

STATES OF JERSEY



DRAFT EXTRADITION (AMENDMENT) (JERSEY) LAW 201-

Lodged au Greffe on 15th March 2016
by the Chief Minister

STATES GREFFE



Jersey

DRAFT EXTRADITION (AMENDMENT) (JERSEY) LAW 201-

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 Extradition (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 14th March 2016

REPORT

1. Introduction

This Law, if adopted, will amend the Extradition Jersey Law 2004 (“the 2004 Law”).

The 2004 Law was introduced to enable Jersey’s courts to deal directly with extradition, as explained in the Report within [P.39/2004](#). Jersey’s extradition obligations are the same as those which affect the United Kingdom (UK), with the exception of those in connection the European Arrest Warrant, which binds the UK through its relationship with the European Union (EU) but does not affect Jersey. These similarities and differences were reflected in the 2004 Law, which substantially followed the UK’s Extradition Act 2003 in relation to extradition under treaties and equivalent extradition arrangements, such as the London Scheme for extradition in the Commonwealth, whilst not containing any equivalent to the European Arrest Warrant provisions of the UK’s Extradition Act.

In October 2010, the UK appointed Sir Scott Baker, a former Lord Justice of Appeal, to head a review of extradition law. The particular areas for study were –

- (i) The operation of the European Arrest Warrant, including the way in which the optional safeguards contained in the EU Framework Decision on the European Arrest Warrant have been transposed into the law of the UK.
- (ii) Whether the forum bar to extradition should be brought into force.
- (iii) Whether the United States (US)/UK Extradition Treaty is unbalanced.
- (iv) Whether requesting States should be required to provide *prima facie* evidence.
- (v) The breadth of the UK Home Secretary’s discretion in an extradition case.

The Scott Baker Report was submitted to the Home Secretary on 30th September 2011.

Three of the 5 issues addressed in the Scott Baker Report are not of direct relevance to this Report. The European Arrest Warrant (i) is not relevant to Jersey. The report concluded that the US/UK Extradition Treaty is not unbalanced (iii), although it was unbalanced for the period when the UK implemented the Treaty ahead of the US. The Scott Baker Report also concluded that the old *prima facie* evidence rule should not be brought back (iv) and this recommendation was accepted.

There were, however, a number of areas where the UK amended its extradition legislation following consideration of the Scott Baker Report. Such legislation was brought forward under the UK Crime and Courts Act 2013, and the UK Anti-social Behaviour, Crime and Policing Act 2014. It follows that Jersey’s extradition legislation should be considered in order to ensure that there are equivalent rights for requested persons as contained within the updated UK legislation. The areas where Jersey legislation requires updating are addressed below.

2. Forum Bar

The issue of forum bar arises when it is argued that the requesting state is not the best place to try the alleged crime, but rather the person should be tried at home. For example, it was argued in well-publicised cases such as *McKinnon* and *Birmingham* that the requested persons should have been tried in the UK, where their alleged actions had been committed, as opposed to the US, where the results of their actions took effect. The matter is complicated when cases involve crimes such as computer hacking (*McKinnon*) or fraud (*Birmingham*) that are readily committed at long distance. There is less disruption to the suspect’s right to family life (Article 8 of the

European Convention) if they are tried at home rather than abroad, although the British Courts have held at the highest level that the right to family life provides only limited protection against extradition.

If an individual is tried with the offence in their home jurisdiction, then extradition will be barred under the “double jeopardy” principle. However, it may be that the home prosecuting authority decides not to prosecute the case; for example, through lack of evidence in the jurisdiction, or because it does not consider that the home country is the most appropriate territory for a prosecution.

Under the Crime and Courts Act 2013, the UK has enacted a new section 83A–83E of their Extradition Act to allow a requested person to raise appropriate but limited arguments relating to forum. Essentially –

- If the UK prosecuting authority has decided not to prosecute, then the requested person can argue in the course of extradition proceedings that the decision was an unreasonable one, such as might be argued in judicial review proceedings.
- If the decision is taken that the prosecuting authority should have decided to prosecute, or in a case where there has never been a UK investigation on which the prosecuting authority could make a positive decision, then the Court can decide if extradition should be refused on grounds of forum.
- Section 83A of the Act provides a list of factors that the Court will take into account when considering forum, such as where loss and harm is alleged to have taken place or was intended, the interests of victims, the availability of evidence in the UK, and connections with the UK.

This legislation does not impede the proper processing of extradition request under the treaties, but it does allow forum issues to be considered by the extradition court, without the need for additional satellite litigation reviewing the decisions of prosecuting and investigating authorities.

It is likely, as anticipated by the Scott Baker Report, that forum concerns may impact upon the approach of prosecution authorities. In accordance with the UK, this is not considered an appropriate issue to be addressed by legislation. For example, any attempts to introduce a general presumption in favour of domestic proceedings might cause great difficulties with important offences, such as those against children facilitated by the Internet. Hence, no legislation is proposed to restrict the discretion and judgement of the Attorney General as to when to bring prosecutions.

The draft Articles 20A–20E to be inserted into the 2004 Law would achieve the same effect as the updated UK legislation.

3. Extra-territoriality

An issue related to forum bar is that of extra-territoriality: if a state requests extradition in respect of crimes committed outside its territory, how far will another state recognise that request? The UK has amended the definition of an “extradition offence” contained within sections 137 and 138 of its Extradition Act so as to make it clear that it will only extradite for extra-territorial offences if the UK’s criminal law would apply to such an offence in equivalent circumstances, were the roles reversed.

