

STATES OF JERSEY



DRAFT CRIMINAL JUSTICE (COMPENSATION ORDERS) (AMENDMENT No. 2) (JERSEY) LAW 201-

Lodged au Greffe on 16th June 2014
by the Chief Minister

STATES GREFFE



Jersey

**DRAFT CRIMINAL JUSTICE (COMPENSATION
ORDERS) (AMENDMENT No. 2) (JERSEY)
LAW 201-**

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 Criminal Justice (Compensation Orders) (Amendment No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 13th June 2014

REPORT

1. Introductory

The Criminal Justice (Compensation Orders) (Jersey) Law 1994 (the “1994 Law”) made new provision to empower Jersey’s criminal courts to order the payment of compensation by persons convicted of crime and for connected purposes. Certain deficiencies in the 1994 Law were recently brought to the attention of the Legislation Advisory Panel by H.M. Attorney General, and the purpose of this Projet de Loi is to address the matters raised by him – none of which is thought to be contentious.

2. Default sentences – length

Under Article 3 of the 1994 Law when a court makes a compensation order it may allow time for payment of the amount due under the order. It may direct payment by instalments; and there is a power to fix a term of imprisonment (known as a “default sentence”) which the convicted person will undergo if a sum is not paid on time. Article 3 stipulates however that a default sentence must not exceed –

- (a) 6 months in the Magistrate’s Court or the Youth Court (or on appeal from those Courts); or
- (b) 12 months in the Royal Court.

These caps on the length of default sentences are thought to be deficient in 2 respects:

- *In the Magistrate’s Court*

The Magistrate has jurisdiction to imprison offenders for up to 12 months. But at the time the 1994 Law was enacted, this jurisdiction was limited to 6 months which is presumably why the cap of 6 months was applied to default sentences as described above. Logically, when the ordinary jurisdiction of the Magistrate was increased from 6 months to 12 months¹, the period of 6 months referred to in Article 3 of the 1994 Law for default sentences ought to have been increased to 12 months as well.

The draft Law would now effect that change (by linking the maximum default sentence to the maximum jurisdiction of the Magistrate to impose imprisonment).

- *In the Royal Court*

The amount of a compensation order made by the Royal Court is potentially unlimited; but no matter how large the compensation order may be – some have been in excess of £60,000² – the default sentence cannot exceed 12 months. The Legislation Advisory Panel could see no reason why the hands of the Royal Court should be tied in this way, and concluded that the length of the default sentence could properly be left to the discretion of the Royal Court. Under Article 6 of the 1994 Law, a defendant has a right of appeal to the Court of Appeal against a default sentence, and therefore is able to challenge a default sentence if he or she believes it to be excessive.

The draft Law would effect that change i.e. it would remove the maximum term of 12 months able to be fixed by the Royal Court as a default sentence.

¹ by the Magistrate’s Court (Miscellaneous Provisions) (Amendment No. 8) (Jersey) Law 2000

² See McLoughlin [2012] JRC 179

3. Review of compensation orders – extensions of time

Article 7 of the 1994 Law empowers the courts to review earlier compensation orders. The defendant may apply to the court to discharge or reduce the amount payable in cases where –

- (a) damages have been assessed at a lesser figure in other civil proceedings;
- (b) relevant property has been recovered by the victim;
- (c) there has been a sudden large reduction in the defendant's means, which is unlikely to be made up in the foreseeable future.

A doubt arose in a recent application to the Royal Court under Article 7 as to whether the Court had power to grant an extension of time within which to pay the relevant compensation order (as opposed to discharging or reducing the amount payable under the order). In the event the Court held that it did have power to grant the desired extension, but intimated that it would be helpful if a brief amendment of Article 7 of the 1994 Law could be passed to make the position clear on the fact of the Law.

The draft Law contains the necessary provision to make it clear that “... *the court which made the compensation order may, on the application of the [relevant] person, vary the time allowed for payment of the amount which remains to be paid, including any date by which any instalment must be paid.*”

4. Miscellaneous drafting points

Nothing can usefully be added to the draftsman's explanatory note which refers to the correction of 2 cross-references in Article 6 of the 1994 Law and an amendment clarifying the right of a parent or guardian to apply to the court under Article 7 of the 1994 Law for a compensation order to be reviewed (where the parent or guardian is liable to pay the amount due).

Financial and manpower implications

There are no manpower or financial implications for the States of Jersey arising from this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Criminal Justice (Compensation Orders) (Amendment No. 2) (Jersey) Law 201

This Note has been prepared in respect of the Draft Criminal Justice (Compensation Orders) (Amendment No. 2) (Jersey) Law 201- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (the “ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Consideration has been given to whether the amendments made by the draft Law to Article 3 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994 (“the 1994 Law”) are compatible with article 5 of the ECHR (“article 5”), which guarantees the right to liberty and security.

Article 5 provides that:

- “1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law –*
 - (a) *the lawful detention of a person after conviction by a competent court;*
 - (b) *the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
 - (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”*

A default sentence imposed under Article 3 of the 1994 Law would fall within the first limb of exception (b) of paragraph 1 of article 5, i.e. lawful detention for non-compliance with the lawful order of a court. Article 5.1(b) has previously been held to permit detention for failure to pay a fine (application no. 6289/73: *Airey v Ireland* 8 DR 42 (1977)), which is analogous to a compensation order.

