

STATES OF JERSEY

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DRAFT SEXUAL OFFENCES (JERSEY) LAW 200- (P.63/2006): AMENDMENTS

**Lodged au Greffe on 20th June 2006
by the Deputy of St. Ouen**

STATES GREFFE

DRAFT SEXUAL OFFENCES (JERSEY) LAW 200- (P.63/2006): AMENDMENTS

PAGE 30, ARTICLE 3 –

In paragraph (1)(e)(ii) for the number “13” substitute the number “15”.

PAGE 31, ARTICLE 4 –

In paragraph (1)(e)(ii) for the number “13” substitute the number “15”.

PAGE 32, ARTICLE 5 –

In paragraph (1)(f)(ii) for the number “13” substitute the number “15”.

PAGE 33, ARTICLE 6 –

In paragraph (1)(e)(ii) for the number “13” substitute the number “15”.

PAGES 36-37, ARTICLES 12 and 13 –

For Articles 12 and 13 substitute the following Article and renumber the remaining Article accordingly –

“12 Sexual Offences (Jersey) Law 1990 amended

In the Sexual Offences (Jersey) Law 1990 –

- (a) in paragraph (1), for the words “18 years” there shall be substituted the words “16 years”;
- (b) after paragraph (2) there shall be inserted the following paragraph –
 - “(2A) Notwithstanding any provision of law, whether enacted or customary, a person who has not attained the age of 16 years shall not be guilty of the *crime* of *sodomie* if the other party to the act has attained that age.”.

DEPUTY OF ST. OUEN

REPORT

Amendments to Articles 3, 4, 5 and 6

Whilst recognising that P.63/2006 is an improvement upon P.196/2005 (which was withdrawn by the Minister) not least by the inclusion of Article 2 – Meeting a child following sexual grooming etc. and the inclusion of Articles 3 to 11 regarding Abuse of Trust provisions, these Articles, however, are almost identical to those found in the U.K. Sexual Offences Act 2003.

Whilst P.63/2006 claims that its aim is to change the most outdated aspects of the existing law and make it fit for the 21st century, the U.K. undertook a wide update of its law with regard to sexual offences.

At the Corporate Affairs Scrutiny Panel public hearing Advocate Lakeman stated that he believed that the full Sexual Offences Act should be on the local statute book as there is currently no statutory law about rape and incest. He then went on to say that the States have a duty to resolve the entire ambit of sexual offences which, in his view, is a complete mess.

Page 4 of P.63/2006 states that the existing law on sexual offences is archaic and discriminatory, much of it originating from the common law of the 1800s. The original Loi of 1895 was replaced by the Loi (1938) modifiant le droit criminel (sodomie et bestialité) and remains in force to this day subject only to the Sexual Offences (Jersey) Law 1990 as amended in 1995.

I use this to illustrate the fact that we aren't able to compare directly with the U.K. as our Sexual Offences Law does not provide full protection for the young and the vulnerable.

There remain two areas which need to be amended to further protect young people.

Firstly by modernising and strengthening our law we can make a direct contribution to our aim of creating a safe, just and tolerant society.

The purpose of this amendment is to alter the age at which the elements of the offences must be proved.

In the draft Law the Home Affairs Minister is proposing that if a child is under 13 and the prosecution can prove the child's age, the accused believes about that the child's age is irrelevant. In other words, the fact that the accused reasonably believes the child to be 18 is no defence. This amendment simply changes 13 to 15. Furthermore the law as currently drafted states that, if the child is over 13 but under 18 the prosecution must show that the accused did not reasonably believe the child to be aged over 18. The burden of proof in respect of this element of the offence is reversed. In other words there is a general presumption that the accused did not reasonably believe the child to be aged 18 or over. However, the accused can rebut the presumption by raising an issue as to whether he or she reasonably believed it.

In both cases the amendment adjusts the minimum age from 13 or under to 15 or under ensuring that a greater responsibility rests with the adult or older individual to ensure that the partner is old enough to participate in sexual activity.

It is for this reason that I am proposing the amendment in order to offer greater protection to children who are exposed to individuals who are willing to take advantage of the vulnerable for sexual pleasure. If accepted it would mean that anyone under the age of 15 would be provided with greater protection than is currently proposed in the abuse of trust legislation. We need to send out a clear message to adults that they can't rely on assumptions. Equally it will clearly define consent which will enable juries to make fair and balanced decisions regarding the question of consent. Consent, after all, means an active decision to say 'yes', an assumption of consent is not enough.

Amendment to Articles 12 and 13

I am proposing this amendment as I firmly believe it offers a solution to equalising the age of consent without extending the limited practice of sodomy across the rest of society.

Article 12 as proposed by the Home Affairs Minister expands upon the current circumstances in which sodomy would be lawful. It will also allow sodomy to be practiced on children as young as 16, whether they be boys or girls. Furthermore it will also allow this act to be practiced by more than two people at any one time.

My amendment is designed to allow lowering the age of lawful consent for men to practice homosexual acts equal to that of those practicing heterosexual acts, whilst ensuring that the act itself is limited to a lawful homosexual activity. This will, I believe, satisfy concerns raised by removing the discrimination and also meet the Island's obligations under the Convention of Human Rights.

Some will still argue that the amendment doesn't go far enough. However Article 8 of the Convention provides that –

1. Everyone has the right to respect for his/her private life.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society – for the protection of health or morals or for the protection of the rights and freedom of others.

I believe this Article is applicable in this situation.

