

**DRAFT ROYAL COURT (AMENDMENT No. 10)  
(JERSEY) LAW 199**

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**Lodged au Greffe on 2nd June 1998  
by the Legislation Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

## Report

These amendments to the Royal Court (Jersey) Law 1948 (“the 1948 Law”) seek to address problems arising from the increasing pressures on the Royal Court. These arise both in the criminal and civil field. Criminal cases alone coming before the Royal Court ran at the level of 80 to 85 per annum in 1994 and 1995. In 1996, 149 criminal cases came before the Court and in 1997, 124 cases.

The number and complexity of civil cases is ever increasing. This arises not only from the Island’s population, but also from Jersey’s position as an international finance centre. Many of these cases are extremely complex and can run for several weeks.

The combined effect of these pressures is that it is customary now for two and sometimes three Courts to sit as the Inferior Number at any one time. This places considerable pressure on the Jurats. Not only must they sit as part of the Inferior Number; they also have to attend sittings of the Full Court, ceremonial occasions and also undertake many extra-judicial duties.

The first of the amendments contained in the draft Law would empower the Bailiff to appoint a retired Jurat who is under 75 years for a particular purpose or period. This proposal is made against the background that, at present, Jurats have to retire upon attaining the age of 72. The proposed reform is to amend the 1948 Law so that the Bailiff be empowered, when the need arises, to call upon the services of a Jurat who has retired from office but who has not yet attained the age of 75. This would enable experienced retired Jurats able and willing to do so to support the existing Jurats when necessary. The Bailiff’s discretion would be exercised sparingly and only when the need arose. However, it would undoubtedly assist in ensuring that justice was not delayed because of any inability to constitute a Court.

The second amendment to the 1948 Law seeks to implement Recommendation 9.15 of the Second Interim Report of the Jersey Judicial and Legal Services Review Committee under the chairmanship of Sir Godfray Le Quesne (R.C. 24/90) that -

“If all the parties to a case [in the Royal Court] agree that the issues raised are predominantly issues of law, they should be able to apply for trial by the Bailiff alone.”.

The recommendation was made against the following background. The Bailiff is the sole judge of law in the Royal Court and the Jurats are the judges of fact (subject to the Bailiff’s casting vote if they are equally divided). The Le Quesne Committee did not favour any fundamental change of these functions. It was their opinion that a judge and two laymen make a better tribunal of fact than a judge sitting alone. However the Committee went on to suggest one change of detail. The relevant passages from the Second Interim Report are as follows -

“At present the Bailiff can sit alone to hear a case if the case involves only issues of law ..... If there is any issue of fact, Jurats must sit as well, even if the issues of law are very extensive and the issues of fact relatively insignificant. The result is that the Jurats may be obliged to sit through a long trial in which their function is confined to a fraction of the time occupied. We believe this requirement can sometimes be unreasonable, and a remedy can be devised without threat to the general rule that issues of fact are to be decided by the Jurats.

*We recommend that, if all parties to a case agree that the issues raised are predominantly (even if not solely) issues of law, they should be able to apply to the Judicial Greffier to certify to the Bailiff that the case is suitable for trial by the Bailiff alone. The Greffier would so certify only if he were satisfied that the issues raised by the case were predominantly issues of law. Even if the certificate were granted, the Bailiff would exercise his discretion in deciding whether to hear the case with or without Jurats. This procedure would be advantageous in a limited number of cases, and we believe it contains sufficient safeguards to prevent any possibility of abuse.”.*

The amendments contained in the draft Law would provide that in any civil cause or matter in which issues of law and fact arose and in which the parties had applied to the Judicial Greffier for certification that the

cause or matter was suitable for trial by the Bailiff alone, and in which the Judicial Greffier had granted such certification, the cause or matter would be able, subject to the final approval of the Bailiff, to be determined by the Bailiff sitting alone. In the first instance, therefore, it would be for the Judicial Greffier to determine whether or not he should grant a certificate on the basis that the issues raised were predominantly issues of law. He would make that determination having regard, amongst any other matters, to the same considerations that weighed with the Le Quesne Committee. It could in any event only be applied with the consent of all the parties to the litigation.

The Legislation Committee believes that the proposed reforms would help to relieve the ever-increasing pressure on the Jurats without making a change which would interfere with the normal constitution of the Inferior Number of the Royal Court.

On a matter of drafting detail, the opportunity is also taken to make explicit provision in the 1948 Law that any cause or matter in which issues *only* of law arise may be determined by the Bailiff sitting alone. This provision is presently made in Rules of Court, but it is desirable that all aspects of procedure in which the Bailiff sits as sole judge - be it to determine issues only of law or issues predominantly of law - be enacted together.

**Explanatory Note**

The purpose of this Law is to amend further the Royal Court (Jersey) Law 1948 -

- (a) to empower the Bailiff to appoint a retired Jurat who is under 75 years to act as a Jurat for a particular purpose or period;
- (b) to provide that if all parties to a case agree that the issues raised are predominantly issues of law, they may apply to the Judicial Greffier to certify to the Bailiff that the case is suitable for trial by the Bailiff alone.

**ROYAL COURT (AMENDMENT No. 10) (JERSEY) LAW 199**

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**A LAW** to amend further the Royal Court (Jersey) Law 1948, sanctioned by Order of Her Majesty in Council of the

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*(Registered on the      day of      199 )*

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**STATES OF JERSEY**

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The      day of      199

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

**ARTICLE 1**

In Article 10 of the Royal Court (Jersey) Law 1948, as amended<sup>1</sup> (hereinafter referred to as "the principal Law") -

- (a) the Article shall be renumbered as paragraph (1) thereof; and
- (b) after paragraph (1) there shall be added the following paragraph -

“(2) Notwithstanding Article 2 of this Law, the Bailiff may appoint a person who has ceased to hold the office of Jurat, other than by operation of the proviso to paragraph (1) of this Article, and who has not attained the age of seventy-five years to act as a Jurat for any period or in relation to any cause or matter as the Bailiff may determine, and an oath under Article 8 of this Law taken

<sup>1</sup> Tome VII, page 509.

by a person prior to his appointment under this paragraph shall continue to be binding on him.”.

## ARTICLE 2

In paragraph (2) of Article 13 of the principal Law,<sup>2</sup> after the words “the Jurats shall” there shall be inserted the words “, subject to paragraph (2) of Article 13B of this Law,”.

## ARTICLE 3

After Article 13A of the principal Law,<sup>1</sup> there shall be inserted the following Article -

### “ARTICLE 13B.

#### **Bailiff as sole Judge**

(1) Any cause or matter in which only issues of law arise may be determined by the Bailiff sitting alone.

(2) Any civil cause or matter -

(a) in which issues of law and fact arise; and

(b) in which -

(i) the parties to the proceedings have applied to the Judicial Greffier for certification that the cause or matter is suitable for trial by the Bailiff alone; and

(ii) the Judicial Greffier has granted such certification,

may, if the Bailiff thinks fit, be determined by the Bailiff sitting alone.

<sup>2</sup> Tome VII, page 512.

<sup>1</sup> Tome VII, page 512 and Volume 1996-1997, page 667.

(3) The Judicial Greffier shall not grant a certificate under sub-paragraph (b) of paragraph (2) of this Article unless he is of the opinion that the issues raised are predominantly issues of law.”.

#### ARTICLE 4

This Law may be cited as the Royal Court (Amendment No. 10) (Jersey) Law 199 .