

STATES OF JERSEY



DRAFT SEX OFFENDERS (JERSEY) LAW 2010 (APPOINTED DAY) ACT 201-

**Lodged au Greffe on 23rd November 2010
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT SEX OFFENDERS (JERSEY) LAW 2010 (APPOINTED DAY) ACT 201-

REPORT

Introduction

If adopted, the Sex Offenders (Jersey) Law 2010 (Appointed Day Act) 201- will bring into force the Sex Offenders (Jersey) Law 2010, which was adopted by the States on 8th October 2009. The Law was subsequently sanctioned by Her Majesty in Council on 21st July 2010 and registered by the Royal Court on 13th August 2010.

The main purpose of the Law is to require people who have been convicted of certain sexual offences, both before and after the commencement of the Law and both in Jersey and elsewhere, to keep the police informed of their whereabouts while they are in Jersey.

The Law will provide an obligation for convicted sex offenders to notify the police of their name and address. It also empowers the Minister for Home Affairs to make an Order to require those offenders to tell the authorities of their travel plans. The Law further provides that a court can make orders – Restraining Orders, Child Protection Orders and Travel Orders – and that breaching these orders is a criminal offence punishable with a term in prison and/or a fine.

Article 28 – Management Arrangements

Article 28 of the Law provides that the Ministers (for Home Affairs, Housing, Health and Social Services, Education, Sport and Culture and Economic Development) and the Chief Police Officer must liaise and, within 6 months of the commencement of this Article, enter into an agreement that sets out the general arrangements that they have agreed they must put into effect to provide for the assessment and management of persons who pose a risk of sexual harm. Thereafter, they must keep under review the implementation and application of the arrangements set out in the general agreement and amend that agreement as necessary or expedient.

In terms of progress, the management arrangements are known as the Jersey Multi-Agency Public Protection Arrangements (JMAPAA). The draft JMAPPA guidelines have been drawn up, circulated and consulted upon with all relevant departments, office-holders and interested parties. The guidelines are now in their final form and are awaiting signature by the Chief Officer of Police and the Ministers specified in the Law. The arrangements will then be laid before the States by the Minister for Home Affairs.

Financial and manpower implications

Funds Approved in 2009 and 2010

P.132/2009, Draft Sex Offenders (Jersey) Law 201-, contained a detailed financial and manpower implications statement which contained the following summary of the anticipated implementation costs:

Service	Description	Revenue Costs
States of Jersey Police:	1 x Detective Sergeant 1 x Detective Constable 1 x PPU Administrator ViSOR costs	160,000 17,000
Probation and After-Care Services:	1 x Probation Officer 1 x Probation Officer (JMAPP Co-ordinator) Training and Consultancy	64,500 64,500 9,000
Health and Social Services:	1 x Senior Practitioner Social Worker 1 X Social Worker Specialist psychiatric reports (Court and Case Costs)	61,000 55,000
	Total Annual Revenue Costs:	431,000
	Court and Case Costs (2011/2012):	
	Judicial Proceedings	559,000
	Specialists' Assessment Reports	80,000
	Total:	639,000
	Court and Case Costs (2013 onwards):	
	Judicial Proceedings	111,800
	Specialists' Assessment Reports	20,000
	Total:	131,800

The States approved funding of £177,000 in the 2009 Annual Business Plan and a further £70,000 in the 2010 Annual Business Plan. As a result, the Police posts were filled in 2009 and the Probation Officer (Jersey Multi-Agency Public Protection Arrangements (JMAPP) Co-ordinator) in 2010. The current shortfall in revenue funding, assuming all the above posts were to be filled, is therefore £184,000.

Court and Case Cost funding is currently the subject of a major review within the Comprehensive Spending Review process. The resultant funding arrangements to replace the current Court and Case Costs structure will need to take account of the anticipated costs created by the bringing into force of the Sex Offenders Law. The amount required from Court and Case Costs funding has been reviewed in the light of

the assessment of anticipated workload outlined in the next section. An updated estimate is provided later in this statement.

Current assessment of anticipated workload

As at July 2010, the Police are expecting to have to make 38 applications to the court once the Law is brought into force. This will be for notification requirements but, in most cases, will also include restraining orders and some child protection orders. There are 15 offenders assessed as 'high risk' in the community who have a post-1990 conviction for a relevance offence.

