

STATES OF JERSEY

r

DRAFT LIQUOR (RESTRICTIONS ON CONSUMPTION) (JERSEY) LAW 200-

Lodged au Greffe on 21st June 2005
by the Home Affairs Committee

STATES GREFFE



Jersey

DRAFT LIQUOR (RESTRICTIONS ON CONSUMPTION) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Home Affairs Committee has made the following statement –

In the view of the Home Affairs Committee the provisions of the Draft Liquor (Restrictions on Consumption) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

On 21st May 2002, the States approved in principle a proposition brought by the Deputy of St. Martir (P.46/2002), to introduce legislation to “permit police officers to confiscate alcohol in the possession of any person in a public place who is causing a nuisance or whose possession of alcohol might, in the opinion of the officers, lead to further misbehaviour”. The Home Affairs Committee was tasked with bringing forward for approval the necessary legislation to give effect to the proposal.

After a lengthy process, which involved several drafts of the Law, consultation with interested parties, and Human Rights compliance checks, the Draft Liquor (Restrictions on Consumption) (Jersey) Law 200- came before the States on Tuesday 22nd March 2005, with the Vice-President acting as Rapporteur.

After members had spoken briefly on the proposition, Deputy Dorey proposed that the States should move to the next item of public business, and this motion was carried.

At its next meeting, the Home Affairs Committee, in consultation with the Attorney General, decided that police officers require legislation which gives them the vires to remove alcohol from people under the age of 18, as it is intrinsically undesirable that young people should have possession of alcohol in any public place, if they are not accompanied by a responsible adult. The draft Law was consequently amended to remove those articles that do not relate to young people, and effectively now controls the consumption of alcohol by a person under the age of 18 who is in a public place, unaccompanied by a responsible adult, or in a place to which he or she has unlawfully gained access.

The Committee received the reworked draft of the Law at its meeting in May, and agreed to consult with Deputy Hill, who had brought the original proposition, Deputy Bridge, who had taken an interest in the development of the legislation, and also the young people of the Island, through the Youth Council.

The responses received have been generally supportive. The Youth Council feels that the legislation will deter young people from drinking irresponsibly on the streets, but query whether it should also be targeted at over-18s. Previous drafts of the Law did include measures in respect of adults, but it is felt that there are provisions within existing legislation that enable police officers to deal with adults.

There are no financial or manpower implications arising from this draft Law.

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 16th June 2005 the Home Affairs Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Home Affairs Committee the provisions of the Draft Liquor (Restrictions on Consumption) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law is intended to control the consumption of intoxicating liquor by –

- (a) a young person who is in a public place, unaccompanied by a responsible adult; or
- (b) a young person who is in any place to which he or she has unlawfully gained access.

The draft Law is set out in the following way –

Article 1 defines expressions used in the Law.

The expression “public place” will not include licensed premises or any other place where liquor may lawfully be sold.

A person is “responsible for a young person” if he or she is a parent or guardian of a young person, or is an adult who is for the time being immediately responsible for the young person’s well-being.

Article 2 applies if a young person is in a public place, unaccompanied by a responsible adult.

The Article also applies if the young person is in any place to which he or she has unlawfully gained access.

If a police officer reasonably believes that the young person has liquor and is drinking or has recently drunk there or intends to drink there, the officer may tell the young person not to drink liquor in that place. The officer may also require the young person to surrender the liquor, and to give his or her name and address.

These powers need not be exercised cumulatively. For example, a police officer may find it sufficient in some cases simply to tell a young person not to drink in the place concerned.

It will be an offence to fail without reasonable excuse to comply with a requirement made by the police officer in the exercise of these powers.

Article 3 applies if any person (whether or not a young person) is in a public place or any place to which he or she has unlawfully gained access, and a police officer reasonably believes that he or she has liquor.

If the person is with a young person (or the officer reasonably believes that he or she has recently been with a young person in that place), and the young person concerned is not accompanied by a responsible adult, and the officer reasonably believes that the first person is going to give the young person liquor to drink in that public place, the officer may exercise the same powers as a police officer has under Article 2. It is an offence to fail without reasonable excuse to comply with a requirement made by the police officer in the exercise of those powers.

Where the person who is reasonably believed to be in possession of liquor is in a place to which he or she has unlawfully gained access, these provisions will apply whether or not the young person is accompanied by a responsible adult.

Article 4 authorizes a police officer to seize and detain any container in a person’s possession, if the person commits an offence under either of Articles 2 and 3 and the officer reasonably believes that it contains liquor.