Amendments to the equivalent Jersey provisions are at Articles 3 and 4 of the draft Law, and would amend Articles 3 and 4 of the 2004 Law.

4. Human Rights jurisdiction of the Attorney General

The 2004 Law determines that almost all substantive decisions as to whether or not a person should be extradited are taken in the courts. This followed the UK’s approach

in the Extradition Act 2003, which removed most of the role previously played by the UK Home Secretary, including a general discretion to refuse extradition.

However, in subsequent High Court decisions, it was decided that the UK Home Secretary ought to consider human rights considerations, notwithstanding that they had been earlier considered by the Magistrate's Court and could be considered again by the High Court in any appeal. This was the basis of the much-publicised UK Home Secretary's decision in 2011 not to extradite Gary McKinnon. The media coverage of that case highlighted that the UK Home Secretary was taking a role which, as the Scott Baker Report concluded, was intended to be held solely by the Courts. The UK inserted new provisions into section 70 of the 2003 Act in order to remove this role from the UK Home Secretary.

Equivalent provisions will be added to Article 7 of the 2004 Law so that the Attorney General will not consider human rights issues at any point after issuing the certificate that sets the extradition process in motion. The application of human rights law will be solely for the courts to determine.

5. Allowing extension of time for human rights appeals

The time limits for bringing appeals in extradition cases in both the UK and Jersey have been very tight and somewhat unforgiving. Extensions of time have not been allowed. Failures to bring appeals due to errors by lawyers have led in the UK to a loss of appeal rights. The UK has allowed the possibility of extending time in exceptional circumstances in order to bring human rights objections.

Directly equivalent legislation is proposed for Jersey as amendments to Articles 45 and 55.

6. Early end to certain requests involving recognised refugees

Sometimes a state might request the extradition of a national who has been granted asylum under the Refugee Convention, or who has been given permission to stay in a country because their return would violate their right to life or put them at risk of torture. Such requests will be rejected unless for any reason the grant of asylum or permission to stay on such human rights issues is revoked. However, under the original structure of the UK Extradition Act, it was necessary to start extradition proceedings following the request, leading to the arrest of the requested person. This would be a procedure without any value, as the request would almost certainly be rejected by the courts under its general human rights jurisdiction. In 2006, the UK legislated to remove this anomaly and allow the UK Home Secretary to refuse to certify extradition requests where these issues are present. The UK Courts have held that in such circumstances there would be very few occasions when it would be appropriate to send an extradition request to the Magistrates Court for further consideration given that the result would be almost certain rejection.

The amendments proposed to Article 7 of the 2004 Law would have equivalent effect. Where a person has been given asylum by the UK or permission to stay on the grounds of the right to life or freedom from torture, the Attorney General may refuse to certify a request for extradition, ending the proceedings at the very beginning.

7. Discovery of relevant Jersey criminal proceedings or sentences

The remaining changes introduced by the draft Law are of a more technical nature. The structure of the 2004 Law is designed to allow for efficient processing of requests and to minimise the possibilities of delay through technical arguments. This can lead to inflexibility where material issues are not addressed in due time. The UK has introduced legislation to enable the court to deal with problems caused when it is realised late in the day that the requested person has been charged with an offence

(i.e. a different offence to the extradition offence) in the UK or is serving a sentence in the UK.

The new Articles 56A and 56B introduce the same for Jersey, although such issues are less likely to arise in Jersey than in the UK. Essentially, the court will be able to suspend extradition proceedings to allow the Jersey criminal process or sentence to take its course.

8. Re-extradition

The final changes are those to Schedule 2 to the 2004 Law. Schedule 2 deals with re-extradition and addresses the scenario where an individual was: (a) serving a sentence in Jersey; (b) whilst serving that sentence, extradited from Jersey to be tried in the requesting state; (c) convicted and sentenced to jail, but before serving that sentence is returned to Jersey to finish their sentence here; and (d) the question of their return to the original requesting state arises. Following the structure of the UK legislature meant that a considerable amount of provisions were passed in order to deal with a scenario that seldom arises in Jersey. The amendments proposed deal with some errors in the original drafting, and implement the proposed changes to extradition explained above into the field of re-extradition.

9. Financial and manpower implications

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

10. Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Note on the Draft Extradition (Amendment) (Jersey) Law 201-

The proposed changes to the Extradition (Jersey) Law 2004 give rise to no issues with regard to compatibility with the Human Rights (Jersey) Law 2000. The reason for this conclusion is that the changes are either of a technical nature or a favourable to the rights of the requested person.

To summarise the issues in turn:

- (a) **Forum bar.** It should be noted that existing human rights challenges to the United Kingdom legislation have been rejected by the British Courts in cases such as *Bermingham* and *McKinnon*. The proposed amendments will, to a degree, improve the ability of requested persons to raise objections based on forum issues.
- (b) **Extra-territoriality.** The changes to the definition of extradition offence are designed to bring clarity to the legislation rather than any significant substantive changes. Insofar as the amendments make clear that extra-territorial jurisdiction can only be asserted by the requesting state if Jersey might do the same were roles reversed, the changes are favourable to requested persons.
- (c) **Removing human rights jurisdiction of the Attorney General.** This does not hinder the ability of requested persons to raise human rights arguments before the courts. There is thus no effect on human rights.
- (d) **Extension of time in bringing human rights arguments on appeals to the courts.** This provision is favourable to the requested persons, and is in respect of provisions whose present state has never been held to be incompatible with the European Convention.
- (e) **Relationship with asylum.** The ability of the Attorney General to reject requests in respect of refugees recognised by the United Kingdom (and those with an equivalent status by reference to the right to life and freedom from torture under Articles 2 and 3 of the European Convention) is plainly favourable to the rights and interests of requested persons.
- (f) The changes with regard to those who are charged in Jersey or serving a sentence in Jersey are of a technical nature and do not give rise to human rights issues.
- (g) The changes with regard to re-extradition are either to deal with drafting errors in the Extradition (Jersey) Law 2004 or simply to bring the above principles into the niche field of re-extradition.

