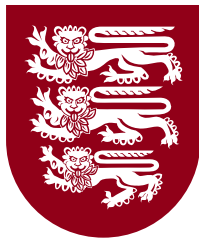


STATES OF JERSEY



Jersey

DRAFT TRUSTS (JERSEY) AMENDMENT LAW 202-

Lodged au Greffe on 22nd October 2025
by the Minister for External Relations
Earliest date for debate: 9th December 2025

STATES GREFFE



Jersey

DRAFT TRUSTS (JERSEY) AMENDMENT LAW 202-

European Convention on Human Rights

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

In the view of the Minister for External Relations, the provisions of the Draft Trusts (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy I.J. Gorst of St. Mary, St. Ouen and St. Peter**
Minister for External Relations

Dated: 21st October 2025

Report

Background and purpose

The Draft Law will amend the [Trusts \(Jersey\) Law 1984](#) (the “TJL84”) to clarify and further develop certain existing provisions of the TJL84 to ensure that the law remains up to date and reflects developing jurisprudence and evolving industry practice, within appropriate and legitimate parameters. The TJL84, together with its supporting case law, is highly-regarded internationally as well as locally. It is not, and was not intended to be, a codification of the law of trusts in Jersey but a statutory framework, allowing flexibility and helping keep Jersey at the forefront of the trusts industry across the world.

The Draft Amendments

(A reference to an Article is to the relevant article in the Amendment Law. Articles in the TJL84 are noted as such.)

There are four principal areas for amendment.

(a) Limited Liability Companies – Articles 2, 3, 4 and 6

A series of amendments is proposed to make it clear that a Jersey Limited Liability Company (LLC) *is* able to act as a trustee of a Jersey trust. As there is no objection in principle to an LLC (or other entity) acting as a trustee, and it has been suggested that it is not entirely clear, amendments are proposed to resolve this. These are the amendments at Articles 2, 3, 4, and 6 and are taken together for ease of explanation.

Article 2 (amending Article 1 of the TJL84 ‘Interpretation’)

The current definition of ‘corporation’ in Article 1 of the TJL84 is amended to delete the existing reference to a limited liability company and instead to add in ‘*or other person having legal personality wherever registered or established*’ after ‘*a body corporate*’, which designation will then also include an LLC or certain partnerships or other entities with legal personality.

Article 3 (amending Article 9 of the TJL84 ‘Extent of application of law of Jersey to creation, etc. of a trust’)

Due to the amendment to Article 1 noted above, the words ‘*or other person having legal personality*’ are otiose in sub-paragraph (2A)(d) and are, therefore, deleted.

Article 4 (amending Article 9A of the TJL84 ‘Powers reserved by settlor’)

As the definition of ‘*corporation*’ will be amended to include ‘*or other person having legal personality wherever registered or established*’, there is no need to differentiate between officers of corporations or partnerships (which are both included in the above term), as is currently the case in Article 9A(2)(c), and the sub-paragraph is amended accordingly.

Article 6 (amending Article 28 of the TJL84 ‘Corporate trustee acting by resolution’)

This clarification recognises that a corporate trustee might not be a company but another type of entity. Article 28 permits a corporate trustee to act in connection with a trust by resolution; this is because a company usually makes key decisions by way of resolution. The amendment states that

a reference to a resolution within Article 28 of the TJJ is to be read as the equivalent decision-making process for the relevant corporate trustee entity.

(b) Resignation of a sole trustee – Article 5

Article 5 of the Draft Law (amending Article 19 of the TJJ84 ‘Resignation or removal of trustee’)

The insertion of a new paragraph (3A) confirms what is to be considered to be the current position but which is not specifically referenced within the TJJ84: that the resignation of a sole trustee is of no effect if it would mean there would be no trustee in place thereafter. This reflects the statement at sub-paragraph (3) of Article 19: that where two or more trustees purport to resign simultaneously, the effect of which would mean that there be no trustee, such resignations shall have no effect. This will avoid any confusion, particularly for lay trustees.