The 38 applications include 15 offenders assessed as 'high risk' living in the community who have a post-1990 conviction for a relevant offence. These criteria were agreed with the LOD for bringing cases forward for consideration by the court under Article 13 of the Law. The remaining 23 applications will include 20 offenders currently in prison and 3 UK registered sex offenders currently living in Jersey. Trends over the last 3 years indicate that there will be 20–25 new sex offenders each year who will be brought within the provisions of the Law.

There are a further 112 offenders living in the community who are in the 'medium/low risk' category from previous assessments, but some are likely to be upgraded to 'high risk' following re-assessment and therefore subject to application to the court. Additional staff have been taken on by the Police from within existing resources to undertake the re-assessments, with assistance from the Probation Service.

As well as a power to impose notification requirements and supervision, the court can make restraining orders, child protection orders and travel orders. These powers will impact upon the resources of the agencies involved in managing sex offenders. P.132/2009 provided detailed impact statements on the likely effect. As outlined above, resources provided to date have been allocated, on a priority basis, to the Police and to fund the JMAPP post. The following sections draw on the information provided in P.132/2009 in outlining the need for the remaining posts to be funded, i.e. one probation officer and 2 social workers.

Probation and After-Care Service

Clearly there will be an expectation by the courts and the public that assessment and enforcement procedures will be undertaken efficiently and in accordance with best practice. The Service regularly inspects its work and any criticism of inadequate work could seriously undermine the confidence of courts and the public alike, emphasizing the importance of adequate staff resourcing and training. The Probation Service currently deals with sex offenders who are subject to probation orders, in prison or on young offender licences. Voluntary after-care is also offered to all prisoners who are released from prison.

The Sex Offenders Law will create additional work in a number of areas –

1. There is provision for offenders to become subject to notification where they have committed sexually aggravated offences before the commencement of the Law. This type of retrospective notification is dependent upon the Court being satisfied that the offender poses a risk of sexual harm. The Probation Service has worked with the police on cases that are currently being supervised by the Probation Service and in these cases joint assessments (using validated assessment tools) have been undertaken.

2. Similarly there is provision for offenders subject to notification to apply to the Court for an order revoking the notification requirement. Under Article 5(4) the Court cannot agree to this application unless it is satisfied that the applicant no longer poses a risk of sexual harm. In order to come to this decision the Court will require an up-to-date risk assessment. It is envisaged that the Court would wish the Probation Service to undertake these assessments due to its expertise in this area and its relationship with the Court. These assessments are likely to include offenders who are not currently supervised by the Service and will constitute a new piece of comprehensive work in order to ensure that public safety is not compromised.
3. The Law introduces Restraining Orders for offenders who have committed sexually aggravated offences and who are regarded as posing a serious threat of sexual harm to the public. This Article also applies to persons who were convicted either in Jersey or elsewhere before the Law came into force. Under Article 10(7)(b) a Court can order such an offender to do anything described in the order. Again, preliminary discussions with the Probation Board would suggest that, apart from recommending the preparation of Probation Service risk assessments, the Courts have the option of ordering the offender to be supervised by the Probation Service. This has been the experience in the UK and, given the experience of the Jersey Probation Service in undertaking this work, is likely to occur in Jersey.

The States of Jersey Police have begun to complete risk assessments on known sexual offenders. Currently they have assessed 38 offenders who will be the subject of applications for notification requirements and, in all likelihood, Restraining Orders. There is no guarantee how many Restraining Orders will contain a supervisory requirement. Such a condition is likely in at least some of the cases, given the current sensitivity in the Island about the management of sexual abusers and the need to be pro-active. As Restraining Orders should continue for a period of at least 5 years, unless there are exceptional reasons to impose a shorter period, supervision of these offenders could be a considerable undertaking and is work that the Probation Service is not currently resourced to undertake.

The Probation Service is currently dealing with 3 of these men on a statutory basis, with 4 others maintaining voluntary contact following release from prison. Experience has revealed that this cohort has already made considerable resource demands on the staff who supervise them. This has recently resulted in discussions with managers about the amount of time-off-in-lieu (TOIL) that has been accrued and the risk of spending less time with non-sex offenders.

