

STATES OF JERSEY



Jersey

DRAFT ROYAL COURT (AMENDMENT No. 16) (JERSEY) LAW 202-

**Lodged au Greffe on 23rd December 2021
by the Chief Minister
Earliest date for debate: 8th February 2022**

STATES GREFFE



Jersey

DRAFT ROYAL COURT (AMENDMENT No. 16) (JERSEY) LAW 202-

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 Royal Court (Amendment No. 16) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator J.A.N. Le Fondré**
Chief Minister

Dated: 23rd December 2021

REPORT

Current position

The [Royal Court \(Jersey\) Law 1948](#) (“the Law”) makes arrangements for the appointment, eligibility, and retirement of Jurats.

Article 2 of the Law requires that candidates for the position of Jurat must be at least 40 years old and have been born in Jersey or resident for 5 years. Unusually to a contemporary reader, that Article also provides that neither women nor people who are not members of the ‘Established Church’ (the Church of England) are disqualified.

Article 9 of the Law deals with how Jurats may retire. As drafted, it makes no provision for leaving the office in good standing until the mandatory retirement age of 72. Apart from age, the only ways to leave the post are either to become physically or mentally incapable of continuing or to fail to *‘discharge the duties ... for a continuous period of 12 months ... without good reason’*.

Clearly, this arrangement is out of step with the modern conception of employment or voluntary service, and there is some concern that the permanent commitment to unpaid and demanding duties may affect the number and demographics of the candidates who put themselves forward for the role.

The effect of the Amendment

The Amendment would modify the arrangements for retirement to allow a structured way to depart the office on agreed terms, as well as making some other improvements.

Article 2 of the Amendment would remove Article 2(2) of the Law. This would have the effect of removing references to the non-disqualification of women and adherents of religions other than the Church of England, or no religion. In the context of the current legal framework, including robust protections against discrimination and for human rights, there is no realistic possibility of disqualification on those grounds. This makes the reference (dating from 1951¹) unnecessary, and as a matter of general principle such otiose provisions are ‘cleaned out’ of the statute book wherever possible.

Article 3 of the Amendment makes material changes by removing Article 9 *‘Retirement of Jurats’* from the Law and replacing it with a new revised version that makes provision for Jurats to retire by agreement.

Under the new rules, Jurats will still cease to hold office when they reach 72. However, they will not be compelled to serve until that age. Instead, a Jurat will be able to notify the Bailiff that they wish to retire, giving at least 6 months’ notice, as long as their total period of service would be at least 6 years.

In order to ensure that the essential services of the courts are not disrupted, no more than two Jurats will be permitted to retire or otherwise leave office each year. If more Jurats wish to retire than can be permitted because of other retirements or deaths, then priority for retirement will be given to those who have served for the longest time. (This eventuality is considered extremely unlikely but needs to be accounted for.)

The existing arrangements for the Court to require the resignation of a Jurat due to physical or mental incapacity or due to a failure to perform their duties will be retained.

¹ [Royal Court \(Amendment\) \(Jersey\) Law 1951](#)

Additionally, Article 3 of the Amendment also inserts a new Article 9AA into the Law, which replicates existing Article 9(2) and allows the Bailiff to call upon any ‘ex-Jurat’ up to the age of 75, who has ceased to hold office or retired (but not if they have been required to resign), to again serve as a Jurat for specific purposes. A Jurat appointed by the Bailiff in this way will not affect the customary 12 Jurats. The intention is that that the pool of persons available for appointment as Jurats (i.e. ‘reserve Jurats’) would be increased.

Article 4 of the Amendment makes a simple improvement for clarity by changing the heading of Article 9A of the Law. This Article allows the Bailiff to appoint Jurats of the Guernsey Royal Court to act as a Jurat in Jersey for particular purposes². As Guernsey Jurats are the sole focus of the Article, the current heading of ‘*Appointment of one or more Jurats by the Bailiff*’ is not particularly descriptive, and so is replaced with a more accurate heading of ‘*Appointment of Guernsey Jurats to act as Jurats in Jersey*’.

Financial and workforce implications

This draft Amendment could have the potential for a marginal increase in the number of times the Electoral College must be convened to elect new Jurats, but this is understood to be manageable within the established resources for the Courts and related services.

Human Rights notes

No human rights notes are included in this proposition as the Law Officers have confirmed that the Draft Royal Court (Amendment No. 16) (Jersey) Law 202- raises no issues of compliance with the European Convention on Human Rights.

² This is primarily a safeguard against perceived bias in case, for instance, a Jersey Jurat was to be called as a witness in a criminal case. This provision was inserted by the [Royal Court \(Amendment No. 13\) \(Jersey\) Law](#), and the proposition addresses the rationale in detail.

