

STATES OF JERSEY



Jersey

DRAFT PUBLIC RECORDS (JERSEY) AMENDMENT LAW 202-

**Lodged au Greffe on 28th October 2025
by the Minister for Sustainable Economic Development
Earliest date for debate: 20th January 2026**

STATES GREFFE



Jersey

DRAFT PUBLIC RECORDS (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 Sustainable Economic Development has made the following statement –

In the view of the Minister for Sustainable Economic Development, the provisions of the Draft Public Records (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy K.F. Morel of St. John, St. Lawrence and Trinity**
Minister for Sustainable Economic Development

Dated: 27th October 2025

Report

These are the first substantive amendments to the [Public Records \(Jersey\) Law 2002](#) which was introduced to provide the legal framework for the management, preservation, and accessibility of public records in Jersey. The law provides a structured approach to the retention and disposal of government and public sector documents, safeguarding historical and administrative records for future generations.

Jersey Archive now holds over 60,000 boxes of archival material from public institutions, dating from 1378 to 2024. As the law is format-neutral, an increasing number of files are also transferred digitally, with 380,000 digital public records currently preserved in the archive's digital system.

Beyond preservation, the law plays an important role in promoting transparency and accountability, strengthening public confidence in government operations while ensuring compliance with best practices in record-keeping. It also facilitates research into the Island's history with the archive's online catalogue – containing digitized images of records – receiving over 340,000 sessions annually, alongside more than 2,500 in-person visits and 3,000 research inquiries.

The proposed amendments to the Law aim to update and clarify its existing provisions, strengthen the responsibility of the Archivist and clarify the responsibilities of public institutions. It will also introduce new tools to improve the management of public records in Jersey by sharing best practice. The introduction of a Code of Practice (see **Appendix 1**) will provide public institutions with clear guidelines, making it easier for them to meet their existing obligations under the Law.

Public institutions already hold a responsibility to maintain proper records management and Jersey Archive has worked closely with departments and institutions to determine retention periods. To date, over 170 retention schedules have been agreed upon under the law. These amendments are therefore designed to clarify and streamline the current obligations rather than introduce significant new requirements.

In conclusion, the proposed amendments to the Public Records (Jersey) Law 2002 are a necessary step toward improving the management, preservation, and accessibility of public records in Jersey. These changes will ensure greater transparency, accountability, and efficiency in the public sector.

Financial and staffing implications

There are no additional financial or staffing implications arising from this Proposition.

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.

Human Rights

The notes on the human rights aspects of the Draft Amendment Law in **Appendix 2** 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.

APPENDIX 1 TO REPORT**Code of Practice on the Management of Records under the
Public Records (Jersey) Law 2002****Draft – 24/06/2024****Contents****Introduction****Part One: Outline of the Code****Part Two: Managing Information and Records****Part Three: Archival records****Annex A – The Public Records Officer****Annex B – The roles of regulatory and other bodies****Introduction**

Public Records (Jersey) Law, 2002 (“PRJL”)

CODE OF PRACTICE (the “Code”).

Guidance to public institutions on the keeping, management and destruction of their records. The Code should be read in conjunction with the PRJL.

Words and expression used in this Code have the same meaning as words and expressions used in the Law.

The Code falls into three sections:

- the first section introduces the Code and its legal basis;
- the second sets out the principles of good information management practice;
- the third section deals with archival records.

The annexes provide more information on:

- the role of the Public Records Officer;
- the roles of regulatory and other bodies;

Part One: Outline of the Code**1.1 Purpose of the Code**

1.1.1. The Code provides guidance to public institutions to help them create a framework for keeping, managing and disposing of their information, either by approved destruction or to the custody of Jersey Heritage Trust. Complying with this Code will help public institutions to account for their activities and assist with meeting with their obligations under the PRJL.

1.1.2. The Code does not attempt to provide an exhaustive set of guidelines for every public institution that creates or holds information. Public institutions should make themselves aware of relevant practice guidance issued by appropriate regulatory bodies and by Jersey Heritage Trust and/or the Archivist.

