

STATES OF JERSEY



DRAFT CRIME (PUBLIC ORDER) (JERSEY) LAW 202- (P.97/2023): COMMENTS

**Presented to the States on 12th January 2024
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

The Panel was grateful to receive a briefing on the [Draft Crime \(Public Order\) \(Jersey\) Law 202-](#) (the ‘draft Law’) on 5th September 2023 (prior to its lodging) and has had a number of subsequent queries addressed by email, which has been much appreciated.

The Panel notes the background and rationale set out by the Minister for Justice and Home Affairs in the report accompanying the proposition (the ‘Report’), including that the prejudice aspects that were initially going to come forward in a combined piece of legislation (the Crime (Prejudice and Public Disorder) (Jersey) 201-) will now be brought to the Assembly separately. The Panel requests that it is kept in touch with this work.

Overall, the Panel is supportive of the draft Law. Some of the Panel’s queries and comments have been set out below, ahead of the proposition’s debate in case it provides useful context or further information for States Members.

The Panel notes that no Child Rights Impact Assessment (CRIA) was presented with the proposition, albeit this was not a formal requirement at the time of lodging. In response to queries about this the Panel was advised by Government Officers that a CRIA would be shared before the debate in the Assembly, however, it has not had the chance to review this at the time of drafting this comments paper. The Panel would request that the Minister takes the opportunity to specifically address the work undertaken in the capacity as corporate parent to assess the impact of this draft Law on children and young people in the speech to the Assembly.

Repeals

The Panel notes that the following Laws will be repealed as a result of the draft Law:

- The [Loi \(1797\) sur les rassemblements tumultueux](#) (the ‘Loi’). An [unofficial translation](#)¹ of the Loi states “*It is forbidden to all persons together as a mob or to assemble together riotously, in numbers of 12 or more.*”² The proposed draft Law includes an offence of ‘Riot’, replacing the Loi. The Panel has been advised that the content of the Loi doesn’t reflect modern requirements, for example, if it was to be enforced it could prohibit political protest and allow for the “banishment” of offenders.
- [Crime \(Disorderly Conduct Harassment\) \(Jersey\) Law 2008](#): a number of articles are copied to the draft Law (with some updates), for example, ‘Threatening, abusive or disorderly conduct’, ‘Harassment’ and articles in relation to restraining orders. Further details on the changes are set out in relevant sections below.

Minor amendments to other Laws:

- [Road Traffic \(Jersey\) Law 1956](#): the Panel understands that this will remove 2 offences from the list detailed in Schedule 3, namely ‘Offences in respect of which there is no power to levy fines summarily’. This will remove references

¹ [Loi \(1797\) sur les rassemblements tumultueux \(jerseylaw.je\)](#) note: this is an unofficial translation of the Loi

² [Ibid](#)

to ‘driving without a licence or employing unlicensed driver’ and ‘careless driving’ and therefore provide a Centenier the power to impose a fine.

- [Misuse of Drugs \(Jersey\) Law 1978](#): will insert the new Article 28A, which provides a Centenier with the power to impose fines summarily. The Panel understands that the use of the Parish Hall system provides an alternative route to the more formal court process, which has the benefit of reducing the impact for an individual of having a criminal record. The Panel notes the interlinking work with the Government’s Substance Use Strategy for 2023 – 2033³ ([‘A Change of Direction’](#)), which highlights the Government’s change of policy approach to recognise substance abuse as a public health problem, opposed to a purely criminal matter. The Panel awaits the publication of the draft Building a Safer Community Strategy and may undertake further scrutiny of this matter in due course.
- [Firearms \(Jersey\) Law 2000](#): the definition of “offensive weapon” is being inserted into the draft Law and therefore references will be removed from the Firearms Law. Queries the Panel asked about the change are set out in relevant section below.

Riot

With regards to the new offence of ‘Riot’, the Panel was advised that, a person commits an offence of riot if they are present at a riot and they use unlawful violence *and* intend to use that violence, or they are aware their conduct may be violent or threaten violence.

The draft Law defines a riot in Article 2, paragraph (2), which states that twelve or more people, defined as “the rioters” are present and use or threaten to use unlawful violence. The number twelve is consistent with the number that was identified in the Loi and also the law in the United Kingdom⁴. The Panel asked for some further details about the riot offence in order to allay concerns about whether there was a risk for people attending a protest peacefully to be defined as a rioter, due to their presence. The Panel described an example scenario of a large group of people conducting a peaceful protest, which was also attended by a small number of people (less than 12), who were causing a public disturbance and behaving violently. The Panel queried how this scenario would be dealt with in respect of the riot offence. It was confirmed to the Panel that those conducting the peaceful protest would not have committed the riot offence as they were not using violence. However, the small group of less than 12 people could be guilty of riot if they used violence (and had intended to use it) because the whole group was larger than 12 people. Additionally, those present who were threatening to use violence could be charge with affray.

