



Jersey

PUBLIC RECORDS (JERSEY) LAW 2002

Revised Edition

15.580

Showing the law as at 1 January 2015

This is a revised edition of the law



Jersey

PUBLIC RECORDS (JERSEY) LAW 2002

Arrangement

Article

| | | |
|---------------|--|-----------|
| PART 1 | | 7 |
| <hr/> | | |
| | PRELIMINARY | 7 |
| 1 | Interpretation..... | 7 |
| 2 | Record..... | 9 |
| 3 | Public record..... | 9 |
| 4 | Age of public record..... | 9 |
| 5 | Public institution..... | 9 |
| 6 | Public record of public institution..... | 10 |
| 7 | Records management..... | 11 |
| | | |
| PART 2 | | 11 |
| <hr/> | | |
| | FUNCTIONS IN RELATION TO RECORDS | 11 |
| 8 | Principal duties of Trust..... | 11 |
| 9 | Principal duties of Archivist..... | 11 |
| 10 | Other functions of Trust..... | 12 |
| 11 | Other functions of Archivist..... | 12 |
| 12 | Panel may give directions and shall approve standards..... | 13 |
| 13 | Public records officer..... | 13 |
| | | |
| PART 3 | | 14 |
| <hr/> | | |
| | RECORDS ADVISORY PANEL | 14 |
| 14 | Establishment..... | 14 |
| 15 | Meetings and terms of appointment..... | 14 |
| 16 | Functions..... | 14 |
| | | |
| PART 4 | | 15 |
| <hr/> | | |
| | APPRAISAL AND RETENTION OF PUBLIC RECORDS | 15 |
| 17 | Appraisal of public records..... | 15 |
| 18 | Schedules of public records..... | 15 |

| | | |
|------------------------------|---|-----------|
| 19 | Further appraisal | 16 |
| 20 | Transfer of non-current archival public records to Trust..... | 16 |
| 21 | Archivist may inspect public records | 16 |
| 22 | Records to which Archivist is not entitled..... | 16 |
| 23 | Records of former public institution..... | 17 |
| 24 | Records of non-public institution performing public functions | 17 |
| 25 | Public institution to have access | 18 |
| 26 | Disposal of public records | 18 |
| PART 5 | | 19 |
| <hr/> | | |
| ACCESS TO PUBLIC RECORDS | | 19 |
| 27 | ..... | 19 |
| 28 | ..... | 19 |
| 29 | ..... | 19 |
| 30 | ..... | 19 |
| 31 | ..... | 19 |
| 32 | ..... | 19 |
| 33 | ..... | 19 |
| 34 | ..... | 19 |
| PART 6 | | 19 |
| <hr/> | | |
| REVIEW OF DECISIONS | | 19 |
| 35 | ..... | 19 |
| 36 | ..... | 19 |
| PART 7 | | 19 |
| <hr/> | | |
| MANAGEMENT OF PUBLIC RECORDS | | 19 |
| 37 | Conditions of records storage | 19 |
| 38 | Public duty to create and keep records | 20 |
| PART 8 | | 20 |
| <hr/> | | |
| MISCELLANEOUS | | 20 |
| 39 | Relationship with other laws | 20 |
| 40 | ..... | 20 |
| 41 | Law does not affect validity etc..... | 20 |
| 42 | Dispute resolution..... | 20 |
| 43 | Protection from liability for making record available | 21 |
| 44 | Protection from liability in general..... | 21 |
| 45 | Annual and other reports | 22 |
| 46 | Certified copy of public record..... | 22 |
| 47 | Fees to go to Trust | 22 |
| 48 | Charges for services..... | 22 |
| 49 | Regulations and Orders..... | 23 |
| 50 | Savings and transitional provisions | 23 |
| 51 | Citation | 23 |

| | |
|---|-----------|
| SCHEDULE 1 | 24 |
| <hr/> | |
| OATHS OF OFFICE | 24 |
| PART 1 | 24 |
| PART 2 | 24 |
| SCHEDULE 2 | 25 |
| <hr/> | |
| RECORDS ADVISORY PANEL | 25 |
| 1 Terms of appointment of members | 25 |
| 2 Disclosure of interest | 25 |
| 3 Oath..... | 25 |
| 4 Frequency of meetings..... | 26 |
| 5 Procedure at meetings..... | 26 |
| 6 Minutes | 26 |
| 7 Expenses of members | 26 |
| SCHEDULE 3 | 27 |
| <hr/> | |
| SAVINGS AND TRANSITIONAL PROVISIONS | 27 |
| 1 Regulations | 27 |
| 2 Application of Law to existing records..... | 27 |
| 3 References to Jersey Archives Service | 27 |
| 4 Existing arrangements..... | 28 |