Explanatory Note

This draft Law amends the Extradition (Jersey) Law 2004 (the “2004 Law”) as follows.

Article 2 inserts definitions for 2 new terms inserted elsewhere and corrects an incorrect cross-reference in an existing definition.

Articles 3 and 4 amend the definition of “extradition offence” in Articles 3 and 4 of the 2004 Law. The effect is such that a state may request extradition when asserting extra-territorial jurisdiction only if Jersey will do the same.

Article 5 amends Article 6 of the 2004 Law. The effect is to enable a territory to be specified in Part 1 of Schedule 1 for some purposes and Part 2 of that Schedule for others and to enable Regulations to specify entries in the Schedule to this effect.

Article 6 amends Article 7 of the 2004 Law. It substitutes a new paragraph (2) enabling the Attorney General to refuse a certificate in respect of an extradition request if the person has been granted refugee status or has been granted leave to remain in the UK on the ground that it would be a breach of the European Convention on Human Rights to remove the person to the territory to which extradition is requested. It also removes the Attorney General from having any role in considering human rights issues arising after the original judicial decision on human rights – see inserted paragraphs (9) and (10).

Article 7 inserts new Articles 20A to 20E which provide for a ‘forum bar’, for extradition to be denied on the grounds that an offence ought to be more naturally tried in the requested state. New Article 20A sets out the matters that would justify the barring of extradition by reason of forum. Article 20B provides that at proceedings on the question of forum that the Magistrate must decide that the extradition is not barred by reason of forum if the Magistrate receives an Attorney General’s certificate. Under Article 20C the Attorney General may certify that the person should not be prosecuted for an offence or offences that correspond to the extradition offence if certain facts set out in the Article apply. Article 20D limits the circumstances in which an Attorney General’s certificate may be questioned and Article 20E provides for relevant definitions.

Article 8 amends Article 30 of the 2004 Law so as to allow the Attorney General to discharge the person on the same grounds as are to be inserted in Article 7 concerning the Attorney General’s refusal to certify an extradition request (refugee status and leave to enter or remain in the UK on ECHR-related grounds).

Article 9 inserts a provision into Article 40 of the 2004 Law the effect of which to prevent an appeal to the Royal Court against a case being sent to the Attorney General being barred for not being brought within time if the person did everything possible to ensure that the notice of appeal was given as soon as possible.

Article 10 amends Article 45 of the 2004 Law. The effect is to enable human rights arguments to be raised on an appeal from an extradition order made by the Attorney General after the end of the permitted period to avoid real injustice or in exceptional circumstances. There is also provision as in Article 40 extending the time for bringing an appeal on any grounds if the person did everything possible to ensure that the notice of appeal was given as soon as possible. This Article also amends Article 55 of the 2004 Law so as to apply Article 56 in the case of human rights appeals brought under Article 45.

Article 11 inserts Articles 56A and 56B into the 2004 Law. Under Article 56A where an extradition order is made but before it can be carried out the Royal Court is informed that the person is charged with an offence, the Court must halt the extradition process until the charge is disposed of. If the person is sentenced to imprisonment the Court may provide that extradition must wait till the end of the sentence. Under Article 56B where after an extradition order is made the Court is informed that the person is serving a sentence in Jersey it may delay extradition till the end of the sentence.

Article 12 corrects a cross-reference in Article 70 of the 2004 Law.

Article 13 amends the 2 tables of designated territories so that Hong Kong is now in Part 1 of the Schedule for the purposes of Articles 8 and 10 only and moves into Part 2 for all other purposes.

Article 14 introduces the *Schedule* which makes substantial amendments to Schedule 2 of the 2004 Law concerning re-extradition.

Article 15 provides for the Law's short title and for it to coming into force 7 days after it is registered in the Royal Court.

The amendments to Schedule 2 of the 2004 Law are as follows. *Paragraph 1* of the *Schedule* to this Law inserts new paragraphs 6A to 6E into Schedule 2, which mirror new Articles 20A to 20E explained above.

Paragraph 2 deletes paragraphs 14 to 24 of that Schedule which all reflected the procedure when a case was sent to the Attorney General. These paragraphs were misconceived as in the case of re-extradition, unlike extradition for the first time, and as already provided for in paragraph 9, it is the Magistrate that makes the decision and there is no scope for the Attorney General to be involved in the process. *Paragraph 3* corrects the heading and sub-paragraph (2) of paragraph 25 of the Schedule to refer to the appeal being against the decision ordering re-extradition rather than referring the case to the Attorney General for which there was never any provision. New sub-paragraph (5), following the provision made in the case of ordinary extradition, enables an appeal to be entertained out of time if the person did everything reasonably possible to ensure that notice of the appeal was given. *Paragraph 4* makes a similar correction to the heading of paragraph 26. *Paragraph 5* deletes paragraphs 30 to 34 which have no effect as they relate to appeals against decisions by the Attorney General in relation to re-extradition when he has no such role. *Paragraph 7* amends paragraph 37 so as to remove cross references to paragraphs being deleted. *Paragraph 8* makes similar changes to paragraph 38.