(c) Termination of a trust by beneficiaries – Article 7

Article 7 of the Draft Law (amending Article 43 of the TJJ84 ‘Termination of a Jersey trust’)

The received interpretation of Article 43 in relation to the ability of the beneficiaries of a trust to call for its termination, was called into question following the Guernsey case of *Rusnano Capital AG (in liquidation) v (1) Molard International (PTC) Limited and (2) Pullborough International Corp [2019] GRC011 (“Rusnano”)* (both at first instance and on appeal). The provisions of Article 43 of the TJJ84 are in similar terms to the provisions of Section 53(3) of the Trusts Guernsey Law 2007, which were under consideration, and so, whilst not binding, it is possible that a Jersey court would give weight to the conclusions reached. The prevailing view has been that the existence of a power to add beneficiaries is sufficient to prevent termination of a trust; the Guernsey court did not consider this to be the case.

Accordingly, it is proposed to amend Article 43 to make it clear that if there are other persons who could become beneficiaries in accordance with the terms of, or pursuant to the exercise of any power under the trust, or if the terms of the trust currently provide for the disposition of trust property for a charitable or non-charitable purpose, the beneficiaries cannot exercise the power to call for the termination of the trust.

Whilst it is acknowledged that it is very common for Jersey trust instruments to include either powers to add or powers to amend (or similar powers by which a beneficiary can be added), which will mean that the statutory ability for the beneficiaries to call for the termination of the trust will seldom be capable of being exercised, it is considered that such amendments will assist in ensuring that the wishes and intentions of the settlor when establishing the trust are given due regard, and give certainty to the position thereby avoiding any unnecessary costs and delays in having to seek a court determination on this question. A beneficiary retains the ability to seek directions from the court and it has been indicated that Article 43 is in reality rarely used. A trustee can, of course, also terminate a trust if that is the right thing to do in the interests of the beneficiaries.

(d) Confirmation of the priority of claims between a former and current trustee and a secured creditor – Article 8

Article 8(3) of the Draft Law (amending Article 43A of the TJJ84 ‘Security’)

This amendment relates to a question arising out of the case commonly known as ‘Re Z’ and which concluded in the Privy Council as *Equity Trust (Jersey) Limited v Halabi (as Executor) [2022 UKPC 36]*. The amendment confirms that the interest of a lender secured over trust assets takes priority over the lien of a current or former trustee arising by operation of law, unless the

lender agrees otherwise. This is considered to reflect what most trustees and lenders would in fact expect to be the situation. This is particularly important in relation to the lien of a former trustee as any risk for a lender can be mitigated when dealing with the current *trustee* by the insertion of waivers in the finance documentation. The *former* trustee will not usually be a party to those contractual arrangements. This applies to assets situated in Jersey or elsewhere, and security granted or created under the law of Jersey or otherwise. It does not affect the nature of or other rights arising from the respective lien or security, nor does it alter the nature of the trustee lien. Nor does it prevent a trustee, where appropriate, taking actual security over trust assets.

Minor amendments

Article 7(3) deletes paragraph 5 of Article 43 of the TJL as it refers to another section which has already been deleted.

Article 8(2) confirms that when considering the right of a trustee to be provided with reasonable security for its liabilities as set out in Article 43A(1), no account is to be taken of any lien arising by operation of law in that consideration. That is, when considering the appropriateness of taking security (of whatever nature) or the adequacy of such security under paragraph 1 of Article 43A, whether or not there is a lien or its nature or extent, is to be disregarded.

Article 9 removes the word ‘actual’ in Article 55 in relation to the level of notice required by a bona fide purchase for value. This standardises all references to notice within the TJL84 so that an honest and reasonable purchaser is expected to make inquiries if there is something to put him or her on inquiry.

Commencement

It is proposed that the Draft Law will come into effect seven days after it is registered.

Consultation

A consultation on the proposed amendments was carried out in July and August 2024. Thirteen responses were received from a number of law firms and individual trust companies, the Jersey Association of Trust Companies, and certain individuals. The proposals had already been discussed by the Trusts Law Working Group comprising leading practitioners from local law firms and trust companies before publication of the Consultation Paper. Liaison has also taken place with various corporate lawyers particularly in relation to the matters relating to the trustee’s lien arising by operation of law. The Government has taken careful note of all responses together with the Working Group, and make amendments to the proposals as was considered most beneficial and appropriate.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

Financial and staffing implications

There are no financial or resource implications arising from the adoption of this Draft Law.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

The impacts on children's rights are likely to be indirect and/or negligible and thus only a screener is required.