Supporting Documents

| | |
|--------------------------------------|-----------|
| ENDNOTES | 29 |
| <hr/> | |
| Table of Legislation History..... | 29 |
| Table of Renumbered Provisions | 29 |
| Table of Endnote References | 29 |



Jersey

PUBLIC RECORDS (JERSEY) LAW 2002¹

A LAW relating to records concerning States functions and other public functions in Jersey, relating to access to those records when they become archives and conferring various functions on the Jersey Heritage Trust, an Archivist and a Records Advisory Panel

Commencement [[see endnotes](#)]

PART 1

PRELIMINARY

1 Interpretation

(1) In this Law unless the context otherwise requires –

“archival” means, in respect of a public record, that it has significant permanent value, whether for the purposes of public administration or as a matter of cultural heritage;

“Archivist” means the officer employed as Archivist under this Law;

“conservation” means, in respect of a record, repairing it or otherwise applying treatment to it;

“current” means, in respect of a public record, that it is required to be readily available for the performance of the day-to-day functions of a public institution (other than the function of providing access, or deciding whether to provide access, to the record under this Law);

“destroy” a record includes treat or modify it in any irreversible way that would prevent any information that could previously have been retrieved from the record from being retrieved from the record;

“dispose” of a record includes –

(a) transfer custody, control or ownership of the record;

(b) be a party to an arrangement for the transfer of the custody, control or ownership of the record; and

(c) destroy the record;

“electronic record” means a record in such a medium or language that it can only be read or understood by a natural person after electronic processing;

“function” includes power, authority and duty;

“Minister” means the Minister for Education, Sport and Culture;

“Order” means Order made under this Law;

“Panel” means the Records Advisory Panel established by this Law;

“person” includes a public institution and any other body of persons corporate or unincorporate;

“preservation” means, in respect of a record, protecting it against damage, deterioration, loss or corruption;

“public institution” has the meaning set out in Article 5;

“public record” has the meaning set out in Article 3;

“public record of a public institution” has the meaning set out in Article 6;

“public records officer” has the meaning set out in Article 13;

“record” has the meaning set out in Article 2;

“records management” has the meaning set out in Article 7;

“Regulations” means Regulations made under this Law;

“retention period” means, in respect of a public record, the period, determined by appraisal under Article 17, during which the record should be kept and at the end of which, according to that appraisal, the record should be the subject of further appraisal, or of disposal;

“Trust” means the Jersey Heritage Trust incorporated by an Act of Incorporation granted by the States by the Loi accordant un acte d’incorporation à l’association dite “The Jersey Heritage Trust”² registered on 3rd June 1983.³

- (2) Notes inserted in the text of this Law do not form part of the Law.
- (3) A reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.
- (4) A reference in this Law to an enactment includes a reference to an enactment of the United Kingdom that applies to Jersey and that reference is a reference to such an enactment as amended from time to time and includes a reference to such an enactment as extended or applied under another enactment of the United Kingdom.

2 Record

- (1) For the purposes of this Law, a record is information that –
 - (a) is created or received (whether before or after this Article comes into force) in the conduct of a corporate, institutional or individual activity; and
 - (b) has such content, context and structure as to provide evidence of the activity.
- (2) Notwithstanding paragraph (1), for the purposes of this Law a record includes anything prescribed by Regulations as a record, but does not include anything prescribed by Regulations as not being a record.
- (3) For the purposes of this Law, a record may be in any code or language, and in any medium.
- (4) For the purposes of this Law, the purpose of the author of something is not conclusive in deciding whether it is a record.
- (5) Regulations that prescribe something for the purposes of paragraph (2) may do so by reference to a particular object or to a class of objects.
- (6) Regulations that prescribe something for the purposes of paragraph (2) may also prescribe a sample (such as a postage stamp, coin or banknote) drawn from a class of objects and may specify how that sample is to be taken.

3 Public record

- (1) For the purposes of this Law, a public record is a record that has been created, or received, by a public institution in the performance of its functions and to the possession of which that or another public institution is entitled.
- (2) However, a record is not a public record merely because it was received by the Trust in the performance of such functions as it has otherwise than under this Law or any other enactment.

4 Age of public record

- (1) For the purposes of this Law, the age of a public record is calculated starting on 1st January next after the day when the last change was made to the substance of the record.
- (2) That calculation is not affected by the circumstance that the record was not (or is not taken to have been) a public record on either of those days, or for all of the time that started running on either of those days or on the day when Part 4 comes into force.