Affray

The Panel was advised that the draft Law would result in a new statutory offence for affray, which would replace the current customary law offence. A key aspect of the draft Law was that it no longer required a bystander to be present, therefore a person who was on their own and threatening violence could be charged with / prosecuted for affray.

³ [A Change of Direction A Substance Use Strategy for Jersey 2023 to 2033.pdf \(gov.je\)](#)

⁴ [Public Order Act 1986, Article 1](#)

The Panel queried the definition of a person of “reasonable firmness” (which is referred to in the articles relevant to both ‘Riot’ and ‘Affray’, and noted concerns that it might create negative implications for individuals who might be considered overly sensitive, more vulnerable, or those who were (for whatever reason) more likely to find a situation distressing. The Panel was advised that a person of “reasonable firmness” was a phrase used to create more objectivity. For example, if an event was assessed by asking “were the people present negatively affected?” this takes into account who they are and is therefore more subjective (i.e. the same crime might impact people differently depending on their personal situation), whereas by using the reasonable firmness test, it tries to provide a more objective perspective of what the “average” person on the street might feel about behaviour.

Threats to kill, rape or cause serious physical injury

The Panel was advised that this is a new offence under Jersey law. The Panel understands that it will not include non-physical threats, such as revenge porn, threats of arson or online threats, however, these threats could be addressed by offences under disorderly behaviour or offences under the Telecommunications Law.

Threatening, abusive or disorderly conduct

As mentioned above, this article is similar to the article which was in the [Crime \(Disorderly Conduct Harassment\) \(Jersey\) Law 2008](#) (proposed to be repealed). The article structure has been updated in the draft Law and the Panel notes that there is a proposed change to the liable punishment of a person who commits the offence. A comparison is set out in the table below:

Law / Article:	Crime (Disorderly Conduct Harassment) (Jersey) Law 2008, Article 2, paragraph (6)	Draft Crime (Public Order) (Jersey) Law 202-, Article 5, paragraph (5)
Liable to:	Imprisonment for a term of 3 months and a fine of level 3 on the standard scale.	Imprisonment for 12 months and a fine of level 3 on the standard scale.

The Panel queried the reasoning for the increase in sentence length and was advised that the increased penalty reflected the adverse impact on the victim’s day-to-day activities, that it was proportionate to the seriousness of the offences, that it was designed to promote public safety and the prevention of crime and disorder, and that it supported the Minister’s Violence Against Women and Girls (VAWG) strategy. The Panel was further advised that the maximum penalty amounts were set upon guidance from the Law Officers’ Department.

The Panel highlights that that the Human Rights Notes attached to the Report detail that the increased penalty might engage Article 10 of the European Convention on Human Rights (ECHR) which is a right to ‘Freedom of Expression’ (see page 9 of the Report for further details). However, the Report also details that the increase is considered proportionate and the article is compliant with Article 10 of the ECHR.

Harassment

Recommendation 28 of the VAWG Taskforce Report suggested that stalking should be specifically named as an offence in Jersey legislation.⁵ In the United Kingdom stalking is an offence under the Protection from Harassment Act 1997. The Panel highlights that stalking has not been included as an offence under the draft Law. The Panel queried this with officers and was advised that the Minister was considering the VAWG Taskforce recommendations before deciding upon a stalking legislation. The Panel would be grateful if, in the presenting speech to the Assembly, the Minister would reference any plans for legislation that would make stalking an offence in Jersey and why it was not felt suitable to include as part of the draft Law.

As with some other articles of the draft Law, the section on ‘Harassment’ reflects articles in the [Crime \(Disorderly Conduct Harassment\) \(Jersey\) Law 2008](#) (proposed to be repealed). The article structure has been updated in the draft Law and the Panel notes that there is a proposed change to the liable punishment of a person who commits the offence. A comparison is set out in the table below:

Law / Article:	Crime (Disorderly Conduct Harassment) (Jersey) Law 2008, Article 3, paragraph (3)	Draft Crime (Public Order) (Jersey) Law 202-, Article 6, paragraph (4)
Liable to:	Imprisonment for a term of 2 years and a fine.	Imprisonment for 5 years and to a fine.

The Panel queried the reasoning for the increase in sentence length and (as per the section regarding ‘Threatening, abusive or disorderly conduct’) was advised that the increased penalty “*is required to reflect the significant impact that harassment might have on the victim, including the increasing prevalence of harassment online.*”⁶

The Panel also queried why there was no limit detailed on the penalty fine was advised that the fine would be applied on a sliding scale that would be amended to keep up with inflation.

Offensive weapon

As referenced in the Report, offensive weapons are currently dealt with in the [Firearms \(Jersey\) Law 2000](#). The Panel asked for clarification about how the draft Law compared to the current law with regards to the burden of proof for the offence. It was advised that the current law states that a person may be arrested for possession of an offensive weapon and the burden of proof is on them to prove that they had lawful authority. The new offence is similar, but it provides a defence for a person carrying a knife where they have good reason or lawful authority (for example, for use at work, religious reasons, as part of a national costume, or for educational purposes within school premises). It extends the offence to cover an article that has “a blade or is sharply pointed” (except for a folding penknife with a blade with a cutting edge no more than 3 inches) and specifically includes school premises as a prohibited location in addition to public place.