Discussions have been undertaken with Dr. David Briggs, Forensic Psychologist, who trains Probation, Police and Social Services in Jersey and the Isle of Man in the effective assessment and management of sexual offenders. Based on experience, his opinion is that the management of up to 12/14 high or very high risk sex offenders would require the additional appointment of a full-time Probation Officer. Dr. Briggs explained that responsible case management for this group would involve the following in order to provide the high challenge/high support combination that is most likely to effect positive change.

- Monitoring
- Supervision
- Treatment plans with the offender
- Continuous assessment
- Regular liaison with significant other people in the offender's life
- Multi-agency case work and reviews
- Regular training, supervision and consultancy.

A thorough work plan would be required involving a minimum of weekly visits and programme work.

In order to maximise the best use of available resources it is hoped that the JMAPP Co-ordinator will be able to undertake some assessments and case management responsibilities of those sex offenders not currently being supervised by the Probation Service. However, the main focus of the post-holder's work will be to co-ordinate a JMAPP process that incorporates the management of sexual *and* violent offenders. It is anticipated that the early months will require a significant amount of implementing procedures, raising awareness with key stakeholders and chairing case conferences on relevant offenders. This will limit the time the Co-ordinator can spend assisting with supervision and management of sex offenders, especially during the first 12 months. Consequently, a new statutory obligation to supervise further high risk offenders will require the corresponding resource allocation to avoid the effects being felt elsewhere.

4. The Law introduces Child Protection Orders (Article 11) through the Royal Court, where a prohibitive order can be imposed on a person where his or her actions (not necessarily criminal actions) involve a sexual element. It is quite possible that the Service will be asked by the Court to prepare, in conjunction with the Children's Service, an assessment on the risk of harm posed to children by the defendant. This would be a new and, as yet, unresourced, area for the Probation Service. A similar area of work likely to affect the Service is the provision of information to the Court in relation to Travel Orders (Article 12) where it is felt that a sex offender should be prohibited from travelling to places outside the Island.
5. The Sex Offenders Law requires management arrangements to be set up in respect of sex offenders. The Probation Service has been responsible for drawing up draft proposals with the police on the predicated basis of the extra Probation Officer post being agreed. Some of the targets for undertaking multi-agency meetings would have to be reviewed if the resource bid was unsuccessful.

Social Services and Children's Service

There will be an impact upon different areas of Health and Social Services in terms of new tasks and additional service pressures. For example, in the case of applications for Child Protection Orders, it is highly likely that the Court will not be prepared to grant an application without a background report and risk assessment on the child or

children concerned being prepared by a children's specialist from the Children's Service. It is also likely that there will be an expectation of Children's Service, Special Needs Service or Mental Health Services contributing to risk assessments regarding the threat posed by a registered person within a household where children or a learning-disabled or mentally-ill adult resides.

It is likely that some assessments, requiring preparation by a specialist (psychiatrist or other mental health professional), may cost up to £4,000 each. In terms of the additional resources likely to be required by the Children's Service, it is felt that 2 Social Worker Posts will be required, one at Main Grade CS10 and one at Senior Practitioner level Grade CS11.

The Senior post would be responsible for –

- acting as main point of contact for the Children's Service on 'offender issues', receiving any meeting requests or referrals (estimated by the SoJ Police to be in the region of 20+ each year once any 'backlog' has been dealt with);
- co-ordinating the review of information held by Children's Service to verify details of any children linked to the offender under 3 categories –
 - i. victims of abuse;
 - ii. birth children or children who are close relatives;
 - iii. those that are likely to come into contact with the offender;
- initiating an assessment of any 'key risks' posed to any children in these categories by the offender being released;
- assessing the ability of any adults in the household to act as 'protective factors' for the child or children;
- attending bi-weekly MAPPA meetings to provide specialist advice and contribute to the development of any management plan;
- undertaking any work that is identified as being required as a result of the above –
 - i. allocation of any work required outside of previously allocated cases;
 - ii. case direction in relation to any open cases;
 - iii. allocation of preparation of any reports for Court to support applications for Child Protection Orders by the Police;
 - iv. joint visits to the family home and/or school to speak to any child or young person (and/or their family) considered to be 'at risk' from the suspect/offender;
 - v. preparing risk assessments to assist in managing any potential contacts with children or young people;
 - vi. undertaking 'keeping safe' work with any child or young person for whom contact with the suspect/offender is a likelihood or possibility;
 - vii. maintaining regular contact with any child and their family as appropriate;

