

STATES OF JERSEY



DRAFT CRIMINAL JUSTICE (AMENDMENT No. 3) (JERSEY) LAW 201-

Lodged au Greffe on 16th June 2014
by the Chief Minister

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (AMENDMENT No. 3) (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 Criminal Justice (Amendment No. 3) (Jersey) Law 201- are compatible with the Convention Rights.

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

Chief Minister

Dated: 13th June 2014

REPORT

This Projet de Loi seeks to amend the Criminal Justice (Jersey) Law 1957 (“the 1957 Law”).

The Legislation Advisory Panel has considered Article 4 of the 1957 Law which enables criminal courts in Jersey to allow time for the payment of fines¹. The court concerned may direct payments by instalments, and may fix a term of imprisonment which the person liable to pay the fine is to undergo if any sum is not duly paid or recovered. Article 4 stipulates however that any such term of imprisonment may not exceed –

- (a) 6 months in the Magistrate’s Court (or on appeal from the Magistrate);
- (b) 12 months in any other case.

The ceiling is thought to be anomalous in each case for the following reasons:

- *The Magistrate’s Court*

The Magistrate has jurisdiction to imprison offenders for up to 12 months. But this jurisdiction used to be limited to 6 months which is presumably why the maximum of 6 months was applied to sentences fixed under the 1957 Law. Logically, when the ordinary jurisdiction of the Magistrate was increased from 6 months to 12 months,² the period of 6 months referred to in Article 4 of the 1957 Law for sentences for non-payment of fines ought to have been increased to 12 months as well.

This draft Law would effect that change (by linking the maximum sentence for non-payment of a fine to the maximum jurisdiction of the Magistrate to impose imprisonment).

- *The Royal Court*

The amount of a fine imposed by the Royal Court is potentially unlimited; but no matter how large the fine imposed, the sentence for non-payment of that fine cannot exceed 12 months. The Legislation Advisory Panel could see no reason why the hands of the Royal Court should be tied in this way, and concluded that the length of the sentence for non-payment could properly be left to the discretion of the Royal Court. Under the Court of Appeal (Jersey) Law 1961, a “sentence” includes any order made by the Royal Court when dealing with the person convicted, and it follows that the order of the Royal Court by which the term of imprisonment is fixed is appealable and that the person convicted is therefore able to challenge the term fixed if he or she believes it to have been excessive.

The draft Law would effect that change i.e. it would remove the limit of 12 months applicable to terms of imprisonment for non-payment of a fine imposed by the Royal Court.

Financial and manpower implications

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

¹ The Article also applies to forfeited recognisances but for the sake of brevity this Report refers only to fines

² by the Magistrate’s Court (Miscellaneous Provisions) (Amendment No. 8) (Jersey) Law 2000

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 Notes on the Draft Criminal Justice (Amendment No. 3) (Jersey) Law 201-

These Notes have been prepared in respect of the draft Criminal Justice (Amendment No. 3) (Jersey) Law 201- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (the “ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Consideration has been given to whether the amendments made by the draft Law to Article 4 of the Criminal Justice (Jersey) Law 1957 (“the 1957 Law”) are compatible with article 5 of the ECHR (“article 5”), which guarantees the right to liberty and security.

Article 5 provides that:

- “1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law –*
 - (a) *the lawful detention of a person after conviction by a competent court;*
 - (b) *the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
 - (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be*

entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”*

A term of imprisonment imposed under Article 4 of the 1957 Law would fall within the first limb of exception (b) of paragraph 1 of article 5, i.e. lawful detention for non-compliance with the lawful order of a court. Article 5.1(b) has previously been held to permit detention for failure to pay a fine (application no. 6289/73: *Airey v Ireland* 8 DR 42 (1977)).

In order to be compliant with article 5 the order must be made by a court of competent jurisdiction, must be sufficiently precise to meet the ECHR test of legal certainty, and must be capable of enforcement; all of which would be satisfied in the case of a term of imprisonment imposed under Article 4 of the 1957 Law.

The amendment to Article 4 of the 1957 Law increases the *maximum* term of imprisonment that can be imposed, in order to give consistency with the existing maximum sentencing powers of the respective courts. In any given case, the actual term of imprisonment is not fixed by Article 4 of the 1957 Law (other than by being limited in some cases to the maximum term of imprisonment within the jurisdiction of the Magistrate’s Court); that is the job of the courts, which are public authorities for the purposes of Article 7(1) of the Human Rights (Jersey) Law 2000, which provides that “*It is unlawful for a public authority to act in a way which is incompatible with a Convention right*”.

Furthermore, under the Court of Appeal (Jersey) Law 1961, a “sentence” includes any order made by the Royal Court when dealing with the person convicted, and it follows that the order of the Royal Court by which the term of imprisonment is fixed is appealable³ and that the person convicted is therefore able to challenge the term fixed if he or she believes it to be excessive.

It is therefore reasonable to conclude that the draft Law is compatible with article 5.

³ As is an order of the Magistrate’s Court – see Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949

Explanatory Note

This draft Law would amend the Criminal Justice (Jersey) Law 1957 (“Law”).

Article 1 amends the power of a court in fixing the length of the term of imprisonment to be served by a person on whom a court has imposed a fine or in respect of whom a recognizance has been forfeited in the event that the person defaults with respect to any payment that is due. Currently, the Law fixes a maximum term of 6 months in the case of an order made by the Magistrate’s Court or by the Inferior Number of the Royal Court on appeal against a decision of the Magistrate’s Court. In any other case, the maximum term is 12 months. So in the case of the Royal Court (other than on appeal from the Magistrate’s Court) the maximum sentence it can impose is 12 months imprisonment.

Article 1 amends this provision in 2 respects. First, in the case of an order made by the Magistrate’s Court or by the Youth Court or by the Royal Court on appeal against a decision of the Magistrate’s Court, the maximum term is the same as the maximum term that is within the jurisdiction for the time being of the Magistrate’s Court. Under Article 3(1) of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949, the current maximum term of imprisonment that can be imposed by the Magistrate’s Court is 12 months. Second, the amendment removes the 12 months’ limitation on a term of imprisonment that applies in any other case.

Article 2 sets out the title of the Law and provides that it will come into force 7 days after the day it is registered.



Jersey

DRAFT CRIMINAL JUSTICE (AMENDMENT No. 3) (JERSEY) LAW 201-

A LAW to amend further the Criminal Justice (Jersey) Law 1957.

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 Criminal Justice (Jersey) Law 1957 amended

In Article 4 of the Criminal Justice (Jersey) Law 1957¹ –

(a) in paragraph (1) the words “Provided that” to the end of the paragraph shall be deleted;

(b) after paragraph (1) there shall be inserted the following paragraph –

“(1A) Any term of imprisonment fixed under paragraph (1) shall not exceed the maximum term of imprisonment within the jurisdiction for the time being of the Magistrate’s Court in the case of an order made by –

- (a) the Magistrate’s Court;
- (b) the Youth Court; or
- (c) the Royal Court on appeal against a decision of the Magistrate’s Court.”.

2 Citation and commencement

This Law may be cited as the Criminal Justice (Amendment No. 3) (Jersey) Law 201- and shall come into force 7 days after the day it is registered.

¹

chapter 08.320