5 Public institution

- (1) For the purposes of this Law, “public institution” means any of the following –

- (a) a Department referred to in Article 1 of the Departments of the Judiciary and the Legislature (Jersey) Law 1965⁴;
 - (b) any administration of the States;
 - (c) the Trust, to the extent that it performs functions under this Law or any other enactment (other than the Loi accordant un acte d'incorporation à l'association dite "The Jersey Heritage Trust"⁵ registered on 3rd June 1983);
 - (d) the Archivist;
 - (e) the Panel;
 - (f) a person prescribed by Regulations for the purposes of this definition;
 - (g) except to the extent that Regulations otherwise provide –
 - (i) the staff establishment of the Lieutenant Governor,
 - (ii) the States of Jersey Police Force,
 - (iii) any office or institution in Jersey where natural persons who are officers of the Crown, or are employed by the Crown, the States or the States Employment Board, work in their capacity as such officers or employees,
 - (iv) a corporation owned by the States or in which the States have a controlling interest,
 - (v) any of the 12 parishes of Jersey so far as concerns its staff establishment, offices, and institutions (including the Honorary Police), that perform the temporal functions of the parish, to the extent that they perform those functions.⁶
- (2) Regulations made under paragraph (1)(f) may prescribe a person to be a public institution for the purposes of some or all of the provisions of this Law.
- (3) Regulations made under paragraph (1)(g) may prescribe an exception for the purposes of some or all of the provisions of this Law.

6 Public record of public institution

- (1) For the purposes of this Law, a reference to a public record of a public institution is a reference to a public record in the custody or control of a public institution (or to possession of which a public institution is entitled).
- (2) For the purposes of this Law, a reference to a public record of a named public institution is a reference to a public record in the custody or control of the named public institution (or to possession of which the named public institution is entitled).
- (3) However, a public record in the custody or control of the Trust is not a public record of the Trust merely because it was transferred to the custody or control of the Trust under Article 20.

7 Records management

For the purposes of this Law, records management is the process of ensuring the creation of records concerning the activities of a public institution to the extent needed to document its activities, the retention of those records to the extent necessary to ensure that the institution can account for its activities and the disposal of those records in a manner that depends on whether or not they still have significant value as evidence of those activities.

PART 2**FUNCTIONS IN RELATION TO RECORDS****8 Principal duties of Trust**

The Trust shall –

- (a) receive archival public records into its custody or control or make some other arrangement for their keeping;
- (b) maintain a public records office for the safe keeping of public records so received;
- (c) employ a person with appropriate qualifications as Archivist;
- (d) employ other persons with appropriate qualifications to assist the Archivist;
- (e) perform such other duties as the States may prescribe by Regulations;
- (f) perform its functions under this Law in accordance with standards approved from time to time by the Panel; and
- (g) comply with any directions of the Panel in relation to the performance of those functions.

9 Principal duties of Archivist

The Archivist shall –

- (a) before he or she begins to perform any of his or her functions under this Law, take oath before the Royal Court, in the form set out in Part 1 of Schedule 1;
- (b) appraise public records and survey the disposal of public records;
- (c) have the management of the public records in the custody or control of the Trust and make them available for public access in accordance with the Freedom of Information (Jersey) Law 2011⁷;
- (d) perform such other duties as the States may prescribe by Regulations;
- (e) perform his or her functions under this Law in accordance with standards approved from time to time by the Panel; and
- (f) comply with any directions of the Panel in relation to the performance of those functions.⁸

10 Other functions of Trust

The Trust may –

- (a) establish and manage specialized places of deposit and other facilities to house or exhibit public and other records (whether or not the Trust has custody or control of those records);
- (b) have the custody or control of any records (other than public records) that, in the opinion of the Archivist, are of significant evidential or cultural value and are offered by or on behalf of any person to the Trust on loan, as a gift, or under some other arrangement;
- (c) acquire copyright, other forms of intellectual property, and other interests, in public and other records, and, to the extent that it has any such property or other interests (or is acting on behalf of any person who has), dispose of that property or any of those interests;
- (d) employ staff, and engage consultants, for the purposes of this Law;
- (e) obtain and maintain equipment for the purposes of this Law;
- (f) perform such other functions as the States may prescribe by Regulations;
- (g) do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Law.

11 Other functions of Archivist

The Archivist may –

- (a) accredit specialized places of deposit and other facilities to house or exhibit public and other records;
- (b) manage any records (other than public records) that, in the opinion of the Archivist, are of significant evidential or cultural value and are offered by or on behalf of any person to the Trust on loan, as a gift, or under some other arrangement;
- (c) promote, by providing advice and other assistance, records management relating to public functions, whether those functions are carried out by the public or private sector;
- (d) promote the preservation, conservation, appreciation and use of public records and other records;
- (e) enter into arrangements with respect to the preservation, conservation, management and custody or control of public records relating to places outside Jersey;
- (f) enter into arrangements with archives services outside Jersey with respect to public records relating to Jersey;
- (g) inspect, assess, acquire, catalogue and dispose of (or authorize the disposal of) public and other records;
- (h) copy and publish public and other records (but not so as to infringe copyright, or any other intellectual property right, in the records);
- (i) lend records that, under this Law, have come into the custody or control of the Trust to museums and other places of public exhibition and to

different places of deposit (but not in breach of any condition attaching to that custody or control);