1.1.3. The Code takes a principles-based approach. The three principles of value, integrity and accountability provide a high-level framework for public institutions to manage information and maintain a record of their activities. This approach can accommodate the varied procedural and technical environments in which public institutions operate by setting out good practice.

1.1.4. The principles apply to information in any format or medium that the public institution holds or that another body holds on its behalf. The principles inform good practice in the creation, management and disposal of information, and are applicable to the diverse procedural and technical environments in which public institutions operate.

1.1.5. For the purposes of the Code, the term information is used as shorthand for both information and records.

1.2 The context of the Code

1.2.1. Public institutions create and acquire information in the course of service delivery and policy development. Information is an asset in the present and may become a historic resource for future generations.

1.2.2. Information technology has changed how people work and how public institutions create and use information. The volume of information is a challenge for public institutions so they need to manage it effectively.

1.2.3. Information can become a liability if it is not properly managed. Public institutions should know what information they hold, why they hold it, how sensitive it is, and how it should be managed. They should keep information for as long as they need it and dispose of it when they no longer have a reason to keep it. Public institutions can dispose of information under retention schedules agreed with the Archivist by destroying it or by transferring it to the custody of Jersey Heritage Trust.

1.2.4. Public institutions should manage their information so as to create and maintain a record of their activities which, in turn, provides evidence of those activities. Public institutions risk financial, legal and reputational damage if they do not manage their information properly. Well managed information improves efficiency and decision-making.

1.3 The status of the Code

1.3.1. The Code is issued under Article 38A of the Law. Compliance with the Code will be taken into account in determining whether an institution has complied with its duty of records management under the PRJL.

1.3.2. The Code does not replace any professional codes of practice, codes of conduct, professional standards or regulations that impose duties to create and manage information on any public institutions covered by the Code. Public institutions have a duty to understand the regulatory framework in which they operate and to adhere to its requirements in addition to observing the requirements of the Code.

1.4 Who the Code applies to

1.4.1. The Code applies to public institutions as defined in Article 5 of the Public Records (Jersey) Law, 2002.

1.4.2. The standards set out in the Code apply to public institutions regardless of how long they have existed, their size or proximity to government. For example, a short-term body such as a public inquiry is subject to the Code in the same way as a government department, police forces and law enforcement, the courts, a regulatory body, an arm's length organisation, a local public institution or a school.

Part Two: Managing Information and Records

2.1 The Principles

2.1.1. There are many good reasons to keep information and those reasons may change over time. These include, but are not limited to, the following:

- for accountability and audit;
- to comply with regulatory requirements, in particular Article 7 of the Public Records (Jersey) Law, 2002 that deals with records management.
- to protect legal and other rights and interests;
- as an archival record.

2.1.2. Public institutions should consider opportunities to make use of the information either within the institution or elsewhere, now or in the future.

2.1.3. Public institutions must periodically assess the information they hold. They must know why they are keeping it and must also be able to explain why they no longer hold information, by keeping a record of decisions to keep, archive or destroy information.

The principles set out below should inform public institutions' approach.

Value	<p>The public institution must understand, manage and use its information in a way that enables it to understand its value, in order to make effective decisions for the benefit of society.</p> <p>The value of information changes over time. Information will have immediate value when first created, satisfying its initial purpose. After this, it may continue to have operational value as working information. It may then have evidentiary value for audit, accountability or regulatory purposes. Information may have potential value if it can be used to create new knowledge, improve services or generate income. Finally, it may have permanent historic value. Historic value is the contribution of the information to the long-term memory of society, as well as the corporate memory of organisations. It helps inform and protect the individual rights of citizens and groups within society and shapes our sense of identity.</p> <p>Public institutions must manage their information in such a way that they can assess its current and future value. Public institutions must work with the Archivist to assess permanent historic value. They must keep information as long as they can show it has value and dispose of it when it no longer has value, either for permanent preservation at Jersey Archive or confidential destruction as agreed with the Archivist. Public institutions must be able to explain why they no longer hold information.</p>
Integrity	The public institution and all its stakeholders must be able to rely upon and trust the information that it holds.
Accountability	The public institution's information management must enable it to provide a clear and accurate account of its activity in accordance with its legal and other obligations.