Paragraph 9 inserts new paragraphs 40A and 40B into Schedule 2 which mirror in a re-extradition context new Articles 56A and 56B of that Law concerning what is to happen where a person is charged with, or serving a sentence in relation to, an offence in Jersey.

Paragraph 10 corrects paragraph 43 of that Schedule to replace an incorrect reference to sending a case to the Attorney General. *Paragraph 11* deletes paragraph 44 which purported to provide for withdrawal of request after the case was sent to the Attorney General, which cannot happen. *Paragraph 12* amends paragraph 45 also to take out a cross-reference to a deleted paragraph and remove a misconceived reference to the Attorney General ordering re-extradition. *Paragraphs 13 to 16* also remove and replace incorrect references to the Attorney General in paragraphs 48 and 52 to 54.

This Law has no implications for manpower or resources.



Jersey

DRAFT EXTRADITION (AMENDMENT) (JERSEY) LAW 201-

Arrangement

Article

1	Amendment of Extradition (Jersey) Law 2004	13
2	Article 1 amended	13
3	Article 3 amended	13
4	Article 4 amended	14
5	Article 6 amended	16
6	Article 7 amended	16
7	Articles 20A to 20E inserted	16
8	Article 30 amended	20
9	Article 40 amended	21
10	Articles 45 and 55 amended	21
11	Articles 56A and 56B inserted	21
12	Article 70 amended	23
13	Schedule 1 amended.....	23
14	Schedule 2 amended.....	23
15	Citation and commencement.....	23

SCHEDULE **24**

SCHEDULE 2 AMENDED		24
1	Paragraphs 6A to 6E inserted	24
2	Paragraphs 14 to 24 deleted	27
3	Paragraph 25 amended	27
4	Paragraph 26 amended	28
5	Paragraphs 30 to 34 deleted	28
6	Paragraph 36 amended	28
7	Paragraph 37 amended	28
8	Paragraph 38 amended	28
9	Paragraphs 40A and 40B inserted	29
10	Paragraph 43 amended	30
11	Paragraph 44 deleted.	30
12	Paragraph 45 amended	30
13	Paragraph 48 amended	30
14	Paragraph 52 amended	30
15	Paragraph 53 amended	30

16 Paragraph 54 amended..... 31



Jersey

DRAFT EXTRADITION (AMENDMENT) (JERSEY) LAW 201-

A **LAW** to amend further the Extradition (Jersey) Law 2004

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 Amendment of Extradition (Jersey) Law 2004

The Extradition (Jersey) Law 2004¹ is amended in accordance with the following provisions of this Law.

2 Article 1 amended

- (1) Article 1(1) is amended as follows.
- (2) After the definition of “honorary police” there shall be inserted the following definition –

“ ‘Human Rights Convention’ has the meaning given to ‘Convention’ by Article 1(1) of the Human Rights (Jersey) Law 2000²;”.
- (3) In the definition of “provisional warrant” in Article 1(1) for the words “Article 9” there shall be substituted the words “Article 10”.
- (4) After the definition of “re-extradition hearing” there shall be inserted the following definition –

“ ‘Refugee Convention’ means the Convention relating to the status of Refugees done at Geneva of 28 July 1951 and the Protocol to that Convention;”.

3 Article 3 amended

- (1) Article 3 is amended as follows.

- (2) For paragraphs (1) to (5) there shall be substituted the following paragraphs –

“(1) This Article sets out whether a person’s conduct constitutes an ‘extradition offence’ for the purposes of this Law in a case where the person –

- (a) is accused in a designated territory of an offence constituted by the conduct; or
- (b) has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.

(2) The conduct constitutes an extradition offence in relation to a designated territory if the conditions in paragraphs (3), (4) or (5) are satisfied.

(3) The conditions in this paragraph are that –

- (a) the conduct occurs in the designated territory;
- (b) the conduct would constitute an offence under the law of Jersey punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in Jersey;
- (c) the conduct is so punishable under the law of the designated territory.

(4) The conditions in this paragraph are that –

- (a) the conduct occurs outside the designated territory;
- (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of Jersey punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment;
- (c) the conduct is so punishable under the law of the designated territory.

(5) The conditions in this paragraph are that –

- (a) the conduct occurs outside the designated territory;
- (b) no part of the conduct occurs in Jersey;
- (c) the conduct constitutes, or if committed in Jersey would constitute, an offence to which paragraph (6) refers;
- (d) the conduct is punishable under the law of the designated territory with imprisonment or another form of detention for a term of 12 months or a greater punishment.”.

- (3) After paragraph (7) there shall be added the following paragraph –

“(8) References in this Article to ‘conduct’ (except in the expression ‘equivalent conduct’) are to the conduct specified in the request for the person’s extradition.”.

4 Article 4 amended

- (1) Article 4 is amended as follows.

- (2) For paragraphs (1) to (5) there shall be substituted the following paragraphs –

“(1) This Article sets out whether a person’s conduct constitutes an ‘extradition offence’ for the purposes of this Law in a case where the person –

- (a) has been convicted, in the designated territory to which extradition is requested, of an offence constituted by the conduct; and
- (b) has been sentenced for the offence.

(2) The conduct constitutes an extradition offence in relation to the designated territory if the conditions in paragraphs (3), (4) or (5) are satisfied.

(3) The conditions in this paragraph are that –

- (a) the conduct occurs in the designated territory;
- (b) the conduct would constitute an offence under the law of Jersey punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in Jersey;
- (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.

(4) The conditions in this paragraph are that –

- (a) the conduct occurs outside the designated territory;
- (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of Jersey punishable as mentioned in paragraph (3)(b);
- (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.