Article 5 authorizes a police officer to dispose of a container that is surrendered to or seized by an officer under the draft Law, and its contents. However, this Article does not enable a police officer to dispose of –

- (a) a sealed container; or
- (b) a container that is intrinsically valuable (for example, a silver flask).

Nothing in this Article prevents a police officer from returning a container that is not yet the subject of a court order directly to a person if the officer thinks it appropriate to do so. However, this is subject to *Article 6* (which requires that in that event, if it was surrendered by or seized from a young person, the officer may only return it to the young person’s parent or guardian).

Article 7 empowers a court, on a conviction under the draft Law, to order the forfeiture or other disposal of a container that is surrendered or seized.

Article 8 provides that the maximum penalty for an offence under the draft Law is a fine not exceeding level 2 or the standard scale (which is at present £500).

Article 9 provides for the criminal liability of a person who aids, abets, counsels or procures an offence under the

draft Law.

Article 10 describes how the draft Law may be cited.



Jersey

DRAFT LIQUOR (RESTRICTIONS ON CONSUMPTION) (JERSEY) LAW 200-

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Removal of liquor from young persons</u>
<u>3</u>	<u>Removal of liquor intended for young persons</u>
<u>4</u>	<u>Enforcement</u>
<u>5</u>	<u>Disposal of containers and their contents by police officers</u>
<u>6</u>	<u>Return of containers obtained from young persons</u>
<u>7</u>	<u>Disposal under court orders</u>
<u>8</u>	<u>Penalty</u>
<u>9</u>	<u>Parties to offences</u>
<u>10</u>	<u>Citation</u>



Jersey

LIQUOR (RESTRICTIONS ON CONSUMPTION) (JERSEY) LAW 200-

A LAW to enable a police officer to require a young person not to consume intoxicating liquor in certain a public place, or in a place to which he or she has unlawfully gained access, if the officer believes on reasonable grounds that the young person is consuming, has recently consumed or intends to consume intoxicating liquor there; to provide for the removal from such a person of a container reasonably believed to contain intoxicating liquor; to provide for the removal, from any person in a public place or a place to which the person has unlawfully gained access, of a container reasonably believed to contain intoxicating liquor, if it is also believed on reasonable grounds that it is held for consumption by a young person in such a place; to provide for the detention and disposal of containers so removed, and their contents; and for connected and incidental purposes.

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 Interpretation

(1) In this Law, unless the context otherwise requires –

“liquor” means intoxicating liquor as defined in Article 1(1) of the Licensing (Jersey) Law 1974;^[1]

“public place” does not include –

- (a) licensed premises as defined in Article 1(1) of the Licensing (Jersey) Law 1974; or
- (b) any other place at which liquor may for the time being lawfully be sold;

“young person” means a person who has not attained the age of majority.

(2) For the purposes of this Law, a person is responsible for a young person –

- (a) if the first person is a parent or guardian of the young person; or
- (b) if the first person has attained the age of majority, and is for the time being the person immediately responsible for the young person’s well-being (whether because the young person is the other person’s guest or for any other reason).

(3) Where this Law confers any power on a police officer or on a court in respect of any container, the Law shall also be construed (unless otherwise expressly provided) as conferring the same power on that police officer or court in respect of the contents of the container.

2 Removal of liquor from young persons

- (1) This Article applies if –
 - (a) a young person is in any public place;
 - (b) a police officer reasonably believes that the young person is in possession of liquor;
 - (c) the police officer reasonably believes that the young person is consuming or has recently consumed or intends to consume liquor in that place; and
 - (d) the young person is not accompanied by a person who is responsible for the young person.
- (2) This Article also applies if –
 - (a) a young person is in a place to which he or she has unlawfully gained access;
 - (b) a police officer reasonably believes that the young person is in possession of intoxicating liquor; and
 - (c) the police officer reasonably believes that the young person is consuming or has recently consumed or intends to consume liquor in that place.
- (3) The police officer may require the young person not to consume in the place concerned –
 - (a) liquor; or
 - (b) anything that the police officer reasonably believes to be liquor.
- (4) The police officer may require the young person to surrender to a police officer any container –
 - (a) that is in the young person’s possession in the place concerned; and
 - (b) that the police officer reasonably believes to be liquor,and a police officer may detain a container so surrendered.
- (5) The police officer may require the young person to give his or her name and address to a police officer.
- (6) If the police officer is not in uniform, he or she shall before imposing a requirement on a young person under any of paragraphs (3), (4) and (5) show documentary evidence that he or she is a police officer to the young person.
- (7) A police officer who imposes a requirement on a young person under any of paragraphs (3), (4) and (5) shall inform the young person that failing without reasonable excuse to comply with the requirement is an offence.
- (8) A young person who fails without reasonable excuse to comply with a requirement imposed on the young person under any of paragraphs (3), (4) and (5) shall be guilty of an offence.