- supporting main grade workers undertaking any assessments on the impact of an individual within, or seeking to join, the family home of children they are already working with;
- assisting and supporting the preparation of any report by the Children's Service, signing-off the report as appropriate for submission to MAPPA and/or the Courts, and supporting the main grade worker in any multi-agency meetings held as a consequence of their involvement;
- advising the Court on issues and options relevant to any contact considerations such as –
 - i. likely options for 'supported' contact arrangements;
 - ii. likely lack of suitable 'supervised' contact arrangements;
 - iii. the ascertainable 'wishes and feelings' of any child or young person in relation to any contact proposals.

The Senior will be expected to develop specialist knowledge and skills in this area so that they can act as a 'service lead' and can be called on to give advice at any relevant planning meetings, held within the Children's Service or with partner agencies, where the potential risk of an offender is being discussed and a decision is required on whether the Service should make a referral and/or recommendation to the MAPPA Co-ordinator.

As the introduction of a far more pro-active management process is being proposed, this will inevitably introduce the significant range of new tasks for children's social workers outlined above. The main grade post will be required to increase overall manpower resources so that individual 'case officers' working on cases already allocated to them can increase their involvement with the child and their family and undertake appropriate assessments and tasks linked to any risks created by potentially placing an offender into a family home. This will be particularly relevant in the consideration of any applications for Child Protection Orders.

General impact of a revenue funding shortfall

It will be apparent from the above that a substantial amount of additional operational work will be created by the new Law. The general impact of a funding shortfall would therefore be –

- Problems in providing assessments to the Court in relation to applications.
- A lack of resource to supervise the highest risk offenders subject to Restraining Orders. These cases are likely to be amongst the most resource-hungry.
- The Probation Service's increased take-up of voluntary after-care by 4 released sex offenders has resulted in considerable TOIL – a situation that will be exacerbated by the likely increase in supervisory obligation under the new Law. Without commensurate resource allocation, the Service will be faced with a dilemma of how to continue effective supervision. To prioritise the supervision of sex offenders at the expense of other clients would be likely to reduce the encouraging results attained by this service over several years. Such a proposal would need to be negotiated with the courts.

- Similarly, the Children's Service would have to re-prioritise work with sex offenders over other task currently undertaken with the inherent risk that this would involve.
- A review of the level of commitment agencies are able to give to the draft JMAPPAs procedures.
- The possibility of undermining the courts' and public's confidence in the effectiveness of a new Law that has not catered adequately for a key stakeholder to perform the necessary tasks envisaged in the legislation.

Proposal for future revenue funding

A growth bid for the outstanding revenue funding in the sum of £184,000 was made as part of the 2011 Comprehensive Spending Review process. However, this bid was not categorised by the Council of Ministers as essential and did not, therefore, form part of the Draft 2011 Annual Business Plan.

Notwithstanding the above, the funding position may not prove to be too critical for 2011. Fortunately, in some respects, there has been 'slippage' in expenditure in 2 areas of the Home Affairs budget where funds were provided for a specific purpose. Firstly, owing to the delay in obtaining Privy Council approval for the Sex Offenders Law, Probation delayed appointment to the JMAPPAs Co-ordinator post until 1st September 2010. Depending upon the Probation Service's budgetary out-turn at the year end, it is possible that the reduced cost of filling the post for one third of the year could be absorbed. In other words, the additional £70,000 granted by the States for 2010 may remain uncommitted.

There is also anticipated 'slippage' in the Vetting and Barring budget of £27,206 in 2010 and a further £22,682 in 2011. The States had approved a budget of £98,000 from 2009 for the creation of a Jersey Vetting Bureau and associated work in relation to the Vetting and Barring Scheme. However, the Criminal Records Bureau have taken longer than expected over the accreditation process, with the result that the Bureau is not expected to 'go live' until the end of this year.

It is estimated, therefore, that there is total estimated 'slippage' of approximately £120,000 which would virtually fund a post each for Probation and the Children's Service in 2011, provided there is no expenditure in 2010 and the sums saved can be carried forward to 2011. Although this would not fund all the posts required, it has the potential to enable the Law to be brought into force forthwith without there being a significant funding shortfall.

