

# STATES OF JERSEY



## DRAFT REGISTER OF NAMES AND ADDRESSES (JERSEY) LAW 201-

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Lodged au Greffe on 15th March 2011  
by the Chief Minister

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STATES GREFFE





Jersey

## **DRAFT REGISTER OF NAMES AND ADDRESSES (JERSEY) LAW 201-**

### **European Convention on Human Rights**

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

In the view of the Chief Minister the provisions of the Draft Register of Names and Addresses (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

## REPORT

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- A. Executive Summary**
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### **A. Executive Summary**

The concept of an Island-wide Register of residents (“the Register”) was mentioned as an objective of P.25/2005: Migration: monitoring and regulation. As part of its work, the Migration Advisory Group concluded that it would be beneficial to develop a basic set of name and address information which identified each individual as unique. This information would be available for use by all government departments, thereby improving public administration and public service.

The Chief Minister issued a Consultation paper on behalf of the Migration Advisory Group in December 2007<sup>1</sup> (“the Part 1 paper”) and a report summarising the findings was published on 3rd June 2008.

The Data Protection Commissioner has been consulted throughout the development of the proposals in the Draft Register of Names and Addresses (Jersey) Law 201- (“the Law”) and the Law has also been subject to a human rights compliance check. It has been deemed compliant with both data protection and human rights principles.

The Law is short and an explanation of the Articles is provided in the Explanatory Note to the Law. However, additional information explaining the policy rationales behind the drafting is provided in Section B below.

### **B. Analysis of the provisions of the Law with policy rationales**

#### **Article 1 – Interpretation**

Article 1 interprets a “public authority” as being a Minister; a department (i.e. the ministerial departments) of the States or a Parish. This excludes arm’s-length organisations and quangos and the non-executive departments, namely the States Greffe and legislative departments of the States.

#### **Article 2 – The Register of Names and Addresses**

The Register will be a tool to be used by all departments and so it is appropriate that the Chief Minister be the Minister to be responsible for its management.

The Part 1 paper proposed that every States department that sought access to the data held on the Register would need to get approval in the form of a Regulation granted by the States. However, it has been concluded that this approach would be impractical and overly prescriptive. In reality, departments operate in accordance with their

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<sup>1</sup> Managing Migration: New Mechanisms – Part 1, The Population Register and Jersey Names and Address Index (R.110/2007)

statutory obligations. It would seem pedantic to make it a legal requirement for a department to seek permission from the States in the form of a Regulation to exercise statutory duties, i.e. duties already approved by the States.

The Law is drafted strictly to limit those bodies that have access to the Register, and also to tightly define the purpose for which they can have access in accordance with the original purpose that access be “for the purposes of improved public administration and better customer services”.

Access to the Register is further limited by the requirement which defines what “public administration and customer service” means and restricts use of the data to a use that relates to –

- (i) the provision of a statutory service to an individual (e.g. access to the Register to assist an individual with an application for a social security benefit; the provision of a passport or driving licence, etc.);
- (ii) assisting an individual to comply with a statutory duty (e.g. to allow departments to access the data to send out forms for completion relating to social security contributions; manpower returns; income tax forms);
- (iii) ensuring that the authority can access the Register to manage compliance by individuals who are in breach of their statutory duties (e.g. sending out notices of failure to pay contributions; return income tax forms).

If access were to be sought by a public authority for any additional purpose that was not covered under any of the provisions above, i.e. for non-statutory purposes, the authority will need to seek approval by Regulation from the States.

The Law authorises the States to amend the definition of “public administration and customer service” by Regulation.

This revised approach has been noted by the Data Protection Commissioner as reasonable.

The Law enables the Minister to obtain “registrable facts” from data held by other departments of the States. This will enable the Register to be established, for example, by using data from Social Security or Driver Vehicle records.

Once the Register is established, this provision will also enable the Minister to receive updated data from other departments’ records to maintain the accuracy of the Register. For example, the registrable facts data will be automatically updated as a result of registration processes under the Social Security or Marriage and Civil Status Laws (i.e. social security registration; marriage; birth of a child) and, if adopted, the Control of Housing and Work (Jersey) Law 201- (*see P.37/2011*) (i.e. application for registration cards by newcomers to the Island and those starting new work or transacting in property or changing address).