- (j) publish catalogues and indexes of, and other guides to, public and other records;
- (k) promote and undertake research and promote and provide education, advice and assistance in connection with public and other records;
- (l) undertake the preservation and conservation of records in the custody or control of the Trust and of other records;
- (m) train, or assist in the training of, persons for work in connection with public and other records;
- (n) provide information and facilities for persons using public and other records;
- (o) charge reasonable fees for services provided by him or her;
- (p) perform such other functions as the States may prescribe by Regulations;
- (q) do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions.⁹

12 Panel may give directions and shall approve standards

- (1) The Panel may give directions, not inconsistent with this Law, to the Trust and the Archivist in relation to the performance of their functions under this Law.
- (2) The Panel shall ensure that at all times there are standards that it has approved, for the purposes of Articles 8 and 9, that are not less strict and not less extensive than the standards in force at those times of the British Standards Institute, and of the International Organization for Standardization, on records management and the storage, conservation and preservation of records.

13 Public records officer

- (1) A public records officer of a public institution has a duty to ensure that the institution complies with any requirement of this Law that applies to the institution.
- (2) If the Archivist is required to consult a public institution, it is sufficient compliance with that requirement if the Archivist consults the public records officer of the institution.
- (3) For the purposes of this Law, the public records officer of a public institution is the person prescribed by Order for those purposes or, if no such person is so prescribed, the chief officer or other person who has charge of the day-to-day running of the institution.
- (4) A person so prescribed as public records officer of a public institution need not be a person employed by or in the institution.

PART 3**RECORDS ADVISORY PANEL****14 Establishment**

- (1) There is established a body to be known as the Records Advisory Panel.
- (2) The Panel shall consist of 5 members appointed by the Minister.
- (3) The members of the Panel shall have such qualifications or experience as qualify them to perform the functions of the Panel and to balance, in that performance, the interests of public institutions, the Trust, the Archivist, the States and the general public.
- (4) The Minister shall appoint one of those members as chairman of the Panel.
- (5) The Minister shall notify the States of the appointments made under this Article.
- (6) The performance of the functions of the Panel shall not be affected by any vacancy in its membership.

15 Meetings and terms of appointment

- (1) Schedule 2 shall have effect with respect to the members and the meetings of the Panel.
- (2) The States may make Regulations amending any provision of Schedule 2.
- (3) Subject to this Law, the Panel may regulate the conduct of its meetings.

16 Functions

The Panel may –

- (a) review from time to time the performance by the Trust, the Archivist and public institutions of their functions under this Law;
- (b) review from time to time the appraisal of the records of public institutions, and the schedules based on that appraisal, under Part 4;
- (c) advise the Minister, the Trust and the Archivist with respect to the functions of the Trust and the Archivist under this Law;
- (d) advise public institutions with respect to their duties under this Law;
- (e) advise the Minister, the Trust, the Archivist and public institutions with respect to the preservation of public records and the provision of public access to them;
- (f) give directions to the Trust and the Archivist with respect to the performance of their functions under this Law; and
- (g) perform such other functions with respect to public records as are conferred on the Panel by this Law or that the States may prescribe by Regulations.

PART 4**APPRAISAL AND RETENTION OF PUBLIC RECORDS****17 Appraisal of public records**

- (1) The Archivist shall appraise regularly the public records of each public institution for the purposes of this Law and further appraise the records in accordance with the schedules referred to in this Article.
- (2) The Archivist shall carry out his or her first appraisal of any class of electronic record so far as possible in anticipation, that is, at the time when the electronic program for creating records of that class is designed, or set in operation, for the public institution that is to create records of that class.
- (3) The public institution shall provide the Archivist with such assistance as the Archivist may reasonably require in order to carry out appraisals of the public records of the institution under this Article.
- (4) The Archivist shall on the basis of these appraisals prepare and update schedules that classify the public records appraised and indicate when further appraisal of the records should be carried out under this Article or disposal of the records should occur.

18 Schedules of public records

- (1) A schedule referred to in Article 17, and any amendment to it, shall be of no effect in relation to public records unless approved by the public records officer of the public institution that has custody or control of the records (or is entitled to their possession).
- (2) Such a schedule shall indicate for the purposes of this Law –
 - (a) the retention periods for classes of records;
 - (b) whether a record of any class is current;
 - (c) whether a record of any class is archival;
 - (d) at what intervals the records of each class should be the subject of further appraisal;
 - (e) what precautions (if any) should be taken to prevent inadvertent or wrongful disposal of records of each class;
 - (f) when records of each class are to be disposed of (if at all); and
 - (g) how records of each class are to be disposed of.
- (3) A public institution shall comply in respect of each record that is a public record of that public institution with the action for the time being specified in the relevant schedule as action to be taken by the institution in respect of the record.
- (4) The Archivist shall comply in respect of each record that is a public record with the action for the time being specified in the relevant schedule as action to be taken by the Archivist in respect of the record.