(5) The conditions in this paragraph are that –

- (a) the conduct occurs outside the designated territory;
- (b) no part of the conduct occurs in Jersey;
- (c) the conduct constitutes, or if committed in the Jersey would constitute, an offence mentioned in paragraph (6);
- (d) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.”.

- (3) After paragraph (7) there shall be added the following paragraph –

“(8) References in this Article to ‘conduct’ (except in the expression ‘equivalent conduct’) are to the conduct specified in the request for the person’s extradition.”.

5 Article 6 amended

- (1) Article 6 is amended as follows.
- (2) After paragraph (3) there shall be inserted the following paragraph –
“(3A) A designated territory may be specified in Part 1 of Schedule 1 for some purposes of this Law and specified in Part 2 of that Schedule for other purposes of this Law and references to a designated territory of the first category or the second category shall be construed accordingly.”.
- (3) After paragraph (4)(a) there shall be inserted the following subparagraph –
“(aa) specify any territory in Part 1 of Schedule 1 for some purposes of this Law and in Part 2 of that Schedule for other purposes of this Law;”.
- (4) In paragraph (4)(c) after the word “either” there shall be inserted the words “or both”.

6 Article 7 amended

- (1) Article 7 is amended as follows.
- (2) For paragraph (2) there shall be substituted the following paragraph –
“(2) However, the Attorney General may refuse to issue a certificate under this Article if –
 - (a) the Attorney General has power under Article 65 to order that proceedings on the request be deferred;
 - (b) the person whose extradition is requested has been recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention; or
 - (c) the person whose extradition is requested has been granted leave to enter or remain in the United Kingdom on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove the person to the territory to which extradition is requested.”.
- (3) After paragraph (8) there shall be added the following paragraphs –
 - “(9) Paragraph (10) applies at all times after the Attorney General issues a certificate under this Article.
 - (10) The Attorney General shall not consider whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights (Jersey) Law 2000³.”.

7 Articles 20A to 20E inserted

After Article 20 there shall be inserted the following Articles –

“20A Forum

- (1) The extradition of a person (‘D’) to a designated territory is barred by reason of forum if the extradition would not be in the interests of justice.
- (2) For the purposes of this Article, the extradition would not be in the interests of justice if the Magistrate –
 - (a) decides that a substantial measure of D’s relevant activity was performed in Jersey; and
 - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) The specified matters relating to the interests of justice are –
 - (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
 - (b) the interests of any victims of the extradition offence;
 - (c) that the Attorney General believes that Jersey is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
 - (d) were D to be prosecuted in Jersey for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in Jersey;
 - (e) any delay that might result from proceeding in one jurisdiction rather than another;
 - (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to –
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in Jersey or in jurisdictions outside Jersey;
 - (g) D’s connections with Jersey.
- (4) In deciding whether the extradition would not be in the interests of justice, the Magistrate shall have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the designated territory concerned.
- (5) If, on an application by the Attorney General, it appears to the Magistrate that the Attorney General has considered the offences for which D could be prosecuted in Jersey in respect of the conduct constituting the extradition offence, the Magistrate shall make the Attorney General a party to the proceedings on the question of whether D’s extradition is barred by reason of forum.

- (6) In this Article ‘D’s relevant activity’ means activity that is material to the commission of the extradition offence and is alleged to have been performed by D.

20B Effect of Attorney General’s certificates on forum proceedings

- (1) The Magistrate hearing proceedings under Article 20A (the ‘forum proceedings’) shall decide that the extradition is not barred by reason of forum if (at a time when the Magistrate has not yet decided the proceedings) the Magistrate receives an Attorney General’s certificate relating to the extradition.
- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the Attorney General’s certificate raised in accordance with Article 20D.
- (3) The Attorney General may apply for the forum proceedings to be adjourned for the purpose of assisting the Attorney General –
 - (a) in considering whether to give a certificate relating to the extradition;
 - (b) in giving such a certificate; or
 - (c) in sending such a certificate to the Magistrate.
- (4) If such an application is made, the Magistrate shall –
 - (a) adjourn the forum proceedings until the application is decided; and
 - (b) continue the adjournment, for such period as appears to the Magistrate to be reasonable, if the application is granted.
- (5) But the Magistrate shall end the adjournment if the application is not granted.

20C Attorney General’s certificates

- (1) An ‘Attorney General’s certificate’ is a certificate given by the Attorney General that –
 - (a) the Attorney General has considered the offences for which D could be prosecuted in Jersey in respect of the conduct constituting the extradition offence and decided that there are one or more such offences that correspond to the extradition offence (the ‘corresponding offences’); and
 - (b) certifies either the facts set out in paragraph (2) or those set out in paragraph (3).
- (2) The facts are that –
 - (a) the Attorney General has made a formal decision as to the prosecution of D for the corresponding offences;
 - (b) that decision is that D should not be prosecuted for the corresponding offences; and
 - (c) the reason for that decision is a belief that –

- (i) there would be insufficient admissible evidence for the prosecution, or
 - (ii) the prosecution would not be in the public interest.
- (3) The facts are that the Attorney General believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in –
 - (a) the prosecution of D for the corresponding offences; or
 - (b) any other proceedings.
- (4) In relation to the extradition of any person to a designated territory, neither this Article nor any other rule of law (whether or not contained in an enactment) may require the Attorney General –
 - (a) to consider any matter relevant to giving an Attorney General's certificate; or
 - (b) to consider whether to give an Attorney General's certificate.
- (5) In this Article 'sensitive material' means material that appears to the responsible prosecutor to be sensitive, including material appearing to be sensitive on grounds relating to –
 - (a) national security;
 - (b) international relations; or
 - (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

