

STATES OF JERSEY

r

DRAFT PROTECTION OF CHILDREN (AMENDMENT No. 3 (JERSEY) LAW 200

Lodged au Greffe on 16th September 2003
by the Legislation Committee

STATES GREFFE



Jersey

DRAFT PROTECTION OF CHILDREN (AMENDMENT No. 3) (JERSEY) LAW 200

European Convention on Human Rights

The President of the Legislation Committee has made the following statement –

In the view of the Legislation Committee the provisions of the Draft Protection of Children (Amendment No. 3) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy R.G. Le Hérissier of St. Saviour**

REPORT

Introduction

The Protection of Children (Jersey) Law 1994 prohibits the taking or making of indecent photographs of children and penalises the possession, distribution, showing and advertisement of such indecent photographs and indeed of pseudo photographs. The Law was amended in 1997 to include pseudo photographs, which are defined to mean an image, whether made by computer graphics or otherwise howsoever, which appears to be a photograph.

The purpose of the Law is the protection of children not only from direct involvement in indecent activity, but also from the making of pseudo images which might excite paedophile tendencies in adults.

The Legislation Committee recognises that the modern problem arises not simply from the possession of photographs themselves, but from the downloading from pornographic websites of indecent photographs which then can be stored electronically. Downloading and storing on the computer hard drive images which have been derived from the Internet in this way can form the subject of a charge of possession of indecent photographs. Those photographs which have then been placed on to other media such as paper or floppy disks could form the subject of a charge of making indecent photographs.

Authorities in America seized a database which contained details of persons paying for access to child pornography sites on the Internet. This received international publicity. Information was passed by the American Authorities to various national police authorities and indeed as a result there has been at least one prosecution in Jersey.

It is important to recognise that the images which can be obtained from some pornographic Internet sites do on occasion depict very young children. The images can be categorised as comprising –

- (a) erotic posing with no sexual activity;
- (b) sexual activity between children;
- (c) non penetrative sexual activity between children and adults;
- (d) penetrative sexual activity between children and adults;
- (e) sadism.

The references to sexual activity can be either heterosexual or homosexual activity. Sometimes children as young as 4 years old are engaged in the sexual activity which is the subject of the photograph.

Although any such activity as described above is serious, there are degrees of seriousness; and some of the child pornography includes images which are unspeakably extreme.

The present position is that the 1994 Law makes no distinction in terms of maximum sentence between possessing indecent photographs of children under the age of 16 years, and making such photographs. Furthermore the available maximum sentence is 3 years' imprisonment.

The position in England and Wales

Under Section 1(1) of the Protection of Children Act, 1978 it is an offence, in essence, to take or make an indecent photograph or pseudo photograph of a child, or to distribute or show such photographs, or to possess such photographs with a view to their being distributed or shown, or publish an advertisement conveying that the advertiser distributes or shows such photographs or intends to do so. The maximum penalty for all those offences, which was originally 3 years on indictment, was increased to 10 years by Section 41(1) of the Criminal Justice and Court Services Act, 2000 in relation to offences committed on or after 11th January 2001.

The offence of possessing an indecent photograph or pseudo photograph of a child was originally a summary offence under Section 160(1) of the Criminal Justice Act, 1988, and carried a maximum penalty of 6 months' imprisonment. By virtue of Section 41(3) of the Criminal Justice and Court Services Act, 2000, it became an offence triable either on indictment or by way of summary charge, and carried a maximum penalty of 5 years' imprisonment.

The disparity between the English and Jersey sentencing options was drawn to the attention of the Royal Court in a recent case, when the Court expressed strongly its recommendation that the Legislation Committee might give early consideration to increasing the available maximum penalties in this area.

The Legislation Committee has given that consideration to the issue and proposes that the 1994 Law be amended bringing the maximum penalties in Jersey in line with the position in England and Wales. This, in the opinion of the Committee, will allow the sentencing court a proper range within which to reflect the seriousness of the offending in individual cases.

Statement of financial and manpower implications

There are no immediate financial or manpower implications arising from the adoption of the draft Law by the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 12th September 2003 the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Legislation Committee the provisions of the Draft Protection of Children (Amendment No. 3) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law amends the Protection of Children (Jersey) Law 1994 so as to increase the terms of imprisonment that may be imposed for certain offences.

The maximum term of imprisonment that may be imposed for the offences of taking or permitting to be taken, making, distributing or showing, and possessing, with a view to distribution or showing, any indecent photograph or pseudo-photograph of a child and of publishing an advertisement that a person distributes or shows such photographs is increased from 3 to 10 years.

The maximum term of imprisonment that may be imposed for the offence of possessing such a photograph is increased from 3 to 5 years.

The Law would come into force 7 days after it is registered in the Royal Court.



Jersey

DRAFT PROTECTION OF CHILDREN (AMENDMENT No. 3) (JERSEY) LAW 200

A LAW to amend further the Protection of Children (Jersey) Law 1994.^[1]

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Article 2 amended

In Article 2 of the Protection of Children (Jersey) Law 1994^[2] –

- (a) in paragraph (1) the words “and shall be liable to imprisonment for a term not exceeding three years or to a fine, or to both” shall be deleted;
- (b) after paragraph (1) there shall be inserted the following paragraphs –

“(1A) A person guilty of an offence under paragraph (1)(a), (c), (d) or (e) shall be liable to imprisonment for a term of 10 years and to a fine.

(1B) A person guilty of an offence under paragraph (1)(b) shall be liable to imprisonment for a term of 5 years and to a fine.”.

2 Citation and commencement

This Law may be cited as the Protection of Children (Amendment No. 3) (Jersey) Law 200 and shall come into force on the seventh day following its registration.

[1] *Volume 1994-1995, page 75, Volume 1996-1997, page 1059, Volume 1998, page 722 and Volume 1999, page 529.*

[2] *Volume 1994-1995, page 76 and Volume 1996-1997, pages 1060 and 1061.*