2.2 Putting the principles into practice

2.2.1. To put these principles into practice, public institutions must have in place appropriate governance, organisational capability and technical measures to ensure that they manage information in accordance with the Code.

2.2.2. The governance measures should include:

- clear responsibility for information and records management at an appropriately senior level;
- a retention schedule, agreed by the public institution and the Archivist, to ensure that the public institution maintains a record of its activities. The schedule will include written rules on how long material should be kept within the institution, what and when material should be archived and what material can be confidentially destroyed;
- regular evaluation of the effectiveness of policies and rules and the extent to which they are being followed;
- written rules on access to the public institution's information including personal information and other sensitive information;
- a governance framework that takes account of information risks (such as inappropriate hoarding) and loss of information which provides for the involvement of senior management.

2.2.3. Public institutions should consider the implications for information management of restructuring and other organisational changes, sponsorship of other bodies, and the procurement of services from contractors.

2.2.4. The organisational capability of the public institution should include:

- an information management function with a designated manager with day-to-day responsibility for information management and responsibility for decisions on access to the public institution's information;
- a designated manager (defined in the PRJL as a Public Records Officer) of sufficient seniority to ensure that the public institution discharges its responsibilities under the Code, and that the public institution is consistent in its approach to managing information, risk and access;
- adequate resources, to comply with the Code and any other statutory obligations;
- suitably trained staff with the appropriate information management skills;
- educational events to ensure all staff in contact with information are regularly updated on records management and good practice.

Public institutions should:

- make sure that the designated manager has the resources to monitor compliance with the Code and other relevant statutory obligations;
- make sure that the designated manager is part of the public institution's governance structure, has oversight of information risk and the ability to raise concerns at the most senior level;
- make sure that those taking decisions to destroy information on its behalf are authorised to do so by the public institution and the Archivist.

Public institutions should engage with the designated manager to make sure that their information is managed in conformity with the Code:

- before major organisational changes;

- before taking decisions about the design, development and procurement of IT systems and applications;
- before the use and re-use of information, including copyright and Crown copyright material;
- before entering cooperative arrangements with other public institutions, before sponsoring other bodies, acquiring systems originating in another body and before procuring services from contractors.

The role of the designated manager will depend on the size and functions of the public institution.

2.2.5 The technical capability of the public institution should include:

- tools and systems to manage and organise information throughout its life;
- tools and systems to locate and use information, consistently applied across the public institution;
- back-up systems to recover from system failures and major disasters;
- systems to ensure that the destruction of information is carried out in line with its sensitivity and is permanent;

Systems to ensure that the transfer of information to the custody of Jersey Heritage Trust is carried out in line with agreed retention schedules.

2.3 Keeping, finding and using information

2.3.1. Public institutions must define how long to keep information and dispose of it when it is no longer needed. Public institutions can dispose of information by transferring it to the custody of Jersey Heritage Trust or by confidentially destroying it with the approval of the Archivist. Public institutions must be able to explain why information is no longer held either by reference to a record of its destruction or by reference to the institution's agreed retention schedule.

2.3.2. Public institutions should keep information for as long as it has value; for example if:

- the institution needs it for reference or accountability purposes, to comply with regulatory requirements or to protect legal and other rights and interests. This is particularly important if the public institution has a duty of care towards vulnerable groups;
- the institution and Archivist have selected it for permanent preservation;
- the institution has identified ways to make use of the information either within the public institution or elsewhere, now or in the future – for example, to improve services or generate income;
- the institution has assessed that it can be used for another purpose, such as statistical, scientific, medical or historical research (subject to Data Protection legislation safeguards);
- it contains or relates to information requested under Freedom of Information legislation. This may indicate long-term value;
- there are exceptional circumstances such as a moratorium on destruction of information, a police investigation, a public inquiry, or legal action.

2.3.3. Public institutions should be able to collect and keep technical and contextual information about their records in order to understand their value. Metadata should be kept in such a way that it remains reliable and accessible for as long as it is required, which will be at least for the life of the records.

2.3.4. Public institutions should be able to transfer technical and contextual information to a successor body and, if selected for permanent preservation, to an archive.