APPENDIX TO REPORT

Human Rights Notes on the Draft Trusts (Jersey) Amendment Law 202-

These Notes have been prepared in respect of the draft Trusts (Jersey) Amendment Law 202- (“the **draft Law**”) by the Law Officers’ Department.

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law has been reviewed by the Law Officers’ Department (the “**LOD**”) to ensure compliance with the European Convention on Human Rights (the “**Convention**”/“**ECHR**”). It provides for amendments to the Trusts (Jersey) Law 1984 (the “**Principal Law**”) including, inter alia: (i) the broadening of the definition of “corporation”; (ii) to provide that the power of the beneficiaries to require the trustee to wind up a trust and distribute the trust property among them (where all of the beneficiaries are in existence and have been ascertained and are not interdicts or minors) does not apply in certain circumstances; and (iii) to provide that an interest in or over trust property created at any time by the trustee that secures the payment or performance of an obligation (including in favour of a trustee or former trustee) takes priority over any lien arising in favour of a trustee or former trustee by operation of law (the “**Trustees’ Lien**”), unless the secured party agrees otherwise (see Article 8 of the draft Law which amends Article 43A of the Principal Law). Brief consideration of this latter amendment in the context of Article 1 of Protocol 1 of the Convention (Protection of property) (“**A1P1**”) is set out below.

A1P1

1. *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
2. *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

The LOD considers that the amendment proposed to Article 43A of the Principal Law, being the incorporation of new paragraph 4, may trigger A1P1. This is on the basis that the Trustees’ Lien is generally considered to be a “possession” and therefore subject to protection under the ECHR. However, that protection is not absolute and subject to lawful interference.

There will be no doubt that any interference with the right of a trustee to the Trustees’ Lien will be “by law”; the amendment to Article 43A of the Principal Law so provides. Further, where property rights are concerned, legislatures have a considerable margin of appreciation in determining the existence of a problem of general public concern and in implementing measures designed to meet it. Uncertainty as regards the priority of security granted over trust assets vis a vis the Trustees’ Lien raises the commercial risk for lenders who may be less inclined to lend to Jersey trustees, particularly trustees of Jersey unit trusts. Lenders expect security granted over trust assets to provide priority over not just all unsecured creditors but also the Trustees’ Lien, in the event of insolvency. The clarity that will be provided by this amendment will be beneficial in that it is expected to assist in confirming Jersey as a prime jurisdiction for commercial trust work.

It should also be noted that it is considered that most trustees would, in fact, expect a lender/secured creditor to take priority as set out above.

In terms of proportionality, paragraph 2 of A1P1 refers to measures that the state “deems necessary to control the use of property in accordance with the general interest”. This means that the measure must be proportionate, i.e.: (a) is done for a legitimate aim; the measure is rationally connected to the aim; (c) the aim could not be achieved in a less intrusive manner; and (d) is proportionate in the general sense of not using a “sledgehammer to crack a nut”. In reality, given the breadth of the margin of appreciation accorded to states in respect of interference with property for the general good, this tends to turn on a less structured question of whether the legislation strikes a “fair balance”, see *Beyeler v Italy [GC], 2000, §107*¹ and *Sporrong and Lönnroth v Sweden, 1982, §69*².

Based on the reasoning above, it can be concluded that any potential interference with the Trustees’ Lien will be proportionate.

¹ [Beyeler v. Italy](#)

² [Sporrong and Lönnroth v. Sweden](#)

EXPLANATORY NOTE

The Trusts (Jersey) Amendment Law 202-, if passed, will make amendments to the Trusts (Jersey) Law 1984, on the recommendation of the Trusts Law Working Group, including amendments to clarify that a sole trustee cannot resign without a successor trustee being in place, to clarify the circumstances in which beneficiaries of a trust can call for the trust to come to an end, and to confirm the priority of a secured lender's interest in or over trust property in relation to a trustee's lien.

Article 1 provides that this Law amends the Trusts (Jersey) Law 1984.

Article 2 broadens the definition "corporation" in Article 1(1), to mean a body corporate wherever incorporated or other person having legal personality wherever registered or established.

Articles 3, 4 and 6 make amendments to Articles 9(2A)(d), 9A(2)(c) and 28 in consequence of the revised definition "corporation".