20D Questioning of Attorney General's certificate

- (1) No decision of the Attorney General relating to an Attorney General's certificate in respect of D's extradition (a 'relevant certification decision') may be questioned except on an appeal under Article 40 or Article 45 against an order for that extradition.
- (2) For the purpose of –
 - (a) determining whether to give permission for a relevant certification decision to be questioned; and
 - (b) determining any such question (if that permission is given),the Royal Court shall apply the procedures and principles which would be applied by it on an application for judicial review.
- (3) When quashing an Attorney General's certificate, the Royal Court shall decide the question of whether or not the extradition is barred by reason of forum.
- (4) In deciding that question –
 - (a) Articles 20A to 20C and this Article apply in relation to the decision (with the appropriate modifications) as they apply to a decision by the Magistrate; and

- (b) in particular –
 - (i) a reference in this Article to an appeal under Article 40 or Article 45 has effect as a reference to an appeal under Article 52 to the Privy Council,
 - (ii) a reference in this Article to the Royal Court has effect as a reference to the Privy Council.

20E Interpretation of Articles 20A to 20D

- (1) This Article applies for the purposes of Articles 20A to 20D (and this Article).
- (2) The following definitions apply –
 - ‘Attorney General’s certificate’ has the meaning given in Article 20C(1);
 - ‘D’ has the meaning given in Article 20A(1);
 - ‘extradition offence’ means the offence specified in the request for extradition (including the conduct that constitutes the extradition offence);
 - ‘forum proceedings’ has the meaning given in Article 20B(1).
- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the 2 offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.”.

8 Article 30 amended

- (1) Article 30 is amended as follows.
- (2) In paragraph (3)(c), after the word “under” there shall be inserted the words “paragraph (6) or”.
- (3) After paragraph (5) there shall be added the following paragraph –
 - “(6) The Attorney General may order the person’s discharge if the person –
 - (a) has been recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention; or
 - (b) has been granted leave to enter or remain in the United Kingdom on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove the person to the territory to which extradition is requested.”.

9 Article 40 amended

After Article 40(6) there shall be inserted the following paragraph –

“(7) But where a person gives notice of application for leave to appeal after the end of the permitted period, the Royal Court shall not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.”.

10 Articles 45 and 55 amended

(1) After Article 45(4) there shall be added the following paragraphs –

“(5) But notice of an appeal under this Article may be given after the end of the permitted period if it is an appeal on human rights grounds.

(6) Notice of any such appeal must be given in accordance with rules of court at a time before the person is extradited to the designated territory in accordance with Article 55.

(7) Where notice of an appeal is given in accordance with paragraphs (5) and (6), the Royal Court shall consider the appeal only if it appears to the Court that –

- (a) the appeal is necessary to avoid real injustice; and
- (b) the circumstances are exceptional and make it appropriate to consider the appeal.

(8) Where a person gives notice of application for leave to appeal after the end of the permitted period (whether or not the application is for leave to appeal on human rights grounds), the Royal Court shall not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.

(9) In this Article ‘appeal on human rights grounds’ means an appeal against the order for the person’s extradition on the grounds (and only on the grounds) that the extradition would not be compatible with the Convention rights within the meaning of the Human Rights (Jersey) Law 2000⁴.”.

(2) After Article 55(4) there shall be inserted the following paragraph –

“(5) If a person brings an appeal under Article 45 by virtue of paragraph (5) of that Article, this Article ceases to apply (but Article 56 applies instead).”.

11 Articles 56A and 56B inserted

After Article 56 there shall be inserted the following Articles –

“56A Court informed after extradition order that person is charged with offence in Jersey

- (1) This Article applies if –
 - (a) the Attorney General has ordered a person’s extradition; and
 - (b) before the extradition order is carried out the Royal Court is informed that the person is charged with an offence in Jersey.
- (2) The Royal Court shall order the extradition order not to be carried out until one of these occurs –
 - (a) the charge is disposed of;
 - (b) the charge is withdrawn;
 - (c) proceedings in respect of the charge are discontinued;
 - (d) an order is made for the charge to lie on the file.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Royal Court may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (4) Rules of court may provide that where there is an appeal against the extradition order –
 - (a) a reference in this Article to the Royal Court has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal; and
 - (b) this Article has effect with any other prescribed modifications.

56B Court informed after extradition order that person is serving sentence in Jersey

- (1) This Article applies if –
 - (a) the Attorney General has ordered a person’s extradition; and
 - (b) before the extradition order is carried out the Royal Court is informed that the person is serving a sentence of imprisonment or another form of detention in Jersey.
- (2) The Royal Court may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (3) Rules of court may provide that where there is an appeal against the extradition order –
 - (a) a reference in this Article to the Royal Court has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal; and
 - (b) this Article has effect with any other prescribed modifications.”.

12 Article 70 amended

In Article 70(4)(a) for “11(3)(b)” there shall be substituted “15(3)(b)”.

13 Schedule 1 amended

- (1) In the table in Part 1 of Schedule 1 after the reference to “Hong Kong Special Administrative Region” there shall be inserted the words “(for the purposes of Articles 8 and 10 only)”.
- (2) In the table in Part 2 of Schedule 1 after the entry for Haiti there shall be inserted the following entry –

“Hong Kong Special Administrative Region (except for the purposes of Articles 8 and 10)”.

14 Schedule 2 amended

Schedule 2 is amended in accordance with the Schedule to this Law.

