

STATES OF JERSEY

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

Lodged au Greffe on 18th January 2005
by the Home Affairs Committee

STATES GREFFE



Jersey

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

European Convention on Human Rights

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

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

(Signed) **Senator W. Kinnard**

REPORT

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

Similar measures were incorporated into the draft Alcohol Strategy in 2000. At that time the Attorney General suggested that an appropriate way forward might be an amendment to the Policing of Roads, Parks and Beaches Regulations, rather than introducing new legislation. This advice was, however, given on the basis that the likely amendment would be to prevent unaccompanied minors from consuming alcoholic beverages in public places. The proposition brought by Deputy of St. Martin suggested a broader approach whereby it would apply to **any** person.

Once detailed drafting instructions had been prepared, the first draft of the Law, then entitled the Confiscation of Alcohol (Jersey) Law 200-, was produced in June 2003. Consultation took place in January 2004, with feedback being considered by the Committee at its meeting in February. The young people of the Island were asked for their views by means of an article appearing in ‘Reality Reloaded’, a section of the Jersey Evening Post that is specifically targeted at young people. Interestingly, no feedback was received.

At that time, consultation with the Law Officers’ Department revealed that while, in the case of minors, the police powers to be exercised under the draft Law are not linked to misbehaviour but are given because its regarded as intrinsically undesirable that young persons should have access to liquor in public places, there may be particular human rights considerations connected with making judgements about people’s behaviour and the circumstances under which alcohol could be confiscated in respect of the provisions concerning adults. Rather than place on individual police officers the burden of deciding whether a person was ‘misbehaving’, it was suggested that the Law should apply to public places designated by the Committee by Order. The power to designate would be restricted to public places with a previous history of public nuisance or disorder arising from the consumption of alcohol, with licensed premises being specifically excluded from the definition of a public place. This approach is used in the Criminal Justice and Police Act in the U.K.

The Committee decided that it was appropriate that the Connétables should be given the opportunity to identify those areas in their own parishes that were found to be associated with nuisance or disorder arising from the consumption of alcohol, and that they would wish to identify as ‘designated public places’. The view of the Comité des Connétables was that ‘it would be difficult to define precisely a designated place to which the law referred, as those causing a nuisance or misbehaving would simply be able to move a short distance to a place which was not so designated’. Consequently, the Connétables’ view was that the legislation should relate to all places except private property. In the light of this, the Home Affairs Committee decided that the Law should retain the provision for the Committee to designate certain areas should the need arise at a later point in time, having first consulted the Constable of the Parish concerned, but that at this juncture no designation would be required. Instead, it was decided to reinstate the provisions relating to misbehaviour that had appeared in earlier drafts of the Law whilst recognising the judgement that would need to be exercised by police officers. A revised draft of the Law was considered by the Committee at its meeting in September 2004, and it was agreed to submit the draft Law to the Law Officers’ Department for a further Human Rights compliance check.

Legal advice, received in January 2005, confirmed that the draft Law itself would be compatible with the European Convention on Human Rights, but advised that care would need to be exercised by officers when considering whether a person is misbehaving and warned that human rights challenges could arise from time to time. The Committee considered this matter at its meeting on the 13th January 2005, and in the light of the legal advice received, decided to remove the particular paragraph which would allow a police officer to remove liquor from a person whom he reasonably believed to be misbehaving in any public place. It was felt that the inclusion of a requirement that someone was misbehaving would lead to difficulties of definition and interpretation and would therefore be difficult for police officers to apply in practice. The Committee therefore took the decision that the preferable way forward was to designate areas in which alcohol cannot, legally, be consumed, thereby removing from the draft Law the need for a judgement to be made as to whether a person is misbehaving or not.

The Committee had already decided at its meeting on 27th March 2003 to close a number of lacunae in current common and statute law in respect of public order offences, including powers to regulate certain insulting, threatening or disorderly behaviour.

There will be certain manpower and financial implications arising from this draft Law associated with the production, distribution and maintenance of signage necessary to identify areas designated under the draft Law, and financial implications arising from the requirement to notify the public of these areas by means of entries in the Gazette pages of the Jersey Evening Post.

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 13th January 2005 the Home Affairs Committee made the following statement before Second Reading of this projet in the States Assembly –

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

Explanatory Note

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

- (a) in a designated public place in which that activity has previously been associated with nuisance or annoyance to the public or disorder; or
- (b) in a place to which he or she has unlawfully gained access.

It is also intended to control the consumption of liquor by persons under the age of 18 years in any public place or in any place to which he or she has unlawfully gained access.