In order to be compliant with article 5 the order must be made by a court of competent jurisdiction, must be sufficiently precise to meet the ECHR test of legal certainty, and must be capable of enforcement; all of which would be satisfied in the case of a default sentence imposed under Article 3 of the 1994 Law.

The amendment to Article 3 of the 1994 Law increases the *maximum* default sentence that can be imposed, in order to give consistency with the existing maximum sentencing powers of the respective courts. In any given case, the actual default sentence is not fixed by Article 3 of the 1994 Law (other than by being limited in some cases to the maximum term of imprisonment within the jurisdiction of the Magistrate’s Court); that is the job of the courts, which are public authorities for the purposes of Article 7(1) of the Human Rights (Jersey) Law 2000, which provides that “*It is unlawful for a public authority to act in a way which is incompatible with a Convention right*”.

Furthermore, under Article 6 of the Law, a person has a right of appeal to the Royal Court or the Court of Appeal (as the case may be) against a default sentence, and is therefore able to challenge it if he or she believes it to be excessive.

It is therefore reasonable to conclude that the draft Law is compatible with article 5.

Explanatory Note

This draft Law would amend the Criminal Justice (Compensation Orders) (Jersey) Law 1994 (defined in *Article 1* as the “principal Law”).

Article 2 amends the power of a court in fixing the length of the term of imprisonment to be served by a person against whom a compensation order has been made in the event that the person defaults with respect to any payment that is due under the order. (Such term is referred to in *Article 3* as a “default sentence”.) Currently, the principal Law fixes a maximum term of 6 months in the case of an order made by the Magistrate’s Court, the Youth Court or by the Royal Court on appeal against a decision of the Magistrate’s Court. In any other case, the maximum term is 12 months. So if the Royal Court makes a compensation order (other than on appeal from the Magistrate’s Court) the maximum default sentence it can impose is 12 months imprisonment.

Article 2 amends this provision in 2 respects. First, in the case of an order made by the Magistrate’s Court, the Youth Court or by the Royal Court on appeal against a decision of the Magistrate’s Court, the maximum term is the same as the maximum term that is within the jurisdiction for the time being of the Magistrate’s Court. Under *Article 3(1)* of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949, the current maximum term of imprisonment that can be imposed by the Magistrate’s Court is 12 months. Second, the amendment removes the 12 months’ limitation on a default sentence that applies in any other case.

Article 3 amends *Article 6* of the principal Law in respect of appeals against a compensation order to correct 2 incorrect cross-references. The cross-references should refer to *Article 3(4)* which allows the court to order a parent or guardian to pay a compensation order and to serve a default sentence instead of the offender in certain circumstances where the offender is under the age of 17.

Article 4 amends *Article 7* of the principal Law to make it clear that an application to the Viscount to discharge a compensation order or reduce the amount which remains to be paid can be made by a parent or guardian who has been ordered to pay a compensation order under *Article 3(4)*, not just a person against whom a compensation order has been made. The amendment also allows such a person to apply to the court to vary the time allowed for payment of a compensation order (including the time for paying any instalment).

Article 5 sets out the title of the Law and provides that it will come into force 7 days after the day it is registered.



Jersey

**DRAFT CRIMINAL JUSTICE (COMPENSATION
ORDERS) (AMENDMENT No. 2) (JERSEY)
LAW 201-**

A LAW to amend further the Criminal Justice (Compensation Orders) (Jersey) Law 1994.

<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>

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

1 Interpretation

In this Law “principal Law” means the Criminal Justice (Compensation Orders) (Jersey) Law 1994¹.

2 Article 3 amended

For Article 3(2) of the principal Law there shall be substituted the following paragraph –

“(2) A default sentence shall not exceed the maximum term of imprisonment within the jurisdiction for the time being of the Magistrate’s Court in the case of an order made by –

- (a) the Magistrate’s Court;
- (b) the Youth Court; or
- (c) the Royal Court on appeal against a decision of the Magistrate’s Court.”.

3 Article 6 amended

In Article 6(1) and (3) of the principal Law, for the words “Article 3(2)” there shall be substituted the words “Article 3(4)”.

4 Article 7 amended

In Article 7 of the principal Law –

- (a) in paragraph (1) for the words from “At any time” to “it appears to the court –” there shall be substituted the following words –

“(1) At any time before a person against whom a compensation order has been made or a person who is ordered to pay compensation under Article 3(4) has paid the Viscount the whole of the compensation which the person is required to pay but at a time (disregarding any power of a court to grant leave to appeal out of time) when there is no further possibility of an appeal on which the compensation order could be varied or set aside, the court which made the compensation order may, on the application of such a person, discharge or reduce the amount which remains to be paid if it appears to the court –”;

- (b) in paragraph (1)(c) after the words “person against whom the order was made” there shall be inserted the words “or a person who is ordered to pay compensation under Article 3(4)”;

- (c) after paragraph (1) there shall be inserted the following paragraph –

“(1A) At any time before the person against whom a compensation order has been made or a person who is ordered to pay compensation under Article 3(4) has paid to the Viscount the whole of the compensation which the person is required to pay, the court which made the compensation order may, on the application of such a person, vary the time allowed for payment of the amount which remains to be paid, including any date by which any instalment must be paid.”;

- (d) in paragraph (2) for the words “this Article” there shall be substituted the words “paragraph (1)”.

5 Citation and commencement

This Law may be cited as the Criminal Justice (Compensation Orders) (Amendment No. 2) (Jersey) Law 201- and shall come into force 7 days after the day it is registered.

¹ *chapter 08.200*