A comparison is set out in the table below regarding the proposed changes to the penalty for the offence of carrying offensive weapons:

⁵ [VAWG Taskforce Report.pdf \(gov.je\)](#)

⁶ Report accompanying [P.97/2023](#), page 11

Law / Article:	Firearms (Jersey) Law 2000, Article 43, paragraph (1)	Draft Crime (Public Order) (Jersey) Law 202-, Article 7, paragraph (4)
Liable to:	Imprisonment for a term of 4 years and to a fine.	Imprisonment for 5 years, a fine, and the court may make an order for the forfeiture or disposal of the weapon concerned.

The Panel asked for confirmation of the relevant age of responsibility for young people who commit an offence under the draft Law, with particular reference to Article 7 referencing the inclusion of school premises. The Panel was advised that the relevant age of criminal responsibility in Jersey was aged 10, as per the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#). A child (aged 10 – 14), a young person (aged 15 – 17), or a young adult (aged 18 – 20) would be considered accordingly by the relevant court and guidelines, with consideration of the sanctions detailed by the relevant law. A child under the age of 10 would not face criminal sanction but may be subject to school policy.

As noted above, the Panel has not had the opportunity to review a CRIA, however, queried the consideration undertaken of the potential impact of the draft Law on children and young people. It was confirmed that this had been undertaken and mitigated where appropriate. An example was provided to the Panel regarding any potential increase in police activity at school premises. It was confirmed that the States of Jersey Police worked closely with all the educational premises and had a policy of involving headteachers or staff where appropriate, before engaging with any pupils on school premises.

Restraining orders

The [Crime \(Disorderly Conduct Harassment\) \(Jersey\) Law 2008](#) provided for restraining orders if harassment has occurred. The draft Law updates this to provide for a wider scope.

The Panel has noted that there is a proposed change to the liable punishment of a person who breaches a restraining order:

Law / Article:	Crime (Disorderly Conduct Harassment) (Jersey) Law 2008, Article 6, paragraph (2)	Draft Crime (Public Order) (Jersey) Law 202-, Article 6, paragraph (4)
Liable to:	Imprisonment for a term of 2 years and to a fine.	Imprisonment for 5 years and to a fine.

The Panel noted the increase in imprisonment term as a penalty and was advised (as per other articles), that the increased penalty reflected the adverse impact on the victim’s day-to-day activities, that it was proportionate to the seriousness of the offences, that it was designed to promote public safety and the prevention of crime and disorder, and that it supported the Minister’s VAWG strategy. The Panel was further advised that the maximum penalty amounts were set upon guidance from the Law Officers’ Department

The Panel highlights that that the Human Rights Notes attached to the Report detail that the increased penalty “*is considered proportionate to the offence due to the potential*

harm to the victim. The increase in maximum penalty reflects the seriousness of the breach and the potential consequences for the other person.”⁷

The Panel also queried why there was no limit detailed on the penalty fine was advised that the fine would be applied on a sliding scale that would be amended to keep up with inflation.

Power to impose fines

The Panel highlights that the level of fine that can be imposed by a Centenier under Article 11 is at level 1 on the standard scale (as set by the [Criminal Justice \(Standard Scale of Fines\) \(Jersey\) Law 1993](#)). For reference, level 1 on the standard scale is currently set as a maximum of £200.

Offences by bodies corporate

The Panel queried the inclusion of this clause and was advised that it was considered appropriate as certain offenses (such as harassment or threats to kill) could be committed by a body corporate.

Public consultation

The Panel noted that a public consultation was undertaken on the earlier iteration of the Crime (Prejudice and Public Disorder) (Jersey) 201- (before the public order and prejudice elements were separated). The Panel has been advised that the consultation (which ran from 14th October 2019 to 10th January 2020) only received thirteen responses. It is further advised that the majority of responses focused on the hate crime and prejudice aspect of the Law. It was advised that the management of drug offence at a Parish Hall enquiry had two respondents supportive of the proposal and one against it.

Human Rights notes

The Human Rights notes which are attached as an appendix to the Report are drafted by the Law Officers’ Department but are specifically state that they are not to be taken as legal advice. The Panel queried if the Minister had taken legal advice relating to the Human Rights compliance of the draft Law and this was positively affirmed.

Conclusion

The Panel is supportive of the draft Law and the consolidation of public order offences into one piece of legislation.

As detailed in this paper the Panel would be grateful if the Minister could address the following points in her speech to the Assembly:

- Provide details about the work undertaken in the capacity as corporate parent to assess the impact of this draft Law on children and young people; and
- Reference any plans for legislation that would make stalking an offence in Jersey.

⁷ Report accompanying [P.97/2023](#), page 13