15 Citation and commencement

This Law may be cited as the Extradition (Amendment) (Jersey) Law 201- and shall come into force 7 days after it is registered.

SCHEDULE

(Article 12)

SCHEDULE 2 AMENDED**1 Paragraphs 6A to 6E inserted**

After paragraph 6 there shall be inserted the following paragraphs –

“6A Forum

- (1) The re-extradition of a person (‘D’) to a designated territory is barred by reason of forum if the re-extradition would not be in the interests of justice.
- (2) For the purposes of this paragraph, the re-extradition would not be in the interests of justice if the Magistrate –
 - (a) decides that a substantial measure of D’s relevant activity was performed in Jersey; and
 - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) The specified matters relating to the interests of justice are –
 - (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
 - (b) the interests of any victims of the extradition offence;
 - (c) that the Attorney General believes that Jersey is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
 - (d) were D to be prosecuted in Jersey for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available Jersey;
 - (e) any delay that might result from proceeding in one jurisdiction rather than another;
 - (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to –
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in the Jersey or in jurisdictions outside Jersey;
 - (g) D’s connections with Jersey.
- (4) In deciding whether the extradition would not be in the interests of justice, the Magistrate shall have regard to the desirability of not

requiring the disclosure of material which is subject to restrictions on disclosure in the designated territory concerned.

- (5) If, on an application by the Attorney General, it appears to the Magistrate that the Attorney General has considered the offences for which D could be prosecuted in Jersey in respect of the conduct constituting the extradition offence, the Magistrate shall make the Attorney General a party to the proceedings on the question of whether D's extradition is barred by reason of forum.
- (6) In this paragraph 'D's relevant activity' means activity that is material to the commission of the extradition offence and is alleged to have been performed by D.

6B Effect of Attorney General's certificates on forum proceedings

- (1) The Magistrate hearing proceedings under paragraph 6A (the 'forum proceedings') shall decide that the extradition is not barred by reason of forum if (at a time when the Magistrate has not yet decided the proceedings) the Magistrate receives an Attorney General's certificate relating to the re-extradition.
- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the Attorney General's certificate raised in accordance with paragraph 6D.
- (3) The Attorney General may apply for the forum proceedings to be adjourned for the purpose of assisting the Attorney General –
 - (a) in considering whether to give a certificate relating to the extradition;
 - (b) in giving such a certificate; or
 - (c) in sending such a certificate to the Magistrate.
- (4) If such an application is made, the Magistrate shall –
 - (a) adjourn the forum proceedings until the application is decided; and
 - (b) continue the adjournment, for such period as appears to the Magistrate to be reasonable, if the application is granted.
- (5) But the Magistrate shall end the adjournment if the application is not granted.

6C Attorney General's certificates

- (1) An 'Attorney General's certificate' is a certificate given by the Attorney General that –
 - (a) the Attorney General has considered the offences for which D could be prosecuted in Jersey in respect of the conduct constituting the re-extradition offence and decided that there are one or more such offences that correspond to the extradition offence (the 'corresponding offences'); and

- (b) certifies either the facts set out in paragraph (2) or those set out in paragraph (3).
- (2) The facts are that –
 - (a) the Attorney General has made a formal decision as to the prosecution of D for the corresponding offences;
 - (b) that decision is that D should not be prosecuted for the corresponding offences; and
 - (c) the reason for that decision is a belief that –
 - (i) there would be insufficient admissible evidence for the prosecution, or
 - (ii) the prosecution would not be in the public interest.
- (3) The facts are that the Attorney General believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in –
 - (a) the prosecution of D for the corresponding offences; or
 - (b) any other proceedings.
- (4) In relation to the extradition of any person to a designated territory, neither this Article nor any other rule of law (whether or not contained in an enactment) may require the Attorney General –
 - (a) to consider any matter relevant to giving an Attorney General’s certificate; or
 - (b) to consider whether to give an Attorney General’s certificate.
- (5) In this paragraph ‘sensitive material’ means material that appears to the responsible prosecutor to be sensitive, including material appearing to be sensitive on grounds relating to –
 - (a) national security;
 - (b) international relations; or
 - (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

6D Questioning of Attorney General’s certificate

- (1) No decision of the Attorney General relating to an Attorney General’s certificate in respect of D’s re-extradition (a ‘relevant certification decision’) may be questioned except on an appeal under paragraph 25 against an order for that re-extradition.
- (2) For the purpose of –
 - (a) determining whether to give permission for a relevant certification decision to be questioned; and
 - (b) determining any such question (if that permission is given),

the Royal Court shall apply the procedures and principles which would be applied by it on an application for judicial review.

- (3) When quashing an Attorney General's certificate, the Royal Court shall decide the question of whether or not the extradition is barred by reason of forum.
- (4) In deciding that question –
 - (a) paragraphs 6A to 6C and this paragraph apply in relation to the decision (with the appropriate modifications) as they apply to a decision by the Magistrate; and
 - (b) in particular –
 - (i) a reference in this Article to an appeal under paragraph 25 has effect as a reference to an appeal under paragraph 37 to the Privy Council,
 - (ii) a reference in this Article to the Royal Court has effect as a reference to the Privy Council.

6E Interpretation of paragraphs 6A to 6D

- (1) This paragraph applies for the purposes of paragraphs 6A to 6D (and this paragraph).
- (2) The following definitions apply –
 - 'Attorney General's certificate' has the meaning given in paragraph 6C(1);
 - 'D' has the meaning given in paragraph 6A(1);
 - 'extradition offence' means the offence specified in the request for extradition (including the conduct that constitutes the extradition offence);
 - 'forum proceedings' has the meaning given in paragraph 6B(1).
- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the 2 offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.”.