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

The draft Law is set out in the following way –

Article 1 defines expressions used in the Law.

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

Article 2 enables the Home Affairs Committee, by Order, to designate any public place for the purposes of the draft Law.

The Committee may only make such an Order if it is satisfied that some nuisance or annoyance to the public, or disorder, has already been associated with the consumption of liquor in that place.

Before making the Order, it must consult the Connétable of the parish concerned.

Article 3 applies if a person is in a designated public place or a place to which he or she has unlawfully gained access.

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

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

An officer who is not in uniform must show evidence that he or she is a police officer before imposing any such requirement. In any event, the officer must tell the person that failing without reasonable excuse to comply with a requirement is an offence.

Article 4 applies if a young person is in any public place (whether or not it has been designated by the Committee under *Article 2*), and is not accompanied by a responsible adult.

If a police officer reasonably believes that the young person has liquor, and is drinking it or has recently consumed or intends to consume liquor in that place, the officer may exercise the same powers as a police officer has under *Article 3*. It is an offence to fail without reasonable excuse to comply with a requirement made by the police officer in the exercise of those powers.

A police officer will also have these powers if a young person is in a place to which he or she has unlawfully gained access, and the young person is reasonably believed to be in possession of liquor. Again, it will be an offence to fail without reasonable excuse to comply with a requirement by the police officer in the exercise of such powers.

Article 5 applies if a person is in any public place, and a police officer reasonably believes that he or she has liquor.

If the person is with a young person (or the officer reasonably believes that he or she has recently been with a young person in that place), and the young person concerned is not accompanied by a responsible adult, and the officer reasonably believes that the first person is going to give the young person liquor to drink in that public place, the officer may exercise the same powers as a police officer has under *Article 3*. It is an offence to fail without reasonable excuse to comply with a requirement made by the police officer in the exercise of those powers.

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

Article 6 authorizes a police officer to seize and detain any container in a person's possession, if the person commits an offence under any of Articles 3, 4 and 5 and the officer reasonably believes that it contains liquor.

Article 7 authorizes a police officer to dispose of a container that is surrendered to or seized by an officer under the draft Law, and its contents. However, this Article does not enable a police officer to dispose of –

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

Nothing in this Article prevents a police officer from returning a container that is not yet the subject of a court order directly to a person if the officer thinks it appropriate to do so. However, this is subject to *Article 8* (which requires that in that event, if it was surrendered by or seized from a young person, the officer may only return it to the young person's parent or guardian).

Article 9 empowers a court, on a conviction under the draft Law, to order the forfeiture or other disposal of a container that is surrendered or seized.

Article 10 provides that the maximum penalty for an offence under the draft Law is a fine not exceeding level 2 on the standard scale (which is at present £500).

Article 11 provides for the criminal liability of a person who aids, abets, counsels or procures an offence under the draft Law.

Article 12 describes how the draft Law may be cited.



Jersey

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

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Designated public places</u>
<u>3</u>	<u>Removal of liquor from persons in certain places</u>
<u>4</u>	<u>Removal of liquor from young persons</u>
<u>5</u>	<u>Removal of liquor intended for young persons</u>
<u>6</u>	<u>Enforcement</u>
<u>7</u>	<u>Disposal of containers and their contents by police officers</u>
<u>8</u>	<u>Return of containers obtained from young persons</u>
<u>9</u>	<u>Disposal under court orders</u>
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Jersey

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

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

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

- (1) In this Law, unless the context otherwise requires –
- “designated public place” means a public place designated for the purposes of this Law by an Order made under Article 2;
 - “liquor” means intoxicating liquor as defined in Article 1(1) of the Licensing (Jersey) Law 1974;^[1]
 - “public place” does not include –
 - (a) licensed premises as defined in Article 1(1) of the Licensing (Jersey) Law 1974;^[2] or
 - (b) any other place at which liquor may for the time being lawfully be sold;
 - “young person” means a person who has not attained the age of majority.
- (2) For the purposes of this Law, a person is responsible for a young person –
- (a) if the first person is a parent or guardian of the young person; or
 - (b) if the first person has attained the age of majority, and is for the time being the person immediately responsible for the young person’s well-being (whether because the young person is the other person’s guest or for any other reason).
- (3) Where this Law confers any power on a police officer or on a court in respect of any container, the Law shall also be construed (unless otherwise expressly provided) as conferring the same power on that police officer or court in respect of the contents of the container.