2.3.5. Public institutions should endeavour to hold information in an appropriate environment. Physical and digital information should be managed in a manner appropriate to the medium in order to preserve its value.

2.3.6. Public institutions should take action to conserve physical records if there are signs of damage according to best practice and in consultation with the Archivist. Digital information should be subject to the appropriate active digital continuity.

2.3.7. Public institutions should make reasonable efforts to recover or preserve physical records and digital information that is found to be damaged or unusable, including their technical and contextual information, keeping a record of any action taken.

2.3.8. Public institutions should make reasonable efforts to recover contextual information for 'orphaned information' which is judged to have value, keeping a record of any action taken.

2.3.9. Public institutions should have appropriate tools to identify, locate and retrieve information when required. An effective search capability should be maintained alongside controls to protect sensitive information.

2.4 Public institutions must be able to trust their information. To do this, they must:

- be able to establish when information was created and who it was created by;
- have in place policies and processes for information security that comply with relevant legislation, guidance and codes of practice;
- apply access and permission controls throughout the life of the information to prevent unauthorised or unlawful access;
- have appropriate technical and organisational measures to prevent accidental loss, destruction or damage, to their information.

2.5 The Data Protection (Jersey) Law, 2018 requires public institutions to destroy personal data when it is no longer needed for the purpose for which they collected it; however public institutions are permitted to keep personal data for archiving and research purposes in the public interest. Public institutions should handle personal data in their records in accordance with retention schedules agreed with the Archivist.

2.6 Disposal

2.6.1. Public institutions must follow agreed policies and guidance on how to dispose of information that no longer has value. Public institutions can dispose of information in line with agreed retention schedules by transferring it to the custody of Jersey Heritage Trust or confidentially destroying it with the approval of the Archivist.

2.6.2. Public institutions must take disposal decisions in line with their agreed retention policy and the security classification of the information. Disposal decisions must be recorded. Those taking disposal decisions must be properly authorised to do so.

2.7 Destroying information

2.7.1. Public institutions should destroy or delete information that no longer has value. Destruction decisions should take into account the current value of the information and any potential future value. Destroying information is essential to maintaining an effective information management capability, and means that institutions avoid the unnecessary financial burden of searching, maintaining and storing information that is no longer needed.

2.7.2. Public institutions should make destruction decisions in accordance with an up-to-date retention schedule, using a method or process that is applied consistently and that has been

approved by the institution and the Archivist. Destruction policies should be sufficiently flexible to adapt to the requirements of extraordinary circumstances such as litigation or a public inquiry.

2.7.3. Public institutions should ensure that staff are aware that there is no need to keep ephemeral material, and this may be destroyed on a routine basis. For example, by deleting trivial emails and messages after they have been read and discouraging staff from keeping multiple or personal copies of documents.

2.7.4. Public institutions should have a destruction schedule to enable them to identify and destroy information that is not needed at the appropriate time, as determined by their policy.

2.7.5. Public institutions may authorise staff or contractors to destroy information but the public institution will remain responsible for decisions to destroy information and for ensuring that they are carried out.

2.7.6. Public institutions should be able to explain why they no longer hold information, either by reference to a record of its destruction or by reference to the institution's retention schedule. If destruction is carried out by a contractor, the public institution should obtain proof, for example, a certificate of destruction.

2.7.7. Public institutions should destroy information by a method appropriate to the sensitivity or security classification of the information. Efforts to destroy information should also be proportionate to its sensitivity and security classification.

2.7.8. Destruction/deletion should be permanent, which means all known copies and versions of the information, including back-ups, have been destroyed or deleted and cannot be recovered by processes within the control and capability of the authority.

2.8 Responsibilities where information is shared

2.8.1. Where the public institution works jointly with another institution, body or contractor, a lead or commissioning institution should be agreed which will remain responsible for ensuring that information is managed in accordance with the Code throughout its life.

2.8.2. The institution and its partner institutions, bodies or contractors should set out their responsibilities in an information sharing agreement. This includes where information in separate public institutions' systems is integrated by technical means.

