

PROJET DE LOI (No. 6) (200-) CONCERNANT LA CHARGE DE JUGE D'INSTRUCTION

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ETATS DE JERSEY

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Report

The *Loi* (1864) *concernant la charge de juge d'instruction* was enacted for the purpose, in the words of its long title [in translation] to determine 'the creation, the mode of appointment, and the functions of the *juge d'instruction*'. The '*juge d'instruction*' is today referred to as the Magistrate in his capacity in criminal matters.

Article 1 of the *Loi* of 1864 vested in the States the power to appoint the Magistrate. When the Law was enacted the *Cour pour la répression des moindres délits* (the Police Court as it came to be known) and the *Cour pour le recouvrement de menues dettes* (the Petty Debts Court) were relatively new creations and were presided over by one of the Jurats of the Royal Court. The present day practice for the appointment of the Magistrate is that an Appointments Board is held presided over by the Bailiff consisting of the President of the Human Resources Committee and another judicial officer, for example, the Attorney General or Judicial Greffier. The Board is assisted by a senior official of the States Personnel Department.

The existing requirement of States approval is unsatisfactory for two main reasons. Not only are States Members put in the position of rubber-stamping a decision which has already effectively been made, but also from the viewpoint of the successful candidate, even though the Appointments Board has been persuaded that he/she is the best candidate for the job, the matter has still to be submitted to political debate. There ought instead to be a system of judicial appointments independent of political influence. The provisions of the *Loi* (1864) *concernant la charge de juge d'instruction* as they presently stand are in the opinion of the Legislation Committee inconsistent with judicial autonomy.

Article 1 of the *Loi* of 1864 would thus be amended to delete the existing reference to appointment by the States by an

absolute majority of members present and, in its place, a power would vest in the Bailiff to appoint the Magistrate and Assistant Magistrates.

Article 3 of the *Loi* of 1864 would be substituted so as to provide that the Magistrate receive such salary and allowances and be entitled to receive pensions and gratuities determined from time to time by the Human Resources Committee after consulting the Magistrate. At present Article 3 requires that the salary of the Magistrate be fixed by the States.

Article 6 of the *Loi* of 1864 would also be substituted. At present it provides that in the case of the absence of the Magistrate for any reason or in the case of a vacancy in the office of Magistrate, the Bailiff shall nominate a Jurat, or an advocate or an *écrivain* of the Royal Court of ten years' standing to exercise the functions of Magistrate during such absence or vacancy. The new Article 6 would provide that in the absence of the Magistrate for any reason or in the case of a vacancy in the office of Magistrate, or for any other reason for which he considers it necessary, the Bailiff appoint a Jurat, or an Advocate or solicitor of the Royal Court who has at least ten years' experience, to perform the functions of Magistrate during that absence or vacancy or for such period as the Bailiff may consider necessary.

The proposed amendments to the *Loi* of 1864 would place the procedure for the appointment of the Magistrate on a similar footing to that which applies in relation to the appointment of the Judicial Greffier and the Viscount.

Explanatory Note

The purposes of this amending *Loi* are -

- (a) to confer on the Bailiff the function of appointing the Magistrate and Assistant Magistrates, a function that is presently performed by the States;
- (b) to enable the Bailiff to appoint relief Magistrates for any reason and not, as at present, only to cover the absence of the Magistrate (or of an Assistant Magistrate) or a vacancy in the office of Magistrate (or of an Assistant Magistrate); and
- (c) to make changes consequential on the above amendments.

[TRANSLATION]

LAW (No. 6) (200-) CONCERNING THE OFFICE OF *JUGE D'INSTRUCTION*

A LAW to amend the Laws (1864 to 1993) concerning the office of *Juge d'Instruction*; sanctioned by Order of Her Most Excellent Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

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

ARTICLE 1

In Article 1(1) of the Law (1864) concerning the office of *Juge d'Instruction*, as amended (hereinafter referred to as "the principal Law"), for the words "he shall be appointed by the States by an absolute majority of members present and if they consider it necessary, the States may appoint" there shall be substituted the words "he shall be appointed by the Bailiff and if the Bailiff considers it necessary to do so, the Bailiff may appoint".

ARTICLE 2

For Article 3 of the principal Law, there shall be substituted the following Article -

"ARTICLE 3

The Magistrate shall receive such salary and allowances, and shall be entitled to receive such pensions (if any) and gratuities (if any), as shall be determined from time to time by the Committee known as 'Human Resources Committee' after consulting the Magistrate."