### **Article 3 – Verification of, and changes to, the Register**

An individual may apply to the Minister for a copy of any facts in relation to themselves, and as specified by Regulation, for persons for whom they are responsible, for example, in the capacity of a carer or guardian, or having Power of Attorney.

The Article includes a power that enables the Minister to require an individual to present documents or information to verify a Register entry about the individual at any time. This power will assist with maintenance of the Register data.

In addition, this Article requires the Minister to update the Register when any errors are identified.

#### **Article 4 – Information to be provided to the Minister**

The requirement to provide change-of-name information to the Minister has been added in order to ensure data accuracy.

#### **Article 5 – Access to the Register and use of information by public authorities**

This Article describes how access, other than for a statutory purpose, will need to be applied for by a public authority by means of a Regulation. This process is as was proposed in the Part 1 paper and will involve the public authority submitting a *projet* to the States which, if agreed, will result in the passing of an authorising Regulation.

For example, if Health and Social Services wish to use the data to send out letters inviting individuals to participate in a health-screening programme, the department will need to get the permission of the States by way of Regulation to access the Register as the running of screening programmes is not a statutory duty of the department.

The Minister is authorised to use any registrable fact for providing statistical information to any other Minister for the purpose of assisting with public policy development and evaluation, and for informing the public about social and economic matters; for example the Statistics Unit publications. In recognition of the need to protect the privacy of individuals' data held on the Register, the Article requires that "statistical information" must not be such that can identify an individual either directly or by deduction.

The information provided will assist with all the strategic planning for which States departments are responsible, such as planning for homes and infrastructure such as roads and drains; planning for schools and hospital requirements, together with social policy, taxation and benefit matters.

Any public authority using the data on the Register is required to have security systems in place that will secure the confidentiality and integrity of the data. Legislation does not deal with the technological processes, but this provision of the Law does make it clear that adequate systems need to be in place and additional protection is given in this respect in Article 7.

#### **Article 6 – Unauthorised disclosure of information**

This Article includes various provisions dealing with unauthorised disclosure of data held on the Register by individuals who have access to the Register. The severity of the penalty for being in breach of these provisions reflects the potential gravity of any circumstance in which data were to be misused or stolen, particularly if it related to many individuals' records.

The Data Protection Commissioner has been consulted with regard to these provisions and she is satisfied that they provide the necessary safeguards.

## **Article 7 – Appointment of Commissioner**

These provisions are introduced specifically to deal with the issue of the security of the data to be held on the Register and to provide assurance.

As proposed in the Part 1 paper, a new role of Register of Names and Address Commissioner (“the Commissioner”) is provided for. It is intended that this role will be taken on as an additional duty by the Data Protection Commissioner, rather than a new post.

It is considered that the creation of this post specifically for the purposes of monitoring how the Law and Register are managed, together with the considerable powers granted to the Commissioner, will provide individuals with an assurance that the confidentiality and integrity of their data will be properly and rigorously safeguarded on an ongoing basis.

### **C. Financial and manpower implications**

This Law will not have any financial and manpower implications in itself. It merely enables Public Authorities to share information should they so wish, and requires the Minister to maintain data that is essentially already maintained, albeit the Law introduces a transparent and legally binding framework of governance, for example, a dedicated Commissioner to support integrity.

For example, if the Population Office wish to use the data under the Law as part of their administration, any costs would fall on the Population Office in the course of administering their legislation, and not as a direct result of this Law, which is a mere enabling piece of legislation. The same would apply to the Social Security Department, or any other Public Authority. Indeed, the intention is that the Register will be used initially and mainly by the Population Office and the Social Security Department, who have extensive records of individuals’ names and addresses under their own legislation already, such that this legislation will not add additional costs in terms of data collection and maintenance. Similarly, access requests under this Law will be dealt with in the same way as, and simultaneous to, any access requests made to the Population Office, as part of, and within, their normal administrative capacities. In this way, the obligations of this Law do not increase costs, although there is substantial reliance on the ongoing administration by Public Authorities of their own Laws.

It is also worth noting that the proposed Commissioner role will be undertaken by the Data Protection Commissioner, and this is not expected to require additional funding or resources of any note.

### **D. European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister 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). On 14th March 2011 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Register of Names and Addresses (Jersey) Law 201- are compatible with the Convention Rights.