Article 5 amends Article 19 to clarify that a sole trustee cannot resign unless a new trustee has been appointed.

Article 7 amends Article 43. New paragraph (3A) provides that the power of the beneficiaries to require the trustee to terminate a trust and distribute the trust property among them (where all of the beneficiaries are in existence and have been ascertained and are not interdicts or minors) does not apply if any other persons could become beneficiaries in accordance with the terms of, or pursuant to the exercise of any power under, the trust, or if the terms of the trust provide for the disposition of trust property for a charitable or non-charitable purpose. This amendment also deletes a definition that has become spent.

Article 8 amends Article 43A. New paragraph (1A) provides that no account is to be taken of any lien arising by operation of law in considering a trustee's right to require to be provided with reasonable security under paragraph (1). New paragraphs (4) and (5) provide that an interest in or over trust property created at any time by the trustee (including under the law of an overseas jurisdiction) that secures the payment or performance of an obligation (including in favour of a trustee or former trustee) takes priority over any lien arising in favour of a trustee or former trustee by operation of law, unless the secured party agrees otherwise.

Article 9 deletes a reference to "actual" notice in Article 55, to align it with the other references to notice in the Trusts (Jersey) Law 1984.

Article 10 gives the citation and provides that this Law comes into force 7 days after it is registered.



Jersey

DRAFT TRUSTS (JERSEY) AMENDMENT LAW 202-

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Jersey

DRAFT TRUSTS (JERSEY) AMENDMENT LAW 202-

A LAW to amend the [Trusts \(Jersey\) Law 1984](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

1 [Trusts \(Jersey\) Law 1984](#) amended

This Law amends the [Trusts \(Jersey\) Law 1984](#).

2 Article 1 (interpretation) amended

In Article 1(1), in the definition “corporation”, for “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”, there is substituted “or other person having legal personality wherever registered or established”.

3 Article 9 (extent of application of law of Jersey to creation, etc. of a trust) amended

In Article 9(2A)(d), “or other person having legal personality” is deleted.

4 Article 9A (powers reserved by settlor) amended

For Article 9A(2)(c) there is substituted –

- (c) to act as, or give directions as to the appointment or removal of, an officer of any corporation in which the trust holds an interest, whether or not the interest is wholly, partly, directly or indirectly held by the trust;

5 Article 19 (resignation or removal of trustee) amended

After Article 19(3) there is inserted –

- (3A) If a sole trustee purports to resign, the effect of which would mean that there would be no trustee, the resignation has no effect.

6 Article 28 (corporate trustee acting by resolution) amended

The text of Article 28 is renumbered as paragraph (1), and after that paragraph there is inserted –

- (2) In relation to a corporate trustee that is not a company, references in this Article to a resolution are to be read as the corporate trustee's equivalent decision-making process.

7 Article 43 (termination of a Jersey trust) amended

(1) This Article amends Article 43.

(2) After paragraph (3) there is inserted –

(3A) But paragraph (3) does not apply in relation to a trust –

- (a) if there are any other persons who could become beneficiaries in accordance with the terms of, or pursuant to the exercise of any power under, the trust; or
- (b) if the terms of the trust provide for the disposition of trust property for a charitable or non-charitable purpose.

(3) Paragraph (5) is deleted.

8 Article 43A (security) amended

(1) This Article amends Article 43A.

(2) After paragraph (1) there is inserted –

(1A) No account is to be taken of any lien arising by operation of law in considering a trustee's right to require to be provided with reasonable security under paragraph (1).

(3) After paragraph (3) there is inserted –

(4) An interest in or over trust property, granted or created at any time by the trustee of the trust, that secures the payment or performance of an obligation (including an obligation owed to a trustee or former trustee) takes priority over any lien arising in favour of the trustee or former trustee by operation of law, unless the secured party agrees otherwise.

(5) For the purposes of paragraph (4), it is immaterial whether the interest is granted or created under the law of Jersey or another jurisdiction.

9 Article 55 (protection to persons dealing with trustee) amended

In Article 55(1), for “actual notice” there is substituted “notice”.

10 Citation and commencement

This Law may be cited as the Trusts (Jersey) Amendment Law 202- and comes into force 7 days after it is registered.