19 Further appraisal

- (1) The Archivist shall further appraise public records at regular intervals, in accordance with the schedules prepared and updated under Article 17.
- (2) A schedule prepared under Article 17 shall require the further appraisal of the records of any class to be carried out no later than one month before the end of the retention period that applies to the records.

20 Transfer of non-current archival public records to Trust

- (1) After an archival public record of a public institution has reached 20 years of age, the institution shall transfer the record to the custody or control of the Trust, in accordance with directions of the Archivist.
- (2) However, paragraph (1) does not require the public institution to transfer any of the following material –
 - (a) anything that is still current;
 - (b) anything that the public institution cannot transfer because the thing has already been lawfully disposed of;
 - (c) anything in respect of which a direction of the Panel is in force under Article 22;
 - (d) library material in the collection of the Public Library;
 - (e) historical material and works of art in the collection of the museums that the Trust administers;
 - (f) material prescribed by Order for the purposes of this Article.
- (3) For the purposes of this Article, a transfer of a record to the control of the Trust includes a transfer of the record to a specialized place of deposit specified by the Archivist.

21 Archivist may inspect public records

- (1) The Archivist, in connection with his or her functions under this Law, may inspect any public record of a public institution and may require a public institution to furnish any public record of the public institution for inspection by the Archivist.
- (2) The public institution shall comply with the requirement.

22 Records to which Archivist is not entitled

- (1) The Panel may, notwithstanding Article 20, direct that a public record, or each record in a specified class of public records, is a record that is not required to be transferred in accordance with that Article.
- (2) The Panel may, notwithstanding Article 21, direct that a public record, or each record in a specified class of public records, is a record to which the Archivist is not entitled to have access under that Article or is entitled to have access under that Article only on specified conditions to be observed by the Archivist.

- (3) A direction under this Article may only be given in respect of a record that contains information that, for the purposes of the Freedom of Information (Jersey) Law 2011, is information that is absolutely exempt information or qualified exempt information.¹⁰
- (4) A direction under this Article has effect for such period as is specified in the direction but may at any time be revoked by the Panel.

23 Records of former public institution

- (1) If a person who is a public institution ceases to be a public institution or, not being a public institution, takes over the functions of a public institution –
 - (a) the public records of the public institution that existed before the day of the cessation or take-over do not cease to exist as public records for the purposes of this Law just because the person is not actually a public institution;
 - (b) those records continue to be subject to this Law as if the person had not ceased to be a public institution on that day or the functions had not been so taken over; and
 - (c) for the purposes of this Law, the person shall be taken to be a public institution in respect of each record that continues to exist as a public record under this Article.
- (2) For the avoidance of doubt it is declared that if a person was taken to be a public institution in respect of any public records, by virtue of Article 24, and then ceased to be taken to be such an institution, this Article applies to the person and those records as if the person were a public institution that ceased to be a public institution.

24 Records of non-public institution performing public functions

- (1) If a person who is not a public institution performs public functions and both the person and the functions have been prescribed by Regulations for the purposes of this Article –
 - (a) the person's records that relate to the prescribed functions begin, if the Regulations so prescribe, to exist for the purposes of this Law as public records when the Regulations come into force (or if the Regulations prescribe a later date, the later date); and
 - (b) for the purposes of this Law, the person shall be taken to be a public institution in respect of each record that exists as a public record because of this Article on and from the date when it begins so to exist.
- (2) A person may be prescribed for the purposes of this Article even if the person, if a body corporate, is not in public ownership or is not under public control.
- (3) For the purposes of this Article, a person's records are the records in the person's custody or control (or to possession of which the person is entitled).

25 Public institution to have access

- (1) The Archivist shall ensure that a public record that is in the custody or control of the Trust because of a transfer under Article 20 is made available, as reasonably required for use by, or at the direction of, the public institution for the time being exercising the functions in the performance of which the record was created.
- (2) The Archivist may make the record available on such conditions as are necessary to ensure its preservation.

26 Disposal of public records

- (1) A person who has custody or control of a public record has a duty not to dispose of it.
- (2) This Article does not prevent –
 - (a) the doing of anything as required by any law or enactment, including Part 7 of this Law;
 - (b) the transfer of a public record to the custody or control of the Trust;
 - (c) the transfer of a public record to such custody or control as the Archivist directs (including transfer to a specialized place of deposit), to the custody or control of a person who owns or has some other interest in the record, to the archives of another country or to the archives of an international organization;
 - (d) the doing of anything with the specific approval of the Archivist or in accordance with a practice generally approved by the Panel;
 - (e) in the case of a current public record, the addition of material to, or alteration of the material in, the record for the purposes of the performance of the functions of the public institution that has custody or control of the record or is entitled to possession of the record; or
 - (f) the disposal of a duplicate that is not unique in any of the following respects –
 - (i) its form;
 - (ii) its content;
 - (iii) its being the only surviving duplicate of a lost record;
 - (iv) its being the only surviving one of a number of duplicates that have no known original at the time of the disposal.

