

DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 200

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by the Legislation Committee**



STATES OF JERSEY

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European Convention on Human Rights

The President of the Legislation Committee has made the following statement -

In the view of the Legislation Committee the provisions of the Draft States of Jersey (Amendment No. 8) Law 200 are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

This draft Law has 2 purposes.

Firstly it extends the present provisions that provide for disqualification for States members in the States of Jersey Law 1966 (the “principal Law”). Article 8(1)(k) of the principal Law currently provides -

“Subject to the provisions of this paragraph, a person shall be disqualified for being a Senator or a Deputy if -

.....

(k) he has, within the seven years immediately preceding the date of his election, or since his election, been convicted anywhere in the Commonwealth of any offence and ordered to be imprisoned for a period of not less than three months without the option of a fine: ...”.

Article 8(2) of the principal Law provides -

“A person seeking election as a Senator or Deputy shall, at the time of his nomination, be required to make a declaration in writing that he is qualified for being elected by virtue of this Law or any other enactment, and any person who knowingly makes a false declaration shall be guilty of an offence and shall be liable to a fine not exceeding level 4 on the standard scale.”.

The Legislation Committee does not consider that, in these days, where movement especially about Europe and the United States is more common than previously, it is appropriate to limit the disqualification to those cases where the conviction took place in a Commonwealth country. This is not to say necessarily that it will be easy to ascertain whether a candidate does have criminal convictions abroad - but as against that it is not necessarily easy to ascertain whether a candidate has convictions from a Commonwealth country. The provision will not only act to deter candidates from standing in circumstances where they are in fact disqualified, but also will provide a basis for determining their membership of the States if they are elected notwithstanding their disqualification.

The second purpose of the amendment Law is to impose an obligation of disclosure on candidates in respect of their previous convictions. That obligation would arise for all convictions which are not spent convictions under the Rehabilitation of Offenders (Jersey) Law 2000, and for all convictions for the listed offences whether they be spent or not. It is of course unlikely, but not impossible, that convictions for most of these listed offences would give rise to a sentence that could result in the conviction becoming spent, but it is thought provision should nonetheless be made as though the possibility existed. This proposed legislation was canvassed in detail in the Committee’s consultative paper R.C.4 of 2001, following which broad support was expressed for the Committee’s proposals.

The proposals are based on two guiding principles -

- (i) Democracy requires that the people have the right to vote for those of their choice who have put themselves forward for election. That principle is, however, qualified by the notion that a real choice is an informed choice as far as possible within the constraints of the rules enabling access to information. Clearly the electorate cannot expect to know everything about the candidates; but the electorate can reasonably expect to be advised if there is anything about the candidate which would be relevant to the second principle set out below.
- (ii) The organs of government must be respected. Recognising that human fallibility appears in everyone, the Legislation Committee nonetheless takes the view that there are some kinds of fallibility that would have a fundamentally damaging effect on the respect in which government should be held, or which might pose a threat to the stability of the government or to those who are governed. It is important that the reputation of the States and of other members is not adversely affected by some members turning out to have serious criminal convictions.

In many jurisdictions there are political parties. These might be expected to scrutinise candidates with some care. Indeed a serious party would not expect to select a person unless satisfied that there were no major criminal offences or other skeletons in his cupboard. The mere risk of such a skeleton might well be enough to persuade a party either not to select, or to de-select, a candidate to represent that party at an election. In Jersey, in the absence of political parties, this vetting does not take place. Anyone who is not disqualified can stand. If a person is able to stand and conceal his record, he may receive many votes in circumstances where, had the voters had the facts, they might not have voted as they did.

Accordingly the Legislation Committee proposes that the principal Law should be amended to provide for mandatory

disclosure of convictions in the circumstances set out in Article 2(2) of the amendment Law.

It is hoped that this proposition might be debated in very early course so that if approved it might possibly receive Royal Assent to be in force for the next election. The Committee regrets that this proposition is brought to the Assembly later than would be ideal, but that seems to be no reason not to bring it at all. It has also to be said, however, that although it would have been possible to bring forward this proposition last year, it was at that stage unclear whether it would be sensible to seek to amend the disqualification and disclosure rules for Senators because it was at least possible that there would be no Senatorial elections in 2002 as a result of the Clothier reforms. It is only in the last months that it has become clear that a free-standing change to the principal Law was required in order for these proposals to have effect for the next election.

In the opinion of the Committee, there are no financial or manpower resource implications for the States if this Law is passed.

