 3* allows for inspection of burial grounds by officers of the Health and Social Services Committee and it is an offence punishable by a fine of up to level 3 on the standard scale to obstruct any such officer.

Article 4 places a duty on the Connétable of each parish, so far as is reasonably practical to do so, to direct the burial authority of a specified burial ground to provide an adequate site for the burial of residents and persons with a close connection with the parish. *Article 5* imposes a duty on certain persons connected with the deceased to arrange for the disposal of the body but where they have failed to do so within a month or such other period as may be practicable, or where no suitable arrangements are made, the duty falls on the Connétable of the parish where the deceased was ordinarily resident or died or was found dead. Regard must be had to the deceased's known wishes (if any) as to the means of disposal. The necessary formalities must have been completed.

Article 6 enables the Medical Officer of Health to make directions on health grounds as to where a body must be taken or remain and as regards steps to be taken to prevent unnecessary contact with a body. Failure to comply with a direction is punishable by a fine of up to level 3 on the standard scale. The MOH may also arrange for the disposal of a body where there is a risk to health. The States may make Regulations in the interests of health or safety with respect to other means of disposal, the period of time a body may be retained on any premises and embalming or preservation.

Article 7 provides that the costs of disposal are payable by the person arranging the disposal but recoverable from the deceased's estate, or if it is not sufficient, the relevant Parish, insofar as the Connétable considers reasonable.

Article 8 makes it an offence without lawful authority to dispose of, destroy or mutilate a body or to bury a body in any place other than a burial ground or at sea. It requires the body to be disposed of on the directions of the Viscount, the costs of doing so to be borne by the Connétable of the Parish in which the body was lying but recoverable from the person contravening this Article.

Article 9 prohibits exhumations of bodies and non-viable foetuses except in accordance with a permit issued by the Viscount, the consent of the Medical Officer of Health, in the case of a Church of England burial, a faculty granted by the Ecclesiastical Court and in the case of a burial in a burial ground, the consent of the burial authority concerned. In the case of cremated human remains the consent of the burial authority concerned is also needed, or if the remains were buried elsewhere, the Superintendent Registrar and the owner of the land concerned need to consent. The person carrying out an exhumation must notify the Superintendent Registrar and dispose of any body exhumed. Breach of the Article is punishable by a fine of up to level 3 on the standard scale.

Article 10 provides for the bringing into and removal out of Jersey of bodies under the authority of a permit issued by the Viscount, with the consent of the Medical Officer of Health in the case of removals. In the case of bodies brought into Jersey, the Viscount has to record the date, place and means of disposal on the permit and send a copy to the Superintendent Registrar who is to keep the records. Movement of bodies in and out of Jersey otherwise than in accordance with a permit is punishable by a fine not exceeding level 3 on the standard scale.

Article 11 contains the general Regulation-making powers and in particular enables a breach of requirements of the Regulations to be an offence. *Article 12* provides for the short title and for the Law to come into force on such day as the States may by Act appoint.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, the standard scale of fines is –

Level 1	£50
Level 2	£500

Level 3	£2,000
Level 4	£5,000.



Jersey

DRAFT BURIALS AND EXHUMATIONS (JERSEY) LAW 200

Arrangement

Article

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Jersey

DRAFT BURIALS AND EXHUMATIONS (JERSEY) LAW 200

A LAW to regulate the practice of burial and exhumation, to empower the designation of burial grounds and persons or bodies to be burial authorities responsible for their supervision and maintenance, to empower the regulation of burial grounds, to impose requirements in relation to the disposal of bodies and the movement of bodies in and out of Jersey, 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 unless the context otherwise requires –

“body” includes the body of a stillborn child;

“burial” includes the interment or placing in a vault or chamber of any body or cremated human remains and “bury” shall be construed accordingly;

“burial authority” shall be construed in accordance with Article 2(1)(b);

“burial ground” means any cemetery or other place set aside for the burial of the dead and designated in accordance with Article 2(1)(a);

“Harbour Master” has the same meaning as in the Harbours (Administration) (Jersey) Law 1961;^[1]

“lawful disposal”, in relation to a body, means disposal in accordance with this Law or any other enactment;

“Medical Officer of Health” means the *Inspecteur Médical* appointed under Article 10 of the Loi (1934) sur la Santé Publique;^[2]

“non-viable foetus” means a foetus expelled from its mother before the 24th week of pregnancy;

“stillbirth” means the birth of a child born after the 24th week of pregnancy (calculated from the beginning of the mother’s last menstrual period) which does not, at any time after being completely expelled from its mother, breathe or show any other sign of life and “stillborn child” shall be construed accordingly;

“Superintendent Registrar” means the person appointed as such under Article 41 of the Marriage and Civil Status (Jersey) Law 2001.^[3]

2 Burial grounds and burial authorities

- (1) The States shall by Regulations designate –
 - (a) burial grounds; and
 - (b) a burial authority for each burial ground so designated.
- (2) A burial authority shall maintain every burial ground for which it is the burial authority and where it delegates such maintenance to any other person it may contribute towards any expenses incurred by that person in maintaining the burial ground.
- (3) The States may by Regulations make provision with respect to the management, regulation and control of any burial ground and such Regulations may provide for burial authorities to issue directions in respect of such matters as the Regulations may prescribe.