PART 5¹¹

ACCESS TO PUBLIC RECORDS

27 12

28 13

29 14

30 15

31 16

32 17

33 18

34 19

PART 6²⁰

REVIEW OF DECISIONS

35 21

36 22

PART 7

MANAGEMENT OF PUBLIC RECORDS

37 Conditions of records storage

A person who has custody or control of an archival public record has a duty to ensure that the record is kept at such a place and in such manner as the Panel approves.

38 Public duty to create and keep records

- (1) A public institution has a duty of records management in relation to the performance of its functions.
- (2) Regulations may make provision for or with respect to the manner in which that duty is to be discharged, and a public institution shall discharge the duty in accordance with any such provision.
- (3) The requirements of this Article are in addition to any other requirements as to the keeping of records or the preparation of accounts, reports and other documentation.

PART 8**MISCELLANEOUS****39 Relationship with other laws**

- (1) ²³
- (2) ²⁴
- (3) ²⁵
- (4) In the case of any inconsistency between the operation of this Law and the Data Protection (Jersey) Law 2005²⁶, the latter shall prevail.²⁷

40 ²⁸**41 Law does not affect validity etc.**

- (1) Nothing in this Law or done under this Law affects the validity of any record or its admissibility in any proceedings.
- (2) Nothing in this Law affects the ownership of a record or any other legally enforceable interest in a record (whether the interest is in the nature of copyright or otherwise).
- (3) In particular, a transfer of a public record under this Law does not of itself transfer the ownership of the record or any other legally enforceable interest in the record (whether the interest is in the nature of copyright or otherwise).
- (4) Nothing in this Law prevents the Trust from agreeing with a person that records in the custody or control of the Trust as a result of a transfer from that person that are not public records are to be held on conditions (including conditions as to fees) to be observed by the person and the Trust, not being conditions inconsistent with this Law.

42 Dispute resolution

- (1) A dispute concerning the operation of this Law may be referred by the Minister, the Trust, the Archivist, the Panel or a public institution to the

Bailiff for resolution if it is a dispute involving any 2 or more of those parties (but not if it is a dispute to which the Bailiff or any person other than those parties is a party).

- (2) A decision of the Bailiff on such a dispute shall be final and shall be complied with by the parties to the dispute.

43 Protection from liability for making record available

- (1) If, in the course of the administration of this Law, access is given to a record –
 - (a) no action for defamation, breach of confidence, or infringement of copyright lies, by reason of the authorizing or giving of the access, against the Bailiff, the Minister, the Trust, the Archivist, the Panel, a public institution, or any person concerned in the authorizing or giving of the access;
 - (b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of the access lies against the author of the record or any other person because the author or other person supplied the record to the Bailiff, the Trust, the Archivist, the Panel or a public institution; and
 - (c) a person concerned in the authorizing or giving of the access is not guilty of a criminal offence by reason only of the authorizing or giving of the access.
- (2) The giving of access to a record under this Law shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the record or of its contents by the person to whom the access was given.
- (3) A person who transfers the custody or control of a public record to the Trust under this Law, or otherwise in accordance with this Law, shall not be liable in damages for that transfer.

44 Protection from liability in general

- (1) A person to whom this Article applies shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to –
 - (a) a public institution, an officer, or employee, in or of a public institution or an agent of a public institution, and a public records officer;
 - (b) the Trust, any member of the Trust, and any person who is, or is acting as, an officer, employee or agent of the Trust or performing any duty or exercising any power on behalf of the Trust;
 - (ba) the Minister and an officer in an administration of the States for which the Minister is assigned responsibility;

- (c) the Bailiff;
- (d) the Archivist;
- (e) the Panel and any member of the Panel;
- (f) any person with whom the Trust has made arrangements for the custody or control of a public record; and
- (g) a person prescribed for the purposes of this Article by Regulations.

45 Annual and other reports

- (1) The Archivist shall, as soon as practicable after the end of the year 2003 and of each subsequent calendar year, make to the States a report on –
 - (a) the performance of his or her functions, and those of the Trust, under this Law during that year; and
 - (b) such developments during that year in the making, management and keeping of public records as are relevant to Jersey.
- (2) The Archivist may also prepare such other reports as he or she thinks appropriate with respect to those matters and may publish any such report in such manner as he or she considers appropriate.
- (3) In making any report under this Article the Archivist shall have regard to the need for excluding from the report, so far as practicable, any matter of a kind referred to in Article 31(2) or (5).