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 17th June 2002 the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Legislation Committee, the provisions of the Draft States of Jersey (Amendment No. 8) Law 200 are compatible with the Convention Rights.

Explanatory Note

This draft Law would amend the States of Jersey Law 1966 (the “principal Law”) regarding the disqualification of a person for election as Senator or Deputy and to impose a new requirement for disclosure of information by a candidate.

Article 1 is the interpretation provision.

Article 2 amends Article 8 of the principal Law.

One of the existing grounds for disqualification for election as a Senator or Deputy is that, within the past 7 years, the candidate has been convicted of an offence for which the candidate was sentenced to imprisonment for 3 months or more. Currently only offences committed within the Commonwealth are relevant. The amendment would have the effect that all offences, wherever committed, are relevant.

Currently, at the time of nomination, a candidate must make a written declaration that he or she is qualified for election. Making a false declaration is already an offence. This draft Law would add a requirement that the declaration must also detail -

- (a) all convictions which are not spent; and
- (b) all spent convictions for offences listed in the substituted paragraph (2)(c).

A Regulation-making power is created for the States to amend the list of offences in the substituted paragraph (2)(a) and an Order-making power for the Privileges and Procedures Committee to prescribe the form and content of the written declaration.

Article 3 is the short title and commencement provision.

STATES OF JERSEY (AMENDMENT No. 8) LAW 200

A LAW to amend further the States of Jersey Law 1966; sanctioned by Order of Her 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 this Law, “principal Law” means the States of Jersey Law 1966,^[1] as amended.^[2]

ARTICLE 2

In Article 8 of the principal Law^[3] -

- (a) in paragraph (1)(k) for the words “anywhere in the Commonwealth” there shall be substituted the words “, whether in the Island or elsewhere,”;
- (b) for paragraph (2) there shall be substituted the following paragraphs-

“(2) A person seeking election as a Senator or Deputy shall, at the time of his nomination, be required to make a declaration, in writing -

- (a) that he is qualified for being elected by virtue of this Law or any other enactment;
- (b) of his convictions, whether in the Island or elsewhere, which are not spent convictions;
- (c) notwithstanding the Rehabilitation of Offenders (Jersey) Law 2001,^[4] of his spent convictions, whether in the Island or elsewhere, for any of the following offences -
 - (i) treason,
 - (ii) murder,
 - (iii) manslaughter,
 - (iv) rape,
 - (v) incest,
 - (vi) sodomy,
 - (vii) any offence against a person not of full age,
 - (viii) fraud,

- (ix) obtaining property by deception,
- (x) theft,
- (xi) perjury,
- (xii) perverting the course of justice,
- (xiii) an offence mentioned in the definition “drug trafficking offence” in Article 1(1) of the Drug Trafficking Offences (Jersey) Law 1988,^[5]
- (xiv) an offence of attempt to commit any of the offences in clauses (i) to (xiii),
- (xv) an offence of conspiracy or incitement to commit any of the offences in clauses (i) to (xiii),
- (xvi) an offence of aiding, abetting, counselling or procuring any of the offences in clauses (i) to (xv).

(3) A person who knowingly makes a false declaration pursuant to paragraph (2) shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.^[6]

(4) The States may by Regulations amend paragraph (2)(c) so as to vary, add or omit any descriptor of offence for which a spent conviction must be disclosed.

(5) The Privileges and Procedure Committee may by Order prescribe the form and content of the declaration required by paragraph (2).

(6) In this Article, “spent conviction” has the same meaning as in the Rehabilitation of Offenders (Jersey) Law 2001.^[7]

ARTICLE 3

Citation and commencement

This Law may be cited as States of Jersey (Amendment No. 8) Law 2000 and shall come into force on the seventh day following its registration.

^[1] Volume 1966-1967, page 3.

^[2] Volume 1973-1974, page 255, Volume 1975-1978, pages 57 and 71, Volume 1986-1987, page 225, Volume 1996-1997, pages 11 and 803, Volume 2000, page 19, Volume 2002, page 367 and R&O 9176.

^[3] Volume 1966-1967, page 5, Volume 1975-1978, page 71 and Volume 2000, page 19.

^[4] Volume 2001, page 51.

^[5] Volume 1988-1989, page 259, Volume 1990-1991, page 1091, Volume 1996-1997, page 430 and Volume 1999, page 627.

^[6] Volume 1992-1993, page 437.

^[7] Volume 2001, page 51.