The agreement should specify:

- the obligation to record decisions, particularly in relation to the transfer or destruction of information;
- obligations under copyright, data protection, FOI and public records legislation;
- record management controls and any special requirements for the security and handling of personal information;
- the ownership of any copyright.

2.8.3. Public institutions should ensure that information sharing arrangements enable them to comply with the requirements of the Public Records (Jersey) Law, 2002 where at least one public institution is subject to the legislation.

2.9 Monitoring and assurance

2.9.1. Public institutions must assess their policies and procedures against the requirements of the Code at regular intervals and update them if necessary. Risks associated with non-compliance should be included in the authority's framework for managing risk.

2.9.2. Public institutions should engage with information management assurance and audit regimes in their field. Measures may include self-assessment tools, external assessments, peer reviews and accreditation schemes.

2.9.3. Under PRJL, the Records Advisory Panel may assess whether a public institution is following good practice.

Part Three: Archival records

3.1 Introduction

3.1.1. Public institutions are subject to the Public Records (Jersey) Law, 2002 (PRJL). Institutions have a statutory duty to transfer records of historic value for permanent preservation to the custody of Jersey Heritage Trust. Records of historic value are identified on the institution's retention schedule which is agreed by the institution and the Archivist.

3.2 Transfer of public records

3.2.1. Public institutions subject to the PRJL must transfer records of historic value, identified in retention schedules agreed by the institution and the Archivist, to the custody of Jersey Heritage Trust no later than 20 years after their creation.

3.2.2. Institutions are encouraged to transfer records selected for permanent preservation earlier if they no longer need them for business purposes and with the agreement of the Archivist.

3.2.3. Institutions must transfer records in line with guidance issued by the Archivist. Institutions must ensure that transfers are properly documented.

3.2.4. Jersey Heritage Trust has issued guidance on the appraisal, selection, preparation and transfer of records.

3.2.5. Public institutions must identify appropriate exemptions under the Freedom of Information (Jersey) Law, 2011 for information that remains exempt.

3.2.6. Public institutions should consult with other institutions that are likely to be affected by their access decisions. This is particularly important for records being transferred before they have reached 20 years.

3.2.7. Public institutions must submit a schedule, under the Freedom of Information (Jersey Heritage Trust (Jersey) Regulations, 2014, for review to Jersey Heritage Trust where it proposes to transfer records subject to FOI exemptions. A schedule must be submitted, that:

- identifies the information clearly;
- cites the relevant exemption(s) that they consider to be engaged by the record;
- explains why the information should not be released;
- identifies a date at which release would either be appropriate or the case for release should be reconsidered.

3.3 Access to archival records transferred under FOI exemptions

3.3.1. The Archivist will notify the public institution where information is due to be released after being transferred with exemptions. The public institution is responsible for reviewing the information for remaining sensitivities and for opening the information to the public or making any further decisions for withholding under FOI exemptions.

3.4 Retention of public records for longer than 20 years

3.4.1. Public institutions must consider the nature of the records that need to be retained in order to decide the most appropriate course of action. The public institution should be able to prove that the records are still in regular use and could be defined as current. Retention of records within the custody of public institutions should be approved by the Records Advisory Panel.

3.4.2. Retaining records without approval breaches the PRJL and may also involve the unlawful processing of personal data.

3.5 Obligations where departments sponsor other bodies

3.5.1. The public institution should support any institution that it sponsors to meet its information and records management responsibilities in accordance with the Code.

3.5.2. Before any institution closes, the sponsoring institution should make sure that plans are in place for the management of its information so that access decisions can continue to be made.

3.5.3. Public institutions should ensure that any short-term body that it sponsors (such as an inquiry) maintains a record of its activity and meets its responsibilities in accordance with the Code.

3.5.4. Public institutions that are short-term bodies create public records. They should:

- create and develop their information management plans in discussion with their sponsoring body from the outset;
- engage directly with the Archivist.

Annex A – The Public Records Officer

Public Records Officer

The role of the designated manager will vary according to the size and functions of the public institution.

Under Article 13 of the PRJL the public records officer (PRO) of the institution has a duty to ensure compliance with the PRJL. The PRO is defined as the Chief Officer or other person who has the day to day running of the institution unless a different individual has been prescribed by Order.