ARTICLE 3

For Article 6 of the principal Law, there shall be substituted the following Article -

"ARTICLE 6

In the case of the absence of the Magistrate for any reason or in the case of a vacancy in the office of Magistrate, or for any other reason for which the Bailiff considers it necessary, the Bailiff shall appoint a Jurat (or an advocate, or a solicitor, of the Royal Court who has at least ten years' experience) to perform the functions of the Magistrate during that absence or vacancy or for such period as the Bailiff may consider it necessary."

ARTICLE 4

(1) This Law may be cited as the "Law (No. 6) (200-) concerning the office of *Juge d'Instruction*" and this Law and the Laws (1864 to 1993) concerning the office of *Juge d'Instruction* may be cited jointly as the "Laws (1864 to 200-) concerning the office of *Juge d'Instruction*".

(2) The amendments made by this Law shall not affect the appointments of Magistrates, and Assistant Magistrates, who have been appointed before this Law comes into force.

(3) The Committee known as “Human Resources Committee” may nevertheless determine from time to time the salaries and allowances, and pensions (if any) and gratuities (if any), of Magistrates and Assistant Magistrates even if they have been appointed before this Law comes into force.

LOI (No. 6) (200-) CONCERNANT LA CHARGE DE JUGE D’INSTRUCTION

LOI pour modifier les Lois (1864 à 1993) concernant la charge de Juge d’Instruction; confirmée par Ordre de Sa Majesté en Conseil en date du

(Enregistré le _____ jour de _____ 200-)

AUX ETATS DE L’ILE DE JERSEY

L’An 200-, le _____ jour de _____

LES ETATS, moyennant la sanction de Sa Très Excellente Majesté en Conseil, ont adopté la Loi suivante -

ARTICLE 1

Dans l’Article 1(1) de la Loi (1864) concernant la charge de Juge d’Instruction, telle que ladite Loi a été modifiée ^[1] (ci-après désignée “la Loi principale”), aux mots “il sera nommé par les Etats à la majorité absolue des membres présents et s’ils le jugent nécessaire, les Etats pourront nommer” seront substitués les mots “il sera nommé par le Bailli et, si le Bailli le juge nécessaire, le Bailli pourra nommer”.

ARTICLE 2

A l’Article 3 de la Loi principale ^[2] sera substitué l’Article suivant -

“ARTICLE 3

Le Magistrat recevra tels traitement et indemnités, et aura le droit de recevoir telles pensions de retraite eventuelles et primes eventuelles, qui seront fixées de temps en temps par le Comité dit ‘Human Resources Committee’ après que le Comité aura consulté le Magistrat.”.

ARTICLE 3

A l’Article 6 de la Loi principale ^[3] sera substitué l’Article suivant -

“ARTICLE 6

En cas d’absence du Magistrat pour quelque raison que ce soit ou en cas de vacance de la charge de Magistrat, ou pour toute autre raison pour laquelle le Bailli le jugera nécessaire, le Bailli nommera un Juré-Justicier (ou un avocat, ou un écrivain, de la Cour Royale qui a au moins dix ans d’exercice) pour en exercer les fonctions pendant cette absence ou cette vacance ou pendant telle période que le Bailli jugera nécessaire.”.

ARTICLE 4

(1) La présente Loi pourra être citée sous le titre de “Loi (No. 6) (200) concernant la charge de Juge d’Instruction” et la présente Loi et les Lois (1864 à 1993) concernant la charge de Juge d’Instruction pourront être citées conjointement sous le titre de “Lois (1864 à 200-) concernant la charge de Juge d’Instruction”.

(2) Les amendements effectués par la présente Loi n'auront aucun effet en ce qui concerne les nominations des Magistrats et Sous-Magistrats nommés avant l'entrée en vigueur de la présente Loi.

(3) Le Comité dit "Human Resources Committee" pourra néanmoins fixer de temps en temps les traitements et indemnités, et pensions de retraite éventuelles et primes éventuelles, des Magistrats et Sous-Magistrats même si leur nomination est antérieure à l'entrée en vigueur de la présente Loi.

[1] Tomes I-III, page 304 and Volume 1968-1969, page 343.

[2] Tomes I-III, page 305.

[3] Tomes I-III, page 305.