We are all aware that there are serious health risks associated with the act of sodomy. We must also be aware of our responsibility to the rest of the community when addressing concerns of a relatively small minority. That does not mean to say that they shouldn't be considered but that any decision should be proportional in its application. Therefore as a Government we have a duty to consider all issues when proposing to introduce a new law such as this.

Currently sodomy is classified as an unlawful sexual practice for the majority of our community and I believe that the majority of individuals do not wish to see the law changed. In 1990 the Sexual Offences Law was changed to enable a homosexual act in private not to be punishable as the crime of *sodomie* if both parties consented and that the act was committed in private. This is currently how the law stands today. However Article 12 of the new law proposes a number of major changes to the current Law.

Firstly the law will allow both men and women to participate in the act as long as they are over 16. And secondly, the law removes the requirement that ensures that only two people can engage in this act at any one time.

The result of these proposed changes goes far further than just equalising the age of consent. The legalisation of anal intercourse will expose a large proportion of our population to health risks which are well documented. This cannot be right. If we need to ensure that our law reflects the same age of consent for homosexual acts as that of heterosexual acts then I firmly believe that we can achieve this by accepting this amendment.

Financial and manpower statement

There are no financial or manpower implications arising from these amendments.

Re-issue Note

This amendment has been re-issued at the request of the proposer as certain changes have been made to the report.

NSPCC calls for new measures to clamp down on adult sex with teenagers

22 June 2004

The NSPCC is calling on the Government to issue guidelines to social workers and other professionals to refer all allegations of adults having sex with under 16-year-olds to the police to look into. This should apply, even where the relationships appear 'consensual'.

The call comes before the publication of the Bichard report.

Guidance from the Government on this issue would send out a clear message to adults of all ages that any sexual activity with under-16's is wrong.

Evidence submitted to the Bichard inquiry outlined how police and social workers did not recognise the threat posed by Soham murder Ian Huntley despite numerous allegations of sexual contact with underage girls.

NSPCC Director Mary Marsh says: "Child protection professionals must not ignore cases where adults have sexual relationships with teenagers, however mutual these seem to be".

"We must never allow another Ian Huntley to slip through the net. The welfare of children must always be front of mind."

"A culture of vigilance and safeguarding must be present in all organisations and sectors that employ people to work with children and young people".

Prompted by the Bichard Inquiry the NSPCC is also recommending:

- improving employment practices including more thorough vetting of people
- applying to work with children
- improving processes for employers to report concerns about employees who are breaching code of conduct or other child protection policies
- setting up a task-force to look at 'soft intelligence' around concerns which do not currently warrant criminal convictions
- expanding the role of the Criminal Records Bureau (CRB); and
- a 'flagging system' for the police and agencies to identify patterns of allegations against particular individuals.

Letter to Luke Small from NSPCC:

Thank you for your letter asking about the NSPCC's support of the reduction of the consenting age for homosexual activities.

The NSPCC supported the provisions of the Sexual Offences (Amendment) Act. These included the equalisation of the age of consent and the establishment of a new offence of "abuse of trust" to provide additional protection for young men and women between the ages of 16 and 18.

The age of consent has an important role in protecting children from possible physical and psychological harm, and in deterring adults from committing harmful acts. Sixteen is recommended as a significant age in a young person's development: they can leave school, enter work and marry for instance. We believe it is also an appropriate age at which young people may be considered able to make informed decisions about their private, consensual behaviour.

Our experience shows the sexual abuse of children and young people is in part dependent on maintaining a sense of exclusion, secrecy, low self esteem and fear. Discriminatory practices, particularly in law, encourages all of these key factors. The NSPCC believes this will remove an obstacle to the delivery of important messages, including those around sexual health.

We believe that there must, of course, continue to be adequate protection under criminal law for children and young people, assaulted by a person of either sex. We are supportive of the proposals by Westminster Government to legislate for additional protection of young people aged 16-18 in situations where an older person abuses his or her position of authority, influence or trust, and to prevent unsuitable people working with children.

Yours sincerely,

Sharon Copsey

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Submission by Brook Jersey to Scrutiny Panel

20 January 2006

Deputy P Ryan
Isola Verde
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Dear Deputy Ryan

Following the recent debate in the States regarding the Sexual Offences Act, and Deputy Reed's comments in the JEP giving Brook's figures, I felt it would be beneficial to write to you with several comments.

I understand that this act has now been forwarded to scrutiny and advice will be given back to the ministers to make a decision to lower the age of homosexual activity from 18 to 16.

Whilst Brook would support equal ages for both sexes, I feel there are several important points that need to be raised.

The current law as it stands, states that it is illegal for a man to have a homosexual relationship with a young man under 18. As far as I'm aware the only illegal act is if the young man is not consenting. The law does not allow a prosecution by the police or a parent if the young person does not wish to pursue with a complaint amounting to a statement to the police and a video interview. This is also the situation with young women who are under the age of 16. Again if this is a consenting relationship with no evidence a so called 'blind eye' seems to be the order of the day. I myself have been in the position of referring such cases to the Child Protection Team from Brook, and have only ever had one prosecution in the 10 years that I have been in this job.

I therefore feel it is probably just as important to look at the present law because actually at the moment this amendment won't really make any difference whether the age is reduced from 18 to 16 as it is almost impossible to police.

Another important point to highlight if the law is changed to 16 is the need for the expansion of such services as Brook to provide the support and testing that these young men will require. We have been continually asking Health for further money to operate infection testing for both sexes but to date, have been unsuccessful.

I hope that the above points will be helpful.

Yours sincerely

Ms Bronia Lever
Manager

cc Deputy B Hill

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