2 Paragraphs 14 to 24 deleted

Paragraphs 14 to 24 shall be deleted.

3 Paragraph 25 amended

- (1) Paragraph 25 is amended as follows.

- (2) In the heading for the words “sending of case to Attorney General” there shall be substituted the words “decision ordering re-extradition”.
- (3) In sub-paragraph (2) for the words “case was sent to the Attorney General” there shall be substituted the words “decision was made”.
- (4) After sub-paragraph (4) there shall be inserted the following sub-paragraph –
 - “(5) But where a person gives notice of application for leave to appeal after the end of the permitted period, the Royal Court shall not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.”.

4 Paragraph 26 amended

In the heading to paragraph 26 for the words “sending of case to Attorney General” there shall be substituted the words “decision ordering re-extradition”.

5 Paragraphs 30 to 34 deleted

Paragraphs 30 to 34 shall be deleted.

6 Paragraph 36 amended

- (1) Paragraph 36 is amended as follows.
- (2) In sub-paragraph (1) for the words “paragraphs 25, 27, 30 and 32” there shall be substituted the words “paragraphs 25 and 27”.
- (3) In sub-paragraph (4) the words “or paragraph 30” shall be deleted.
- (4) In sub-paragraph (5) the words “or paragraph 32” shall be deleted.

7 Paragraph 37 amended

In paragraph 37(1) for the words “paragraphs 25, 27, 30 and 32” there shall be substituted the words “paragraphs 25 and 27”.

8 Paragraph 38 amended

- (1) Paragraph 38 is amended as follows.
- (2) In sub-paragraph (2)(b) the words “or paragraph 30 or to allow an appeal under paragraph 32” shall be deleted.
- (3) For sub-paragraph (3) there shall be substituted the following sub-paragraph –
 - “(3) If –
 - (a) the Royal Court allows an appeal under paragraph 25 by the person whose re-extradition is requested;

- (b) a person acting on behalf of the designated territory brings an appeal under paragraph 37 against the decision of the Royal Court; and
 - (c) the Privy Council allows the appeal,
- the Privy Council shall quash the order discharging the person made by the Royal Court under paragraph 26(5), or by the Magistrate, and order the person to be re-extradited.”.

9 Paragraphs 40A and 40B inserted

After paragraph 40 there shall be inserted the following paragraphs –

“40A Court informed after re-extradition order that person is charged with offence in Jersey

- (1) This paragraph applies if –
 - (a) the Magistrate has ordered a person’s re-extradition; and
 - (b) before the extradition order is carried out the Royal Court is informed that the person is charged with an offence in Jersey.
- (2) The Royal Court shall order the re-extradition order not to be carried out until one of these occurs –
 - (a) the charge is disposed of;
 - (b) the charge is withdrawn;
 - (c) proceedings in respect of the charge are discontinued;
 - (d) an order is made for the charge to lie on the file.
- (3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Royal Court may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).
- (4) Rules of court may provide that where there is an appeal against the re-extradition order –
 - (a) a reference in this Article to the Royal Court has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal; and
 - (b) this Article has effect with any other prescribed modifications.

40B Court informed after re-extradition order that person is serving sentence in Jersey

- (1) This paragraph applies if –
 - (a) the Magistrate has ordered a person’s re-extradition; and

(b) before the extradition order is carried out the Royal Court is informed that the person is serving a sentence of imprisonment or another form of detention in Jersey other than the sentence referred to in Article 71(6).

(2) The Royal Court may order the re-extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

(3) Rules of court may provide that where there is an appeal against the extradition order –

(a) a reference in this Article to the Royal Court has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal; and

(b) this Article has effect with any other prescribed modifications.”.

10 Paragraph 43 amended

In paragraph 43(2)(b) for the words “sends the case to the Attorney General for a decision as to whether the person is to be re-extradited” there shall be substituted the word “re-extradited”.

11 Paragraph 44 deleted.

Paragraph 44 shall be deleted.

12 Paragraph 45 amended

In paragraph 45(2) –

(a) the words “or paragraph 30” shall be deleted;

(b) in clause (b) the words “, if the Attorney General has ordered the person’s re-extradition” shall be deleted.

13 Paragraph 48 amended

In the heading to paragraph 48 for the words “sent to Attorney General” there shall be substituted the word “heard”.

14 Paragraph 52 amended

In paragraph 52(2) to (4) for the words “Attorney General” there shall be substituted the word “Magistrate”.

15 Paragraph 53 amended

(1) Paragraph 53 is amended as follows.

(2) In sub-paragraph (6) for the words “send the case to the Attorney General under paragraphs 3 to 13 (inclusive) for the Attorney General’s decision

whether the person should be re-extradited” there shall be substituted the words “re-extradite the person”.

- (3) Sub-paragraphs (8) and (9) shall be deleted.
- (4) In sub-paragraph (10) for the word “negative” there shall be substituted the word “affirmative”.

16 Paragraph 54 amended

- (1) Paragraph 54 is amended as follows.
- (2) In sub-paragraph (6) for the words “send the case to the Attorney General under paragraphs 3 to 13 (inclusive) for the Attorney General’s decision whether the person should be re-extradited” there shall be substituted the words “re-extradite the person”.
- (3) Sub-paragraphs (8) and (9) shall be deleted.
- (4) In sub-paragraph (10) for the word “negative” there shall be substituted the word “affirmative”.

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- ¹ *chapter 17.325*
 - ² *chapter 15.350*
 - ³ *chapter 15.350*
 - ⁴ *chapter 15.350*