3 Removal of liquor intended for young persons

- (1) This Article applies if –
 - (a) a person is in any public place;
 - (b) a police officer reasonably believes that the person is in possession of liquor;
 - (c) the person is with a young person in that place, or the police officer reasonably believes that the first person has recently been with a young person in that place; and
 - (d) the police officer reasonably believes that the first person intends to give liquor to the young person for consumption in that place; and
 - (e) the young person is not accompanied by a person who is responsible for the young person.
- (2) This Article also applies if –
 - (a) a person is in a place to which he or she has unlawfully gained access;
 - (b) a police officer reasonably believes that the person is in possession of intoxicating liquor;
 - (c) the person is with a young person in that place, or the police officer reasonably believes that the first person has recently been with a young person in that place; and

- (d) the police officer reasonably believes that the first person intends to give the intoxicating liquor to the young person for consumption in that place.
- (3) The police officer may require the first person to whom paragraph (1) or paragraph (2) refers “(the first person”) to surrender to a police officer any container –
 - (a) that is in the person’s possession in the place concerned; and
 - (b) that the police officer reasonably believes to contain liquor,and a police officer may detain a container so surrendered.
- (4) The police officer may require the first person to give his or her name and address to a police officer.
- (5) If the police officer is not in uniform, he or she shall before imposing a requirement on a person under either of paragraphs (3) and (4) show documentary evidence that he or she is a police officer to the person.
- (6) A police officer who imposes a requirement on a person under either of paragraphs (3) and (4) shall inform the person that failing without reasonable excuse to comply with the requirement is an offence.
- (7) A person who fails without reasonable excuse to comply with a requirement imposed on the person under either of paragraphs (3) and (4) shall be guilty of an offence.
- (8) In this Article, “the place concerned” means –
 - (a) the public place, if this Article applies by reason of paragraph (1); and
 - (b) the place to which the first person has unlawfully gained access, if this Article applies by reason of paragraph (2).

4 Enforcement

If a person commits an offence under either of Articles 2 and 3, a police officer may seize and detain any container –

- (a) that is in the person’s possession in the place in which the offence occurs; and
- (b) that the police officer reasonably believes to contain liquor.

5 Disposal of containers and their contents by police officers

- (1) A police officer may dispose of –
 - (a) any container that is surrendered to a police officer in compliance with a requirement under either of Articles 2 and 3, and detained under that Article by a police officer; or
 - (b) any container that is seized and detained by a police officer under Article 4.
- (2) Paragraph (1) does not authorize a police officer to dispose of a sealed container or its contents.
- (3) Paragraph (1) does not authorize a police officer to dispose of an unsealed container that has intrinsic value apart from the fact that –
 - (a) it is a container; or
 - (b) it is made from material of which containers of liquor are ordinarily made,but this restriction does not apply to the contents of the container.
- (4) Nothing in this Article prevents a police officer from returning a container (whether or not including its contents) to the person by whom it is surrendered or from whom it is seized.
- (5) However, paragraph (4) is subject to Articles 6 and 7.

6 Return of containers obtained from young persons

- (1) This Article applies to a container –
 - (a) that is surrendered to a police officer by a young person in compliance with a requirement under either of Articles 2 and 3; or
 - (b) that is seized by a police officer under Article 4 from a young person.
- (2) A police officer may only return a container to which this Article applies (whether or not including its contents) to a young person by whom it is surrendered or from whom it is seized –
 - (a) by delivering the container to a parent or guardian of the young person; or
 - (b) in accordance with a court order.
- (3) If a police officer delivers a container to a parent or guardian of a young person under paragraph (2) the container shall be taken to have been returned to the young person.

7 Disposal under court orders

- (1) A court before which a person is convicted of an offence under this Law may order anything shown to its satisfaction to be –
 - (a) a container surrendered to a police officer in compliance with a requirement under either of Articles 2 and 3; or
 - (b) a container seized by a police officer under Article 4,
to be forfeited or disposed of in such other manner as the court may order.
- (2) If a court orders a container to be forfeited under paragraph (1), it may order the container to be destroyed or dealt with in such other manner as the court may order.

8 Penalty

A person who commits an offence under this Law shall be liable to a fine not exceeding level 2 on the standard scale.

9 Parties to offences

Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

10 Citation

This Law may be cited as the Liquor (Restrictions on Consumption) (Jersey) Law 200.

[1] Chapter 11.450.