

STATES OF JERSEY



DRAFT FREEDOM OF INFORMATION (JERSEY) LAW 201- (P.39/2011): AMENDMENT

**Lodged au Greffe on 25th March 2011
by the Privileges and Procedures Committee**

STATES GREFFE

DRAFT FREEDOM OF INFORMATION (JERSEY) LAW 201- (P.39/2011):
AMENDMENT

PAGE 155, ARTICLE 42 –

- (a) delete the word “or” at the end of paragraph (f);
- (b) for the full-stop at the end of paragraph (g) substitute “; or”;
- (c) after paragraph (g) add the following paragraph –
 - “(h) the exercise, by the Jersey Financial Services Commission, of any function imposed on it by any enactment.”.

PRIVILEGES AND PROCEDURES COMMITTEE

REPORT

The Privileges and Procedures Committee has decided to re-lodge this amendment to Article 42 of the Draft Freedom of Information (Jersey) Law 201- as a result of ongoing consultation with the Jersey Financial Services Commission (J.F.S.C.).

The J.F.S.C. is not included in the list of scheduled public authorities which will be subject to the Law from the outset; however, the Committee believes that this amendment should be made now, in anticipation of the Commission being subject to the Law at a future date.

Article 42(g) currently reads –

“Information is qualified information if its disclosure would, or would be likely to, prejudice –

...

(g) the proper supervision or regulation of financial services.”

The Commission recommended that this provision be amended to read –

“Information is qualified information if its disclosure would, or would be likely to, prejudice –

...

(g) the exercise of the statutory functions of the Jersey Financial Services Commission.”

The Committee is concerned that the Law as presently drafted could prejudice the exercise of the statutory functions of the J.F.S.C. under the Companies (Jersey) Law 1991, the Control of Borrowing (Jersey) Order 1958 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

There is no clear provision in the current draft of the Law to deal with information held by a public authority which has been derived from information provided to it by a legal person. Such information is only exempt under the draft Law where disclosure would, or would be likely to, prejudice the commercial interests of that person; or prejudice the economic interests of Jersey. These exemptions will not apply in all cases dealt with by the J.F.S.C. under the aforementioned legislation, and this could result in the Commission being requested to provide information that it considers to be prejudicial to the exercise of its statutory functions.

The Committee has decided to maintain the existing provision in Article 42(g) as this could also refer to bodies/authorities other than the J.F.S.C. or matters that may not be related specifically to the J.F.S.C.’s functions. The Committee has therefore decided to add a further provision at Article 42(h) in relation to the exercise of the statutory functions of the Jersey Financial Services Commission.

In bringing forward this amendment, the Committee has taken into account the exemptions which are available to the Financial Services Authority under the United Kingdom Freedom of Information Act 2000, for which there are no equivalents under the Draft Freedom of Information (Jersey) Law 201-. The first is in Section 30 of the U.K. Act, and covers information held for the purposes of “investigations and proceedings conducted by public authorities”. The second is contained within

Section 36 of the U.K. Act, and covers information that, if released, would “otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs”.

Having discussed this matter at length with the Commission, the Committee proposes that an amendment should be made to the draft Law in order to enable it to carry out its statutory functions without risk of prejudice. Information which falls under the new Article 42(h) will be qualified information, and, as such, will subject to the public interest test. The J.F.S.C. will only be able to refuse to supply the information under Article 42(h) if it is satisfied that, in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so. Any decision could be the subject of an appeal.

Financial and manpower statement

The adoption of this amendment would not result in any additional financial or manpower implications for the States.