The role of the Public Records Officer:

Oversight

- oversees the appraisal, selection, review, retention, transfer to the Archive and destruction of records and arrangements for access to the organisation's records in accordance with agreed retention schedules;
- makes sure the public institution keeps to the principles of the Code so that they know why they keep different categories of information and when to dispose of information to Jersey Archive or through destruction when they no longer need it;
- authorises the use of absolute exemptions and qualified exemptions under the Freedom of Information (Jersey) Law, 2011, in respect of records or parts of records when they are due for transfer;
- provides schedules of the records that they propose to transfer to the custody of Jersey Heritage Trust including any which are subject to FOI exemptions.

Monitoring and assessment

- monitors compliance with the Code, reporting to the senior leadership of the authority;

- assesses the authority's policies and procedures against the requirements of the Code at regular intervals and updates them if necessary;
- assesses performance against the requirements of the Code and recommends measures to improve performance if necessary.

Retaining and destroying information

- makes sure the public institution has policies on retaining, transferring to the Archive and destroying information, agreed with the Archivist;
- makes sure that the public institution destroys information consistently and in line with its policies;
- makes sure that the public institution destroys information using a method appropriate to the sensitivity or security classification of the information. Records destruction must be recorded and, if destruction is carried out by a contractor, must be certified;
- ensures that the procedure destroys all known copies and versions including back-ups and they cannot be recovered, taking into account that the efforts should be proportionate to the sensitivity and security classification of the information.

Permanent preservation

- oversees the appraisal and selection of records for permanent preservation, following agreed retention schedules and prepares records for transfer to the custody of Jersey Heritage Trust;
- oversees the review of records selected for transfer to identify sensitivities in the records which have a bearing on public access to the records;
- applies FOI exemptions to records or parts of records selected for permanent preservation;
- supplies the Archivist with data on information and records on request.

Annex B – The roles of regulatory and other bodies

The Archivist and Jersey Heritage Trust

Under the PRJL Jersey Heritage Trust is responsible for receiving archival public records into its custody and maintaining a public records office for the safe keeping of public records that have been received.

The Archivist is responsible for the appraisal of public records and surveys the disposal of records under the PRJL.

Under the PRJL, the Archivist employed by Jersey Heritage Trust is responsible for the preservation and safekeeping of archival public records and provision of public access to those records in accordance with the FOIL.

The Archivist will work with public institutions to help them implement good records management practices as outlined in the Code.

The Records Advisory Panel

The Records Advisory Panel is a statutory body, established under the PRJL. The Panel is responsible for approving standards on records management and the storage, conservation and preservation of records.

The Panel may review the performance of the Trust, the Archivist and public institutions under the PRJL and may advise and direct the Trust, the Minister, the Archivist and public institutions as to the performance of their functions under the Law.

APPENDIX 2 TO REPORT**Human Rights Notes on the Draft Public Records (Jersey) Amendment Law 202-**

These Notes have been prepared in respect of the draft Public Records (Jersey) Amendment Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

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

The draft Law amends the Public Records (Jersey) Law 2002 (the “**2002 Law**”). The 2020 Law is compliant with the ECHR as detailed in [Projet \(P.107/2002\)](#).

Nature of the amendments made by the draft Law

Article 2 of the draft Law amends Article 1 of the 2002 Law to include a definition of the term “*administration of the States*” that is consistent with the definition in the Freedom of Information (Jersey) Law 2011 (the “**FOI Law**”).

Article 3 of the draft Law amends Article 3(1) of the 2002 Law to widen the definition of ‘public record’ to include records “*whether in Jersey or elsewhere*”.

Article 4 of the draft Law amends Article 5 of the 2002 Law to provide the power, by way of Regulations to prescribe an entity as a ‘public institution’ for the purpose of the 2002 Law. The aim is to create a definitive list of public institutions to provide clarity and certainty. The amendment permits an entity who may dispute being categorised as a public institution under an administration of the States in Article 5(1)(b) or a corporation owned by the States or in which the States has a controlling interest in Article 5 (g)(iv) the right for them or the Archivist to refer the matter to the Minister for consideration.