## Explanatory Note

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This draft Law makes provision for the establishment of a Register of Names and Addresses of individuals in Jersey.

### PART 1 – INTERPRETATION

*Article 1* is an interpretation provision. In particular it defines “public authority” to mean any Minister, department or parish.

### PART 2 – REGISTER OF NAMES AND ADDRESSES

*Article 2* requires the Minister to establish and maintain a Register of Names and Addresses (“Register”). The use of the Register is confined to “statutory purposes”. “Statutory purposes” are defined to mean enabling or facilitating “public administration and customer service” and such other purposes as the States may specify by Regulation in relation to a specified public authority. “Public administration and customer service” is defined to mean the provision of any statutory service to an individual by a public authority or anything done by a public authority to enable or facilitate compliance with a statutory duty or in consequence of a breach or alleged breach of such a duty. The States may amend this definition by Regulations. The Register must contain “registrable facts” on each individual who is specified in Regulations. The registrable facts are defined to mean name, address, date and place of birth, date of arrival in Jersey if not born in Jersey, gender and social security number.

*Article 3* allows an individual to apply to the Minister for a copy of the registrable facts that are recorded in relation to him or her on the Register or in respect of an individual specified in Regulations. The individual must notify the Minister of any inaccuracies in the information and the Minister must update the information on the Register accordingly. Similarly, if the Minister becomes aware under any other enactment of any change in the information recorded, the Register must be updated.

*Article 4* requires the Minister to be notified of any change of name by which a person is ordinarily known.

*Article 5* allows any public authority access to the Register to use the registrable facts to enable or facilitate the exercise of any public administration and customer service. The States are given power by Regulations to specify other purposes for which a specified public authority may use registrable facts. The Minister may also use the registrable facts to provide statistical information to any Minister or department for assisting in the development and evaluation of public policy and informing the public about economic and social matters. “Use” includes accessing, obtaining, recording, holding and disclosing.

*Article 6* makes it an offence for a person to disclose information obtained under this Law in certain circumstances. Any person who obtains information in connection with establishing or maintaining the Register or in connection with using registrable facts must not disclose that information unless authorized under an enactment (whether this Law or any other) or under a Court order or direction. A person guilty of an offence is liable to imprisonment for 5 years and a fine.



### PART 3 – SUPERVISION OF OPERATION OF LAW

*Article 7* provides for the appointment of a Register of Names and Addresses Commissioner. The Commissioner's role is to review the arrangements by the Minister and public authorities in relation to the Register, including provision for securing confidentiality and integrity of information on the Register.

### PART 4 – MISCELLANEOUS AND CLOSING

*Article 8* makes provision for any Regulations or Order under this Law to include such transitional, consequential, incidental or supplementary provisions as appear necessary or expedient to the States or Minister, as the case requires.

*Article 9* provides for the title of this draft Law and that it will come into force on such day as the States may by Act appoint.





Jersey

## DRAFT REGISTER OF NAMES AND ADDRESSES (JERSEY) LAW 201-

### Arrangement

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Jersey

## DRAFT REGISTER OF NAMES AND ADDRESSES (JERSEY) LAW 201-

A **LAW** to make provision for the establishment of a Register of Names and Addresses of individuals in Jersey for use by public authorities for specified 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 –

### PART 1

#### INTERPRETATION

##### 1 Interpretation

In this Law, unless the context otherwise requires –

“adult” means a person who has attained the age of 16 years;

“Court” means the Royal Court;

“Minister” means the Chief Minister;

“prescribe” means prescribe by Order;

“public administration and customer service” has the meaning in Article 2(4);

“public authority” means any of the following –

- (a) a Minister;
- (b) a department of the States;
- (c) a parish of Jersey;

“Register” means the Register of Names and Addresses established and maintained under Part 2;

“registrable fact”, in relation to an individual, has the meaning in Article 2(8).