The Home Affairs Department, Health and Social Services Department, and the Probation Board are in no doubt, however, that the States would need to make a commitment to fully fund the Law from 2012. This represents a significant challenge in the current financial climate, but it is seen as essential from a public safety perspective and to make sure that the Sex Offenders Law is implemented properly and without creating unacceptable risk.

The Home Affairs Department has highlighted the need for additional funding in 2012 and beyond, which the Council of Ministers is taking forward as a 'growth' submission, in the sum of £184,000, as part of the CSR process for 2012 – 2013.

Court and Case Costs funding

It is extremely difficult to estimate the level of Court and Case Costs funding that will be required for either new or retrospective sex offender cases to be taken through the courts. Nevertheless, with the assistance of the Judicial Greffe a best estimate can be made based, firstly, upon the anticipated workload for new cases, and secondly, by making certain assumptions about the possible outcome of applications based upon the cost of criminal cases generally. The unit cost per case, based on a hypothetical figure of 25 cases, is £22,000.

Narrative	Unit amount	Number	Total
Defence lawyer's costs			
5 of 25 applications for Restraining Order are refused by the Royal Court and costs ordered to be paid to the defence. (Reasonable costs)	25,000	5	125,000
5 of 25 applications for Restraining Order are not contested	0	5	0
2 of 15 appeals to the Court of Appeal allowed (Reasonable costs)	25,000	2	50,000
13 of 15 appeals to Court of Appeal refused (Legal Aid Appeal rate)	15,000	13	195,000
Risk assessment reports	5,000	25	125,000
Court Commissioner's costs (assuming 1 day per case, element for travel and accommodation for any external Commissioner)	1,000	25	25,000
Court of Appeal costs (assuming 0.5 day for each of 20 appeals at 3,000 per day) 10 x 3,000	1,500	20	30,000
TOTAL			550,000

The spread of expenditure will depend upon how quickly the 38 retrospective applications which the Police wish to make progress through the court process. Bearing in mind that 20 of these applications will be in respect of 20 offenders currently serving prison sentences, the estimates have been spread over the next 4 years as follows –

	Year 1	Year 2	Year 3	Year 4	Year 5
Retrospective	10	10	10	8	0
New	22	22	22	22	22
Total cases	32	32	32	30	22
Unit cost	22,000	22,000	22,000	22,000	22,000
Total (rounded)	700,000	700,000	700,000	650,000	500,000

It is unlikely that these sums could be absorbed by the judicial departments within the increased Court and Case Costs budgets allocated for 2011. However, under the new arrangements for the budgeting of Court and Case Costs expenditure which are emerging from the outcome of the major review within the Comprehensive Spending Review, there is expected to be a central provision reserved for exceptional expenditure. Provided an application meets the criteria for funding, a pragmatic approach given the uncertainty of the estimates would be to control costs in the first instance but with recourse to the central provision if required.

Summary

The delay in the Law being enacted has created slippage in expenditure of some of the existing funding. Provided this can be carried forward into 2011, 2 out of the 3 additional posts required could be funded from within existing resources. This would enable the Law to be brought into force forthwith pending full funding from 2012 onwards.

For 2012 and beyond, the Council of Ministers has accepted the need for additional funding by including both the staff (£184,000) and court and case costs (£700,000) elements as a 'growth' submission within the CSR process for 2012 – 2013. However, this ongoing requirement cannot be confirmed until the 2012 Annual Business Plan debate in September 2011. Therefore, members should be aware that, if they wish to bring this Law into force now, they will also need to confirm the above funding in next September's debate.

Explanatory Note

This Act brings the Sex Offenders (Jersey) Law 2010 into force on 1st January 2011. The Law was adopted by the States on 8th October 2009 (P.132/2009).



Jersey

DRAFT SEX OFFENDERS (JERSEY) LAW 2010 (APPOINTED DAY) ACT 201-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 32 of the Sex Offenders (Jersey) Law 2010¹, have made the following Act –

1 Law commenced

The Sex Offenders (Jersey) Law 2010² shall come into force on 1st January 2011.

2 Citation

This Act may be cited as the Sex Offenders (Jersey) Law 2010 (Appointed Day) Act 201-.

¹ *L.18/2010*
² *L.18/2010*