To the effect that where an entity does not agree that they are a public institution and have advised the Archivist as to why they believe they do not meet the criteria, the entity or the Archivist having considered the explanation must refer the matter to the Minister whose decision is final. The Minister can amend the Regulations by Order on the recommendation of the Panel.

Article 7 of the draft Law amends Article 38 of the 2002 Law by inserting a new requirement for the Panel to notify the Minister if they become aware that a public institution is in breach of its duty of record management. The Minister may, on the advice of the Panel take such steps as necessary to remedy the breach, including directing the public institution to rectify the breach with the assistance of the Archivist.

To assist public institutions in discharging their record management obligations, Article 8 of the draft Law inserts a new provision: Article 38A into the 2002 Law requiring the Minister to issue a Code of Practice. Compliance with the Code of Practice must be considered when determining whether a public institution has discharged its duty of records management under the 2002 Law.

Article 9 of the draft Law further amends Article 45 of the 2002 Law to include in the Archivist’s annual report or other reports, details of action taken in respect of a public institution who was in breach of its duty of record management. Whilst Article 6 (other functions of Archivist amended), deletes Articles 11(g) and 11(l) in consequence of the amendments to Article 9.

The draft Law potentially engages the right to respect for private life in Article 8 of the ECHR, which provides –

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The power in the draft Law provided by Article 4 to include an institution as a ‘public institution’ in the list prescribed by draft Regulations could potentially engage Article 8(1) ECHR. Once designated as a public institution, the institution is subject to the requirement in the 2002 Law to maintain and make available for archiving their public records. These records may contain confidential client correspondence/information and or sensitive trade information that could interfere with a person’s rights under Article 8(1). In particular, the archived public records (unless they are exempt) may be accessible to the public via a freedom of information request under the FOI Law.

However, the inclusion of an institution as a ‘public institution’ in the list prescribed by draft Regulations under and in accordance with the draft Law would be compatible with Article 8 of the ECHR because Article 8(1) provides “qualified” rights, and any interference with such rights through the operation of the Law is justified in accordance with the provisions of Article 8(2). Further, the requirements of the draft Law are “in accordance with the law” as they are an amendment to primary legislation which is sufficiently precise and accessible. It is considered that the potential for the draft Law’s interference with any Article 8(1) rights would be necessary in a democratic society to ensure the economic well-being of the island, as public record management and archiving under the Law supports openness and transparency and government accountability as well as the protection of the rights and freedoms of members of the public to access those records.

The draft Law is also compatible with the ECHR because of the safeguard contained in Article 9 (Principal duties of Archivist) in the 2002 Law. Article 9(c) requires the Archivist when making public records available, to do so in accordance with the FOI Law.

Accordingly, the provisions of the draft Law are considered to be compatible with Article 8 of the ECHR.

EXPLANATORY NOTE

This draft Law seeks to amend the Public Records (Jersey) Law 2002 (“the Law”).

Article 1 introduces the amendments.

Article 2 inserts a definition of “administration of the States” into Article 1 (interpretation) to clarify the meaning of that expression in Article 5(1), which lists the “public institutions” to which the Law applies, and Article 44(2). The definition mirrors that in the Freedom of Information (Jersey) Law 2011.

Article 3 amends Article 3 (public record) to provide that a public record is a record that has been created, or received, by a public institution in the performance of its functions, whether it was created or received in Jersey or elsewhere.

Article 4 replaces Article 5(2) (public institution). New paragraph (2) provides that Regulations may prescribe a person to be a public institution for the purposes of the Law, and that Regulations made under this Article may be amended by the Minister on the recommendation of the Records Advisory Panel. It further provides that, if there is a dispute as to whether an entity is an administration of the States, or a corporation owned by the States or in which the States have a controlling interest, the entity or the archivist can refer the matter to the Minister, whose decision is final.

Article 5 amends Article 9 (principal duties of Archivist) to include among the principal mandatory duties of the Archivist certain functions that are currently in Article 11 (other functions of Archivist), for example: inspecting, assessing, acquiring, and cataloguing public records; disposing (or authorising the disposal) of public records; and undertaking the preservation and conservation of certain public records.

