

STATES OF JERSEY



DRAFT LOI (No. 7) (201-) CONCERNANT LA CHARGE DE JUGE D'INSTRUCTION

**Lodged au Greffe on 19th October 2010
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT LOI (No. 7) (201-) CONCERNANT LA CHARGE DE JUGE D'INSTRUCTION

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 Loi (No. 7) (201-) concernant la charge de Juge d'Instruction are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

REPORT

The *Loi (1864) concernant la charge de juge d'instruction* ("the 1864 Law") was enacted for the purpose, in the words of its long title – in translation – to determine 'the creation, the mode of appointment, and the functions of the juge d'instruction'. The 'juge d'instruction' is today referred to as the Magistrate in his or her capacity in criminal matters.

Under Article 1 of the 1864 Law, the Magistrate is appointed by the Bailiff, who may also appoint one or more Assistant Magistrates ('*Sous-Magistrats*'). The persons qualified for such appointment are, apart from any Jurat or Officer of the Crown –

- (i) Jersey advocates or solicitors of 10 or more years' standing;
- (ii) anyone who has held judicial office in the Commonwealth;
- (iii) any English barrister or solicitor of 10 or more years' standing.

There is a further power under Article 6 of the 1864 Law for the Bailiff to appoint relief magistrates as the need may arise to assist on a part-time basis with the Magistrate's workload. Persons so appointed have been Jersey lawyers with considerable experience over the years of the lower courts. However, the range of qualified persons who may be appointed as relief magistrates is considerably more limited than the range of qualified persons who may be appointed as the actual Magistrate or as an Assistant Magistrate. Article 6 stipulates that a person appointed as a relief magistrate can only be "*un Juré-Justicier (ou un avocat, ou un écrivain, de la Cour Royale qui a au moins 10 ans d'exercice)*", that is to say, a Jurat, or an advocate or solicitor of the Royal Court of at least 10 years' standing. This does not enable *e.g.* the appointment of a suitably qualified person from outside the Island. This is unduly restrictive; there is no compelling reason why a person qualified to act as the Magistrate or as an Assistant Magistrate should not be equally qualified to act as a relief magistrate.

The main purpose of this draft Law is therefore very straightforward, namely, to make the qualifications for appointment as a relief magistrate the same as the qualifications for appointment as Magistrate.

Another purpose of the draft Law is to widen slightly the range of persons able to be appointed as Magistrate (or as Assistant Magistrate). At present, whilst English barristers and solicitors of 10 or more years' standing are eligible for appointment, that is not true of –

- Scottish advocates and solicitors;
- Barristers and solicitors from Northern Ireland; and
- Guernsey advocates.

The draft Law would make them – if they were of 10 or more years' standing – eligible also for appointment to the office of Magistrate or Assistant Magistrate; and hence eligible as well for appointment as a relief magistrate.

Finally, Article 1 of the 1864 Law contains an old provision that allows for the appointment of a serving Crown Officer as Magistrate. That provision is no longer appropriate and would be repealed.

Financial and manpower implications

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

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister 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). On 13th October 2010 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Loi (No. 7) (201-) concernant la charge de Juge d'Instruction are compatible with the Convention Rights.

ANNEX TO REPORT

[TRANSLATION]

1 Substitution of Article 1(2)

In the Laws (1864 to 2000) concerning the office of *Juge d'Instruction*, for Article 1(2) there shall be substituted the following paragraph –

“(2) The following shall be deemed to have the qualifications to discharge such office –

- (a) Jurats of the Royal Court;
- (b) advocates and solicitors of the Royal Court who have been in practice for at least 10 years or who have held office as a Crown Officer;
- (c) those who have held judicial office in the Commonwealth;
- (d) those who have been in practice for at least 10 years –
 - (i) either at the Bar of England and Wales or as a Solicitor of the Senior Courts of England and Wales,
 - (ii) either as a member of the Faculty of Advocates or as a Solicitor in Scotland,
 - (iii) either at the Bar of Northern Ireland or as a Solicitor of the Court of Judicature of Northern Ireland, or
 - (iv) at the Bar of Guernsey.”.

2 Substitution of Article 6

In the Laws (1864 to 2000) concerning the office of *Juge d'Instruction*, for Article 6 there shall be substituted the following Article –

“Article 6

In the case of absence of the Magistrate for any reason or in the case of a vacancy in the office of Magistrate, or for any other reason for which the Bailiff considers it necessary, the Bailiff shall appoint a person having the necessary qualification referred to in Article 1(2) to perform the functions of the Magistrate during that absence or vacancy or for such period as the Bailiff may consider necessary.”.

3 Citation and commencement

This Law may be cited as the Law (No. 7) (201-) concerning the office of *Juge d'Instruction* and shall come into force on the seventh day after its registration.

Explanatory Note

This Loi would amend the Lois (1864 à 2000) concernant la charge de Juge d'Instruction in 3 ways.

It would amend the qualifications and experience a person must possess before being qualified to be appointed as the Magistrate or as an Assistant Magistrate. It would also enable a person with the requisite qualifications, but who was not a Jurat or an advocate or solicitor of the Royal Court, to be appointed as a Relief Magistrate.

The Loi would also repeal a provision of the present Lois that permits a serving Crown Officer to be appointed to be the Magistrate.



Jersey

DRAFT LOI (No. 7) (201-) CONCERNANT LA CHARGE DE JUGE D’INSTRUCTION

LOI pour modifier en plus les Lois (1864 à 2000) concernant la charge de Juge
d’Instruction.

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]

LES ETATS, moyennant la sanction de Sa Très Excellente Majesté en
Conseil, ont adopté la Loi suivante –

1 Substitution de l’Article 1(2)

Dans les Lois (1864 à 2000) concernant la charge de Juge d’Instruction¹, à
l’Article 1(2) sera substitué l’alinéa suivant –

“(2) Seront censés avoir la compétence nécessaire pour remplir cette
fonction –

- (a) les Jurés-Justiciers de la Cour Royale;
- (b) les avocats et écrivains de la Cour Royale qui ont au moins
10 ans d’exercice ou qui ont rempli la charge d’un Officier
de la Couronne;
- (c) ceux qui exercent ou ont exercé les fonctions de Juge dans le
Commonwealth;
- (d) ceux qui ont au moins 10 ans d’exercice –
 - (i) soit au Barreau de l’Angleterre et du Pays de Galles
soit comme un ‘Solicitor of the Senior Courts of
England and Wales’,
 - (ii) soit comme membre de la Faculté des Avocats soit
comme un ‘Solicitor’ en Ecosse,

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- (iii) soit au Barreau de l’Irlande du Nord soit comme un ‘Solicitor of the Court of Judicature of Northern Ireland’, ou
 - (iv) au Barreau de Guernesey.”.

2 Substitution de l’Article 6

Dans les Lois (1864 à 2000) concernant la charge de Juge d’Instruction, à l’Article 6 sera substitué l’Article suivant –

“Article 6

En cas d’absence du Magistrat pour quelque raison que ce soit ou en cas de vacance de la charge de Magistrat, ou pour toute autre raison pour laquelle le Bailli le jugera nécessaire, le Bailli nommera une personne ayant la compétence nécessaire visée à l’Article 1(2) pour en exercer les fonctions pendant cette absence ou cette vacance ou pendant telle période que le Bailli jugera nécessaire.”.

3 Intitulé et entrée en vigueur

La présente Loi pourra être citée sous le titre de Loi (No. 7) (201-) concernant la charge de Juge d’Instruction et entrera en vigueur le septième jour après son enregistrement.

¹ *chapter 07.525*