2 Designated public places

- (1) The Home Affairs Committee may by Order designate any public place for the purposes of this Law, if it is satisfied that –
 - (a) any nuisance or annoyance to the public or a section of the public; or
 - (b) any disorder,has been associated with the consumption of liquor in that place.
- (2) However, before making an Order under this Article, the Home Affairs Committee shall consult the Connétable of the parish in which the public place is situated.

3 Removal of liquor from persons in certain places

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

4 Removal of liquor from young persons

- (1) This Article applies if –
 - (a) a young person is in any public place;
 - (b) a police officer reasonably believes that the young person is in possession of liquor;
 - (c) the police officer reasonably believes that the young person is consuming or has recently consumed or intends to consume liquor in that place; and
 - (d) the young person is not accompanied by a person who is responsible for the young person.
- (2) The police officer may require the young person not to consume in the place concerned –

- (a) liquor; or
 - (b) anything that the police officer reasonably believes to be liquor.
- (3) The police officer may require the young person to surrender to a police officer any container –
- (a) that is in the young person’s possession in the place concerned; and
 - (b) that the police officer reasonably believes to be liquor,
- and a police officer may detain a container so surrendered.
- (4) The police officer may require the young person to give his or her name and address to a police officer.
- (5) If the police officer is not in uniform, he or she shall before imposing a requirement on a person under any of paragraphs (2), (3) and (4) show documentary evidence that he or she is a police officer to the person.
- (6) A police officer who imposes a requirement on a young person under any of paragraphs (2), (3) and (4) shall inform the young person that failing without reasonable excuse to comply with the requirement is an offence.
- (7) A young person who fails without reasonable excuse to comply with a requirement imposed on the young person under any of paragraphs (2), (3) and (4) shall be guilty of an offence.

5 Removal of liquor intended for young persons

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

offence.

- (7) A person who fails without reasonable excuse to comply with a requirement imposed on the person under either of paragraphs (3) and (4) shall be guilty of an offence.
- (8) In this Article, “the place concerned” means –
 - (a) the public place, if this Article applies by reason of paragraph (1); and
 - (b) the place to which the first person has unlawfully gained access, if this Article applies by reason of paragraph (2).

6 Enforcement

If a person commits an offence under any of Articles 3, 4 and 5, a police officer may seize and detain any container –

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

7 Disposal of containers and their contents by police officers

- (1) A police officer may dispose of –
 - (a) any container that is surrendered to a police officer in compliance with a requirement under any of Articles 3, 4 and 5, and detained under that Article by a police officer; or
 - (b) any container that is seized and detained by a police officer under Article 6.
- (2) Paragraph (1) does not authorize a police officer to dispose of a sealed container or its contents.
- (3) Paragraph (1) does not authorize a police officer to dispose of an unsealed container that has intrinsic value apart from the fact that –
 - (a) it is a container; or
 - (b) it is made from material of which containers of liquor are ordinarily made,but this restriction does not apply to the contents of the container.
- (4) Nothing in this Article prevents a police officer from returning a container (whether or not including its contents) to the person by whom it is surrendered or from whom it is seized.
- (5) However, paragraph (4) is subject to Articles 8 and 9.

8 Return of containers obtained from young persons

- (1) This Article applies to a container –
 - (a) that is surrendered to a police officer by a young person in compliance with a requirement under any of Articles 3, 4 and 5; or
 - (b) that is seized by a police officer under Article 6 from a young person.
- (2) A police officer may only return a container to which this Article applies (whether or not including its contents) to a young person by whom it is surrendered or from whom it is seized –
 - (a) by delivering the container to a parent or guardian of the young person; or
 - (b) in accordance with a court order.
- (3) If a police officer delivers a container to a parent or guardian of a young person under paragraph (2) the container shall be taken to have been returned to the young person.

9 Disposal under court orders

- (1) A court before which a person is convicted of an offence under this Law may order anything shown to its satisfaction to be –
 - (a) a container surrendered to a police officer in compliance with a requirement under any of Articles 3, 4 and 5; or
 - (b) a container seized by a police officer under Article 6,
to be forfeited or disposed of in such other manner as the court may order.
- (2) If a court orders a container to be forfeited under paragraph (1), it may order the container to be destroyed or dealt with in such other manner as the court may order.

10 Penalty

A person who commits an offence under this Law shall be liable to a fine not exceeding level 2 on the standard scale.^[3]

11 Parties to offences

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

12 Citation

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

[1] *Volume 1973-1974, page 277, Volume 1979-1981, page 395 and Volume 1999, page 627.*

[2] *Volume 1973-1974, page 277 and R&Os 8358 and 8560.*

[3] *Volume 1992-1993, page 437.*