46 Certified copy of public record

- (1) The Archivist may give a certificate that a record referred to in the certificate is a true copy of a public record in the custody or control of the Trust and such a certificate is prima facie evidence in all courts of the matters stated in the certificate.
- (2) Any writing purporting to be a certificate given under this Article shall, unless the contrary is proved, be taken to be such a certificate and to have been duly given.

47 Fees to go to Trust

A fee or charge that the Archivist may require under this Law is payable into the income of the Trust, but may be applied by the Trust only in the performance of the functions of the Trust and of the Archivist under this Law.

48 Charges for services

- (1) If the Archivist provides a service that is not within his or her duties under this Law, but is within in his or her functions under this Law, and no provision is made by or under this Law for a charge for the service, the Archivist may make a reasonable charge for the service.
- (2) The Archivist may refuse to provide or complete the service if the charge is not paid.

49 Regulations and Orders

- (1) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter that may be prescribed by Regulations under this Law.
- (2) The Minister may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to the following matters –
 - (a) fees and charges relating to access to records, and to the provision of extracts, copies and certificates, under this Law;
 - (b) the form and content of any notice or certificate given under this Law; and
 - (c) any other matter that may be prescribed by Order under this Law.
- (3) Regulations or an Order made under this Law may –
 - (a) make different provision in relation to different cases or circumstances; and
 - (b) contain such transitional, consequential, incidental or supplementary provisions as appear to the States or the Minister, as the case may be, to be necessary or expedient for the purposes of the Regulations or Order.
- (4) The Subordinate Legislation (Jersey) Law 1960²⁹ shall apply to Orders made under this Law.

50 Savings and transitional provisions

Schedule 3 shall have effect.

51 Citation

This Law may be cited as the Public Records (Jersey) Law 2002.

SCHEDULE 1

(Article 9 and Schedule 2)

OATHS OF OFFICE**PART 1**

You swear and promise before God that you will well and faithfully discharge the duties of Archivist under the Public Records (Jersey) Law 2002 and that you will not disclose any information that may come to your knowledge in the performance of your functions under that Law except in so far as the law requires or authorizes you so to do.

PART 2

You swear and promise before God that you will well and faithfully discharge the duties of a member of the Records Advisory Panel under the Public Records (Jersey) Law 2002 and that you will not disclose any information that may come to your knowledge in the performance of your functions under that Law except in so far as the law requires or authorizes you so to do.

SCHEDULE 2

(Article 15)

RECORDS ADVISORY PANEL**1 Terms of appointment of members**

- (1) Subject to this paragraph, a member of the Panel shall hold and vacate office in accordance with the terms of his or her appointment.
- (2) A member shall be appointed by instrument in writing for a period not exceeding 6 years and upon expiry of such period shall be eligible for reappointment.
- (3) A member may at any time resign his or her office by giving not less than one month's notice in writing to the Minister.
- (4) A member vacates office if he or she –
 - (a) has not attended any meeting of the Panel for a period longer than 12 consecutive months without the permission of the Minister;
 - (b) dies;
 - (c) has become bankrupt;
 - (d) is incapacitated by physical or mental illness; or
 - (e) is otherwise unable or unfit to discharge the functions of a member.
- (5) A person appointed as chairman of the Panel shall continue to hold appointment as such until –
 - (a) he or she resigns from that appointment by notice in writing delivered to the Minister;
 - (b) that appointment is revoked by the Minister by an instrument in writing; or
 - (c) he or she ceases to be a member of the Panel.

2 Disclosure of interest

If a member of the Panel has any direct or indirect personal interest in the outcome of the deliberations of the Panel in relation to any matter he or she shall not take part in those deliberations or, if he or she has already started to take part in those deliberations, he or she shall cease to take part in those deliberations.

3 Oath

A member of the Panel shall, before he or she begins to perform any function under this Law, take oath before the Royal Court in the form set out in Part 2 of Schedule 1.

4 Frequency of meetings

The Panel shall meet at least twice in each year.

5 Procedure at meetings

- (1) At a meeting of the Panel –
 - (a) 3 members of the Panel constitute a quorum;
 - (b) the chairman of the Panel (or, in the absence of the chairman, another member of the Panel appointed for the purposes of the meeting by the members present at the meeting) shall preside;
 - (c) the Bailiff and the Archivist are entitled to be present but shall have no vote;
 - (d) each member shall have one vote on each matter for deliberation; and
 - (e) in the event of an equality in the votes the person presiding shall have a casting vote.
- (2) The validity of any proceedings of the Panel shall not be affected by the absence during those proceedings of the Bailiff or the Archivist.

6 Minutes

The Panel shall keep minutes of its meetings.

7 Expenses of members

- (1) The States shall pay each member of the Panel who attends a meeting of the Panel reasonable out-of-pocket and other expenses occasioned by him or her in the course of carrying out his or her duties as such a member.
- (2) A person is not entitled to any other fee or remuneration as a member of the Panel.