Article 6 amends Article 11 (other functions of Archivist) in consequence of the amendments to Article 9.

Article 7 amends Article 38 (public duty to create and keep records) by inserting new paragraphs (2A) and (2B), which require the Records Advisory Panel, if it becomes aware that a public institution is in breach of its duty of records management, to notify the Minister. The Minister may, on the advice of the Panel, take the steps that the Minister considers necessary, including directing the public institution to remedy the breach with the assistance of the Archivist.

Article 8 inserts new Article 38A requiring the Minister to publish a Code of Practice to assist public institutions with the performance of their duty of records management under the Law. Compliance with the Code of Practice must be taken into account in determining whether an institution has complied with its duty of records management.

Article 9 amends Article 45 (annual and other reports) to substitute paragraph (3) in order to provide that a report by the Archivist may include details of the steps taken under Article 38(2A) in relation to a public institution that was in breach of its duty of records management. The previous text of paragraph (3) is no longer relevant as it is spent (it relates to Article 31, which was repealed by the Freedom of Information (Jersey) Law 2011).

Article 10 gives the citation and provides that the draft Law will come into force on a day to be specified by the Minister for Sustainable Economic Development by Order.



Jersey

DRAFT PUBLIC RECORDS (JERSEY) AMENDMENT LAW 202-

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Jersey

DRAFT PUBLIC RECORDS (JERSEY) AMENDMENT LAW 202-

A LAW to amend the [Public Records \(Jersey\) Law 2002](#).

<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 [Public Records \(Jersey\) Law 2002](#) amended

This Law amends the [Public Records \(Jersey\) Law 2002](#).

2 Article 1 (interpretation) amended

In Article 1(1), before the definition “archival” there is inserted –

“administration of the States” means –

- (a) a department established on behalf of the States; and
- (b) a body, office or unit of administration established on behalf of the States (including under an enactment);

3 Article 3 (public record) amended

In Article 3(1), after “functions” there is inserted “(whether in Jersey or elsewhere)”.

4 Article 5 (public institution) amended

(1) For Article 5(2) there is substituted –

(2) Regulations made under paragraph (1)(f) may –

- (a) prescribe a person to be a public institution for the purposes of this Law; and

(b) be amended by Order of the Minister, on the recommendation of the Panel.

(2) After Article 5(3) there is inserted –

(4) If there is a dispute as to whether an entity falls within paragraph 5(1)(b) or (g)(iv), the entity or the Archivist must refer the dispute to the Minister, whose decision on the matter is final.

5 Article 9 (principal duties of Archivist) amended

For Article 9(b) there is substituted –

- (b) inspect, assess, acquire, appraise and catalogue public records;
- (ba) dispose of (or authorise the disposal of) public and other records, and survey that disposal;
- (bb) preserve and conserve records in the custody or control of the Trust and other records;

6 Article 11 (other functions of Archivist) amended

Article 11(g) and (l) are deleted.

7 Article 38 (public duty to create and keep records) amended

After Article 38(2) there is inserted –

- (2A) If the Panel becomes aware that a public institution is in breach of its duty of records management, the Panel may notify the Minister, who may take the steps that the Minister, on the advice of the Panel, considers necessary.
- (2B) Those steps may include directing the public institution to remedy the breach with the assistance of the Archivist.

8 Article 38A (Code of Practice) inserted

After Article 38 there is inserted –

38A Code of Practice

- (1) The Minister must publish a Code of Practice to assist public institutions with the performance of their duty of records management under this Law.
- (2) Compliance with the Code of Practice must be taken into account in determining whether a public institution has complied with its duty of records management.
- (3) The Code may be published by making electronic copies available on a website, or by making printed copies available to public institutions.

9 Article 45 (annual and other reports) amended

(1) For Article 45(3) there is substituted –

- (3) A report under this Article may include details of the steps taken under Article 38(2A) in relation to a public institution in breach of its duty of records management.

10 Citation and commencement

This Law may be cited as the Public Records (Jersey) Amendment Law 202- and comes into force on a day to be specified by the Minister for Sustainable Economic Development by Order.