## **PART 2**

### **REGISTER OF NAMES AND ADDRESSES**

#### **2 The Register of Names and Addresses**

- (1) The Minister must establish and maintain a register of individuals to be known as the “Register of Names and Addresses”.
- (2) The purposes for which the Register is to be established and maintained are confined to the statutory purposes.
- (3) The statutory purposes are –
  - (a) to enable or facilitate public administration and customer service; and
  - (b) such other purposes as the States may by Regulations specify under Article 5(2).
- (4) In this Law “public administration and customer service” means any of the following –
  - (a) the provision of any service under any enactment to an individual by a public authority;
  - (b) anything done by a public authority to enable or facilitate compliance by an individual of any duty under any enactment;
  - (c) anything done by a public authority in consequence of a breach or alleged breach by an individual of any duty under any enactment.
- (5) The States may by Regulations amend the definition of “public administration and customer service” in paragraph (4).
- (6) An entry on the Register must be made in respect of every individual who is specified in Regulations made under paragraph (10).
- (7) An entry in respect of an individual shall consist of the registrable facts in relation to that individual.
- (8) In this Law, “registrable facts”, in relation to an individual, means –
  - (a) the individual’s name (including title) and residential address;
  - (b) the individual’s date and place of birth;
  - (c) (if the individual was not born in Jersey), the individual’s date of arrival in Jersey;
  - (d) the individual’s gender;
  - (e) the individual’s social security number.
- (9) The Minister may enter on the Register registrable facts in relation to an individual that are held by any department or administration of the States notwithstanding anything in any enactment to the contrary.

- (10) The States shall, by Regulations, specify individuals, whether by category, class or description, in respect of whom an entry must be made on the Register.

### **3 Verification of, and changes to, the Register**

- (1) An individual may apply to the Minister for a copy of the registrable facts recorded on the Register in respect of –
  - (a) that individual; and
  - (b) any individual specified in Regulations made under paragraph (8) and in accordance with those Regulations.
- (2) Such application shall –
  - (a) be in such form as the Minister may determine;
  - (b) be accompanied by such fee as the Minister may prescribe; and
  - (c) comply with any requirements specified in the form, including the provision of any documents establishing the identity of the person making the application.
- (3) Following an application in accordance with paragraph (2) the Minister shall supply the individual making the application with a copy of the registrable facts relating to the individual in respect of whom the application was made.
- (4) An individual (“the notifying individual”) must notify the Minister forthwith of any inaccuracy in the registrable facts relating to that individual, or an individual in respect of whom that individual may make an application under paragraph (1), of which the notifying individual has become aware and shall supply the Minister with such information or document as the Minister may require to correct the inaccuracy.
- (5) The Minister may, at any time, require an individual to provide the Minister with such documents and information as the Minister may require for the purpose of verifying a registrable fact relating to that person.
- (6) The Minister shall update the information recorded on the Register as soon as reasonably practicable following –
  - (a) notification of an inaccuracy under paragraph (4) or the provision of documents or information under (5); or
  - (b) any change in that information given to the Minister under Article 4 or under any enactment.
- (7) The rights of an individual under this Article in respect of registrable facts are without prejudice to any rights that individual may have in respect of that information under the Data Protection (Jersey) Law 2005<sup>1</sup>.
- (8) The States may, by Regulations, specify any individual, description or class of individual in respect of whom any individual, description or class of individual may make an application under paragraph (1).

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**4 Information to be provided to the Minister**

- (1) This Article applies to an individual who is ordinarily resident in Jersey for a continuous period of 3 months or more and who changes the name by which he or she is ordinarily known (whether or not by deed poll).
- (2) An adult to whom this Article applies shall notify the Minister of the change of name within one month of such change taking place.
- (3) An adult who shares a household with a child to whom this Article applies, such adult being –
  - (a) the parent of the child; or
  - (b) other person with parental responsibility for the child,shall notify the Minister of the change of the child's name within one month of the change taking place.
- (4) This Article shall not apply to any change of name if such change is registered under the Marriage and Civil Status (Jersey) Law 2001<sup>2</sup> or the Gender Recognition (Jersey) Law 2010<sup>3</sup>.
- (5) If there is more than one adult who is subject to the duty under paragraph (3), compliance with the duty by one adult shall discharge all other adults who are subject to that duty.
- (6) A notification under paragraph (2) or (3) shall be in such form as the Minister may determine and accompanied by any documents or other information that the Minister requires to verify the identity of the individual who is the subject of the notification.
- (7) A person who fails to comply with paragraph (2) or (3) shall be guilty of an offence and liable to a fine of level 2 on the standard scale.
- (8) The Minister may by Order modify the requirements of this Article in respect of any individual or description of individual as may be prescribed.

