

STATES OF JERSEY

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DRAFT ROYAL COURT (AMENDMENT No. 11) (JERSEY) LAW 200-

**Lodged au Greffe on 18th January 2005
by the Legislation Committee**

STATES GREFFE



Jersey

DRAFT ROYAL COURT (AMENDMENT No. 11) (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 Royal Court (Amendment No. 11) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Connétable of St. Clement**

REPORT

The Royal Court (Amendment No. 4) (Jersey) Law 1985 was registered by the Royal Court on 11th January 1985. That Law empowered Commissioners to preside over the Royal Court and, when doing so, to exercise the powers of the Bailiff as sole judge of law and to have a casting vote whenever the Jurats were divided in opinion.

In the 20 years since that Law was enacted, the Commissioners have played an important rôle in assisting the Royal Court to discharge its business in a timely and efficient manner. That Law did not, however, empower the Commissioners to discharge certain functions of the Bailiff exercisable other than in the Royal Court. Thus, for example, Commissioners are not able to sign orders of justice or to make orders before cases are actually heard by the Royal Court. Such powers remain exercisable only by the Bailiff, Deputy Bailiff and Lieutenant-Bailiff. If none of them is available to deal with such matters, potentially urgent applications have to be delayed.

In order to overcome the problem, this *projet de loi* would empower the Bailiff to appoint Commissioners to discharge any of the judicial functions exercisable by the Bailiff. Thus, a Commissioner would be able to be authorised –

- (a) to sign orders of justice containing interim injunctions;
- (b) to grant permission for a plaintiff to serve a summons on a defendant resident outside Jersey;
- (c) to issue a caveat (*une opposition*) against the alienation of immovable property;
- (d) to make an *ordre provisoire* authorising the Viscount to make interim arrests;
- (e) to exercise jurisdiction in other interlocutory (pre-trial) matters.

As already noted, the matters above may be the subject of urgent applications at short notice when the Bailiff and Deputy Bailiff are engaged on other duties. There may also be applications in which a Plaintiff seeks to enjoin funds held in Jersey which are the subject of international litigation. Such applications are liable to involve complex matters of private international law, requiring consideration of voluminous files and the hearing of oral submissions from counsel.

It is in the interests of the efficient administration of justice that such matters be able to be dealt with, when the need arises, by a Commissioner. The alternative is to risk delays in dealing with the business of the Court. On the basis that justice delayed is justice denied, such risk ought not to be countenanced.

On an unconnected matter, the opportunity would also be taken in the *projet de loi* to make it clear that a question of procedure is one of law of which the Bailiff is sole judge. This would be a matter of clarification of the principal Law rather than of reform.

There are no manpower implications to this proposal, and the fees of Commissioners who undertake any of this additional work will not exceed £5,000 per annum.

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 14th January 2005 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 Royal Court (Amendment No. 11) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

One object of this draft Law is to make it clear that if a question of procedure arises in a case before the Royal Court, that question is to be treated as one of law and therefore one for the presiding judge to decide.

Another object of this draft Law is to make it clear that the functions of Commissioners appointed for a specified term under Article 10A of the Royal Court (Jersey) Law 1948 extend to any judicial functions of the Bailiff that the Bailiff authorizes or requires them to perform.

At the same time, minor amendments are made removing an express provision relating to the availability of Commissioners appointed under Article 10A and to their removal from office on grounds of failure to comply with the terms of their appointment.



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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 10A amended</u>
<u>3</u>	<u>Article 10C replaced</u>
<u>4</u>	<u>Article 13 amended</u>
<u>5</u>	<u>Article 17A inserted</u>
<u>6</u>	<u>Citation and commencement</u>



Jersey

DRAFT ROYAL COURT (AMENDMENT No. 11) (JERSEY) LAW 200-

A LAW to make further provision about questions of procedure and about the functions of Commissioners appointed by the Bailiff.

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

In this Law, a reference to the principal Law is a reference to the Royal Court (Jersey) Law 1948.^[1]

2 Article 10A amended

For Article 10A(5)– (7) of the principal Law^[2] there shall be substituted the following paragraphs –

- “(5) Where the appointment is made for a term, the term shall be specified in the instrument of appointment.
- (6) In the case of a Commissioner appointed for a term, the Bailiff –
 - (a) may, with the agreement of the Commissioner, extend the term for such period as the Bailiff thinks appropriate; and
 - (b) may from time to time authorize or require the Commissioner to exercise, whether for the purposes of this Law or for any other purposes, such other judicial functions of the Bailiff as the Bailiff specifies.
- (7) Notwithstanding the other provisions of this Article, the Bailiff may, if the Bailiff thinks fit, terminate the appointment of a Commissioner on the ground of incapacity or misbehaviour.”.

3 Article 10C replaced

For Article 10C of the principal Law^[3] there shall be substituted the following Article –

“10C Powers of Commissioners

- (1) Where a Commissioner presides over the Royal Court the powers of the Bailiff specified

in Article 13 shall be exercised by that Commissioner.

- (2) A Commissioner appointed by the Bailiff for a specified term may exercise, whether for the purposes of this Law or for any other purposes, such other judicial functions of the Bailiff as the Bailiff may from time to time authorize or require.”.

4 Article 13 amended

After Article 13(1) of the principal Law^[4] there shall be added the following paragraph –

“(1A) For the purposes of this Law, a question of procedure is one of law.”.

5 Article 17A inserted

After Article 17 of the principal Law^[5] there shall be inserted the following Article –

“17A Savings and transitional provision

- (1) Articles 10A(6) and (7) and 10C, as substituted by the Royal Court (Amendment No. 11) (Jersey) Law 200^[6], shall, in addition to their application in relation to any Commissioner appointed under Article 10A after the time when that Law comes into force, also apply in relation to any Commissioner appointed under Article 10A before that time whose appointment is still in force at that time.
- (2) Except as provided in this Article, the amendments made to this Law by the Royal Court (Amendment No. 11) (Jersey) Law 200^[7] shall not affect the terms of any appointment under Article 10A still in force at the time when the latter Law comes into force or the functions of any Commissioner appointed under that Article before that time.
- (3) Article 13A(1A), as inserted by the Royal Court (Amendment No. 11) (Jersey) Law 200^[8], shall, from the time when that Law comes into force, apply to any proceedings that commence or continue after that time.
- (4) The amendment of this Law by the Royal Court (Amendment No. 11) (Jersey) Law 200^[9] shall not invalidate any proceedings that have commenced, but not been concluded, at the time when the latter Law comes into force, or anything done before that time in respect of any proceedings.”.

6 Citation and commencement

This Law may be cited as the Royal Court (Amendment No. 11) (Jersey) Law 200 and shall come into force on the seventh day following its registration.

[1] *Tome VII, page 502, Volume 1979-1981, page 195, Volume 1984-1985, page 175, Volume 1990-1991, pages 113 and 855, Volume 1992-1993, page 461, Volume 1996-1997, pages 147 and 667, Volume 1998, page 659 and Volume 2001, page 7.*

[2] *Tome VII, page 510 and Volume 1984-1985, page 175.*

[3] *Tome VII, page 510 and Volume 1984-1985, page 175.*

[4] *Tome VII, page 512.*

[5] *Tome VII, page 514.*

[6] *P.7/2005.*

[7] *P.7/2005.*

[8] *P.7/2005.*

[9] *P.7/2005.*