3 Inspection of burial grounds

- (1) An officer of the Health and Social Services Committee may at any reasonable hour inspect any burial ground to ascertain whether Regulations made under Article 2(3) have been complied with.
- (2) A person who obstructs an officer carrying out an inspection under paragraph (1) shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale. ^[4]

4 Duty of Connétables and burial authorities to provide burial sites

- (1) Where –
 - (a) a parishioner has left instructions requesting burial in the parish; or
 - (b) any person with a duty to dispose of the body under Article 5(1) requests that the parishioner be buried in the parish,the Connétable of that parish shall, so far as is reasonably practicable for the Connétable to do so, direct the burial authority for such burial ground in the parish as the Connétable may specify to provide an adequate site for the burial of the parishioner in that burial ground.
- (2) A burial authority shall comply with any direction of a Connétable under paragraph (1).
- (3) Nothing in this Article shall prevent a burial taking place –
 - (a) in any burial ground with the agreement of the burial authority or –
 - (b) in any grave space, grave or vault in respect of which an exclusive right of burial has been granted, at the request of the owner of such right.
- (4) In this Article “parishioner”, in relation to any parish, means a person who, at the date of death –
 - (a) was ordinarily resident in that parish; or
 - (b) had, in the opinion of the Connétable, a close connection with that parish.

5 Duties in respect of disposal of bodies

- (1) Where a person has died in Jersey, or that person’s body has been brought into Jersey, it shall be the duty of –
 - (a) the person’s surviving spouse;
 - (b) the person’s nearest known relative or any one or more of them being kin in the same degree;
 - (c) the executor or administrator of the person’s estate as the case may be;
 - (d) any person lawfully in possession of the body after the person’s death; and

- (e) in the case of a body brought into Jersey, the person who applied for a permit under Article 10, to arrange for the lawful disposal of the body.
- (2) The arranging for the lawful disposal of the body by any one of the persons subject to the duty described in paragraph (1) shall act as a discharge of the duty of the other persons so subject.
- (3) The Connétable of a parish shall arrange for the lawful disposal of the body of any person who was immediately prior to death ordinarily resident in that Parish or, if not ordinarily resident in Jersey, who has died or been found dead in the parish –
 - (a) where all persons subject to the duty described in paragraph (1) have failed to arrange for the lawful disposal of the body within one month of the death or such other period as the Connétable considers practicable in the circumstances of the case; or
 - (b) in any other case where it appears that no suitable arrangements for the lawful disposal have been or are being made.
- (4) A person arranging for the lawful disposal of a body in accordance with paragraph (1) or (3) shall have regard to any known wishes of the deceased as to the means of disposal.
- (5) A person shall not dispose of a body unless –
 - (a) the death or stillbirth, as the case may be, has been registered in accordance with Article 50 of the Marriage and Civil Status (Jersey) Law 2001^[5] or the Viscount has given permission for it to be disposed of before such registration;
 - (b) in the case of a cremation, the provisions of any Regulations made under Article 3(1)(c) of the Cremation (Jersey) Law 1953^[6] have been complied with; and
 - (c) in the case of a body that has come under the jurisdiction of the Viscount, the Viscount has released it for burial or cremation in accordance with Article 6 of the Inquests and Post-mortem Examinations (Jersey) Law 1995.^[7]
- (6) A person who contravenes paragraph (5) shall be guilty of an offence and liable to a fine and to imprisonment for a term not exceeding 5 years.

6 Protection of health

- (1) Where a deceased person was suffering from such a disease or condition that the Medical Officer of Health considers that there is a risk to health from the spread of infection or contamination, the Medical Officer of Health may give either or both of the following directions –
 - (a) that the body should remain or be transported to such place as the Medical Officer of Health may direct prior to its disposal; and
 - (b) that every person having charge or control of a place where the body remains shall take such steps as may be reasonably practicable to prevent persons coming unnecessarily in contact with, or proximity to, the body.
- (2) Where a body is being kept in circumstances which the Medical Officer of Health considers creates a risk to health the Medical Officer of Health may arrange for its lawful disposal forthwith.
- (3) The States may by Regulations make such provision with respect to –
 - (a) the means of disposal of bodies otherwise than in accordance with this Law or any other enactment;
 - (b) the period of time bodies may be retained after death on any premises; or
 - (c) embalming or preservation,
 as may appear to be desirable in the interests of health or safety.
- (4) A person who contravenes any direction given under paragraph (1) shall be guilty of an offence and

liable to a fine not exceeding level 3 on the standard scale.^[8]

7 Costs of disposal

The costs of lawful disposal of a body under this Law shall be payable by the person arranging for its disposal and –

- (a) shall be recoverable from the deceased person's estate; or
- (b) if the monetary value of the estate is not sufficient to meet such costs, such part of those costs as the Connétable considers reasonable shall be recoverable from the parish in which the deceased person was ordinarily resident, or, if the deceased was not ordinarily resident in Jersey, in which the deceased has died or been found dead.