**5 Access to the Register and use of information by public authorities**

- (1) A public authority may use any registrable fact for the purpose of enabling or facilitating a public administration and customer service.
- (2) The States may by Regulations make provision for any specified public authority to use registrable facts for purposes specified in the Regulations.
- (3) Regulations under paragraph (2) may specify –
  - (a) all or part of the Register;
  - (b) descriptions of registrable facts,that a specified public authority may use.
- (4) The Minister may use any registrable fact for providing statistical information to any Minister for the purpose of –
  - (a) assisting in the development and evaluation of public policy; and
  - (b) informing the public about social and economic matters.



- (5) For the purposes of paragraph (4), “statistical information” does not include personal information that is, information that relates to and identifies a particular person whether the identity is specified in the information or can be deduced from the information.
- (6) A public authority must not use registrable facts from the Register unless the Minister is satisfied that the authority has adequate systems in place for securing the confidentiality and integrity of those facts.
- (7) No public authority may use information on the Register for any purpose other than one authorized under this Law or under any other enactment.
- (8) In this Article “use” includes accessing, obtaining, recording, holding, and disclosing.

## **6 Unauthorized disclosure of information**

- (1) A person is guilty of an offence if, without lawful authority –
  - (a) he or she provides any person with information that he or she is required to keep confidential; or
  - (b) he or she otherwise makes a disclosure of any such information.
- (2) For the purposes of this Article, a person is required to keep information confidential if it is information that is or has become available to that person by reason of holding an office or employment the duties of which relate, in whole or in part, to –
  - (a) the establishment or maintenance of the Register; or
  - (b) the use of registrable facts under Article 5.
- (3) For the purposes of this Article, information is provided or otherwise disclosed with lawful authority if such provision or disclosure –
  - (a) is authorized under this Law or under another enactment;
  - (b) is in pursuance of an order or direction of the Court;
  - (c) is for the purposes of the performance of the duties of an office or employment described in paragraph (2).
- (4) It is a defence for a person charged with an offence under this Article to show that, at the time of the alleged offence, that person believed, on reasonable grounds, that he or she had lawful authority to provide the information or to make the disclosure in question.
- (5) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 5 years and a fine.

## **PART 3**

### **SUPERVISION OF OPERATION OF LAW**

## **7 Appointment of Commissioner**

- (1) The Minister must appoint a Commissioner to be known as the Register of Names and Addresses Commissioner.

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- (2) It shall be the function of the Commissioner to keep under review –
    - (a) the arrangements for the time being maintained by the Minister for the purposes of his or her functions under this Law or any Regulations made under this Law; and
    - (b) the arrangements made by public authorities for using registrable facts.
  - (3) Where the Commissioner reviews any arrangements under paragraph (2) his or her review must include, in particular, a review of the extent to which the arrangements make appropriate provision –
    - (a) for securing the confidentiality and integrity of information recorded on the Register;
    - (b) for dealing with complaints made by individuals about use of information recorded on the Register.
  - (4) It shall be the duty of every public authority to provide the Commissioner with all such information (including information on the Register) as he or she may require for the purpose of carrying out his or her functions under this Law.
  - (5) The Commissioner is to hold office in accordance with the terms of his or her appointment and shall be paid out of the annual income of the States a salary and other remuneration in accordance with the terms of his or her appointment.
  - (6) As soon as practicable after the end of each calendar year, the Commissioner must make a report to the Minister about the carrying out of the Commissioner's functions.
  - (7) The Commissioner may also, at any other time, make such report to the Minister on any matter relating to the carrying out of those functions as the Commissioner thinks fit.
  - (8) The Minister must lay before the States a copy of every report made to him or her under this Article not more than one month after receiving it.
  - (9) The Commissioner's powers under this Law are without prejudice to the powers of the Data Protection Commissioner under the Data Protection (Jersey) Law 2005.

## **PART 4**

### **MISCELLANEOUS AND CLOSING**

#### **8 Regulations and Orders**

Any Regulations or Order made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States or the Minister, as the case requires, to be necessary or expedient for the purposes of the Regulations or Order.

**9 Citation and commencement**

- (1) This Law may be cited as the Register of Names and Addresses (Jersey) Law 201-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint.

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- <sup>1</sup> *chapter 15.240*
  - <sup>2</sup> *chapter 12.600*
  - <sup>3</sup> *L.1/2010*