EXPLANATORY NOTE

This draft Law if passed will make changes to the Royal Court (Jersey) Law 1948 (“the 1948 Law”) with respect to Jurats, most particularly by adding a new mechanism to allow for retirement before the age of 72, being the age when a Jurat otherwise ceases to hold office.

Article 1 provides that it is the 1948 Law that is being amended.

Article 2 deletes Article 2(2) of the 1948 Law, which provides for the avoidance of doubt that people who are not members of the established church or who are women are not disqualified for appointment as a Jurat. (This provision is no longer needed today because there could never be such a doubt.)

Article 3 substitutes a new Article 9 of the 1948 Law. Jurats still cease to hold office on reaching the age of 72, but there is added a new provision allowing a Jurat to give notice of intention to retire on completion of 6 years’ service. Up to 2 Jurats may retire each year under this provision but this is subject to the numbers of Jurats ceasing to hold office (the number will be reduced by up to 2, depending on how many cease to hold office). If more Jurats wish to retire than the number permitted, only the longest serving may do so. The provision for a Jurat to be required to resign on grounds of a lack of fitness for duty remains, but Jurats permitted to retire are now also required to present a petition to the Bailiff for Her Majesty in Council to permit the retirement or resignation.

Article 3 also inserts a new Article 9AA into the 1948 Law. It applies to retired Jurats the provision enabling a Jurat who has ceased to hold office to serve for any period or in relation to any cause or matter as the Bailiff may determine, up to the age of 75.

Article 4 changes the heading of Article 9A of that Law to make it clear that the Article deals only with the appointment of Guernsey Jurats to act as Jurats in Jersey.

Article 5 provides for how the draft Law may be cited and for it to come into force 7 days after it is registered in the Royal Court.



Jersey

DRAFT ROYAL COURT (AMENDMENT No. 16) (JERSEY) LAW 202-

A LAW to amend further the [Royal Court \(Jersey\) Law 1948](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Amendment of [Royal Court \(Jersey\) Law 1948](#)

This Law amends the [Royal Court \(Jersey\) Law 1948](#).

2 Article 2 (qualifications for the office of Jurat) amended

Article 2(2) is deleted.

3 Article 9 substituted

For Article 9 there is substituted –

“9 Retirement and resignation of Jurats

- (1) Subject to this Article a Jurat ceases to hold office on attaining the age of 72.
- (2) A Jurat may indicate an intention to retire before that age by giving not less than 6 months’ notice to the Bailiff, or any other person nominated by the Bailiff, provided that at the end of that period of 6 months the Jurat will have completed 6 years’ service.
- (3) The Bailiff may permit the retirement of up to 2 Jurats in any year following an indication of intention to retire under paragraph (2).
- (4) However –

- (a) the number permitted to retire is reduced by the number of Jurats otherwise ceasing to hold office in that year (to a maximum of 2);
 - (b) if more Jurats than the number permitted under this Article have indicated an intention to retire in any one year, the length of service will determine who may retire under this Article.
- (5) A Jurat may be required by the Court to resign –
 - (a) if for a continuous period of 12 months the Jurat fails, without good reason, to discharge the duties of the office; or
 - (b) if, in the opinion of the Court, the Jurat is permanently unable for any reason efficiently to carry out the duties of the office.
- (6) A Jurat who is permitted to retire or required to resign under this Article must present to the Bailiff, for transmission to Her Majesty in Council, a petition praying that Her Majesty in Council may be pleased to permit the Jurat to retire, or resign from, the office of Jurat.
- (7) If a Jurat required to resign under paragraph (5) has not within a reasonable time presented a petition as required by paragraph (6), the Jurat is removable by Order of Her Majesty in Council on the petition of the Superior Number of the Royal Court.
- (8) The retirement or resignation of a Jurat under this Article triggers a vacancy in the number of Jurats for the purposes of Article 4.

9AA Appointment to serve as a Jurat after retirement

- (1) Despite Article 1, a Jurat who has ceased to hold office or retired under Article 9 (other than by being required to resign under paragraph (5) of that Article) and who has not attained the age of 75 years may be called upon to serve as a Jurat for any period or in relation to any cause or matter as the Bailiff may determine.
- (2) A person serving as a Jurat under paragraph (1) is not included in the total of 12 Jurats that may be appointed under customary law.
- (3) An oath under Article 7 taken by a person before being called to serve under this Article continues to be binding on the person for the duration of that service.”.

4 Article 9A amended

For the heading to Article 9A there is substituted –

“9A Appointment of Guernsey Jurats to act as Jurats in Jersey”.

5 Citation and commencement

This Law may be cited as the Royal Court (Amendment No. 16) (Jersey) Law 202- and comes into force 7 days after it is registered.