8 Unlawful disposal, etc. of bodies

- (1) A person who, without lawful authority, disposes of, destroys or mutilates a body shall be guilty of an offence and liable –
 - (a) if the disposal, destruction or mutilation was made with intent to conceal the commission or impede the prosecution of any offence or with intent to aggrieve, distress or annoy any person, to a fine or to imprisonment for a term not exceeding 5 years, or both; or
 - (b) in any other case to a fine not exceeding level 4 on the standard scale.^[9]
- (2) A person who buries a body in any place other than –
 - (a) a burial ground; or
 - (b) with the consent of the Harbour Master, at sea,shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.^[10]
- (3) Where a body has been disposed of, destroyed or mutilated in contravention of paragraph (1), or buried in contravention of paragraph (2), it shall (if still available) be disposed of in accordance with the directions of the Viscount.
- (4) The costs of a disposal in accordance with paragraph (3) shall be borne by the parish in which the body was unlawfully lying and such costs shall be recoverable from the person contravening this Article.

9 Exhumations

- (1) A person shall not exhume –
 - (a) a body; or
 - (b) a non-viable foetus that is buried in a burial ground,unless the conditions set out in paragraph (2) are satisfied or the Viscount has given a direction under Article 3(2) of the Inquests and Post-mortem Examinations (Jersey) Law 1995.^[11]
- (2) The conditions referred to in paragraph (1) are –
 - (a) that a permit has been issued by the Viscount in the Viscount's absolute discretion and subject to such conditions as the Viscount thinks fit;
 - (b) that the written consent of the Medical Officer of Health has been obtained;
 - (c) in the case of a body buried in ground consecrated in accordance with the rites of the Church of England, that a faculty has been granted by the Ecclesiastical Court; and
 - (d) in the case of a burial in a burial ground, that the written consent of the burial authority for that

burial ground has been obtained.

- (3) A person shall not exhume any cremated human remains except with the written consent of –
 - (a) where the remains were buried in a burial ground, the burial authority responsible for that burial ground; or
 - (b) where the remains were buried elsewhere, the Superintendent Registrar and the owner of the land (including any usufructuary or lessee of that land on a contract lease) in which they were buried.
- (4) A person carrying out an exhumation in accordance with paragraphs (1) or (3) shall notify the Superintendent Registrar and, in the case of a body, arrange for its lawful disposal.
- (5) A person who contravenes or fails to comply with any provision of this Article shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.^[12]

10 Movement of bodies into and out of Jersey

- (1) A person who wishes to bring a body into or remove a body out of Jersey shall apply to the Viscount for a permit and subject to paragraph (2), the Viscount may refuse the permit or grant it subject to such conditions, if any, as the Viscount thinks fit.
- (2) The Viscount shall not grant a permit in respect of the removal of a body out of Jersey without the written consent of the Medical Officer of Health.
- (3) In the case of a permit in respect of the bringing of a body into Jersey, the Viscount shall record on the permit the date, place and means of disposal of the body and shall send a copy of the permit to the Superintendent Registrar.
- (4) The Superintendent Registrar shall keep and, so often as may be necessary, have indexed and bound the copies delivered to him under paragraph (3).
- (5) A person who brings a body into or removes a body out of Jersey other than in accordance with a permit issued in accordance with this Article shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.^[13]

11 Regulations

- (1) The States may make Regulations for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed under this Law.
- (2) Regulations made under this Law may –
 - (a) make any contravention of, or failure to comply with, any provision of the Regulations an offence punishable by such fine not exceeding level 3 on the standard scale^[14] as the Regulations may prescribe;
 - (b) prescribe fees to be paid in respect of any matter arising under, provided for or authorized under this Law;
 - (c) prescribe the forms of the notices, certificates and applications in respect of any matter arising under, provided for or authorized under this Law;
 - (d) make different provision in relation to different cases or circumstances; and
 - (e) contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient.

12 Citation and commencement

This Law may be cited as the Burials and Exhumations (Jersey) Law 200- and shall come into force on such day as the States may by Act appoint.

[1] *Volume 1961-1962, page 164 and Volume 2002, page 491.*

[2] *Tome VII, page 117.*

[3] *Volume 2001, page 262.*

[4] *Volume 1992-1993, page 437.*

[5] *Volume 2001, page 267.*

[6] *Tome VIII, page 306.*

[7] *Volume 1994-1995, page 277.*

[8] *Volume 1992-1993, page 437.*

[9] *Volume 1992-1993, page 437.*

[10] *Volume 1992-1993, page 437.*

[11] *Volume 1994-1995, page 276.*

[12] *Volume 1992-1993, page 437.*

[13] *Volume 1992-1993, page 437.*

[14] *Volume 1992-1993, page 437.*