SCHEDULE 3

(Article 50)

SAVINGS AND TRANSITIONAL PROVISIONS**1 Regulations**

- (1) Regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Law.
- (2) Any such provision may, if the Regulations so provide, come into force on the day on which this Schedule comes into force or a later day.
- (3) To the extent to which any such provision comes into force on a date that is earlier than the date of its promulgation, the provision does not operate so as –
 - (a) to affect, in a manner prejudicial to any person (other than the States or a public institution), the rights of that person existing before the date of its promulgation; or
 - (b) to impose liabilities on any person (other than the States or a public institution) in respect of anything done or omitted to be done before the date of its promulgation.

2 Application of Law to existing records

This Law applies to records already in existence on the day when the Law comes into force in the same way as it does to records created on or after that day, and any age or other period referred to in this Law that relates to any record shall be reckoned as if this Law had always been in force in relation to the record.

3 References to Jersey Archives Service

Unless other provision is made in that respect by Regulations, a reference to the Jersey Archives Service in any enactment of Jersey, or in any agreement or arrangement, in force immediately before the date when this Law comes into force, shall, on and from that date, be taken to be a reference –

- (a) to the Archivist, in the case of a matter that concerns functions of the Jersey Archives Service that are, from that date, analogous to those of the Archivist under this Law;
- (b) to the Trust, in the case of a matter that concerns the Jersey Archives Service's having custody or control of a record or other functions of the Jersey Archives Service that are, from that date, analogous to those of the Trust under this Law.

4 Existing arrangements

- (1) Notwithstanding this Law, an arrangement in force immediately before the date when this Law comes into force relating to the disposal or custody or control of public records continues in force after that date until the Archivist otherwise directs.
- (2) If, immediately before that date, a record was in the custody or control of the Jersey Archives Service, as constituted immediately before that date, under an arrangement by which the custody or control of the record was accepted from a person other than a public institution by or on behalf of the States, that arrangement (including any provision of the arrangement concerning access to or disposal of the record) has effect on and from that date as if made, on that date, by that person with the Trust.

ENDNOTES**Table of Legislation History**

| Legislation | Year and No | Commencement |
|--|--------------------|-----------------------------------|
| Public Records (Jersey) Law 2003 | L.48/2002 | 1 August 2003 (R&O.58/2003) |
| Transfer of Functions (Education, Sport and Culture Committee) (Jersey) Act 2003 | R&O.57/2003 | 1 August 2003 |
| Data Protection (Jersey) Law 2005 | L.2/2005 | 1 December 2005 (R&O.134/2005) |
| States of Jersey (Amendments and Construction Provisions No. 6) (Jersey) Regulations 2005 | R&O.46/2005 | 9 December 2005 |
| Employment of States of Jersey Employees (Consequential, Amendment, Repeal, Transitional and Savings Provisions) (Jersey) Regulations 2005 | R&O.155/2005 | 9 December 2005 |
| Freedom of Information (Jersey) Law 2011 | L.17/2011 | 1 January 2015 (R&O.202/2014) |

Table of Renumbered Provisions

| Original | Current |
|-----------------|--|
| 1 (3), (4) | spent, omitted from this revised edition |
| (5) | (3) |
| (6) | (4) |
| 51(1) | 51 |
| 51(2) | spent, omitted from this revised edition |

Table of Endnote References

-
- ¹ *This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 6) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*
- ² *L.7/1983*
- ³ *Article 1(1) amended by L.17/2011*
- ⁴ *chapter 16.300*
- ⁵ *L.7/1983*
- ⁶ *Article 5(1) amended by R&O.155/2005*
- ⁷ *chapter 16.330*
- ⁸ *Article 9 amended by L.17/2011*

-
- ⁹ Article 11 *amended by L.17/2011*
¹⁰ Article 22(3) *amended by L.17/2011*
¹¹ Part 5 *repealed by L.17/2011*
¹² Article 27 *repealed by L.17/2011*
¹³ Article 28 *repealed by L.17/2011*
¹⁴ Article 29 *repealed by L.17/2011*
¹⁵ Article 30 *repealed by L.17/2011*
¹⁶ Article 31 *repealed by L.17/2011*
¹⁷ Article 32 *repealed by L.17/2011*
¹⁸ Article 33 *repealed by L.17/2011*
¹⁹ Article 34 *repealed by L.17/2011*
²⁰ Part 6 *repealed by L.17/2011*
²¹ Article 35 *repealed by L.17/2011*
²² Article 36 *repealed by L.17/2011*
²³ Article 39(1) *repealed by L.17/2011*
²⁴ Article 39(2) *repealed by L.17/2011*
²⁵ Article 39(3) *repealed by L.17/2011*
²⁶ *chapter 15.240*
²⁷ Article 39(4) *amended by L.2/2005*
²⁸ Article 40 *repealed by L.17/2011*
²⁹ *chapter 15.720*