

STATES OF JERSEY



DRAFT TREASON (JERSEY) LAW 201-

Lodged au Greffe on 18th March 2014
by the Chief Minister

STATES GREFFE



Jersey

DRAFT TREASON (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 Treason (Jersey) Law 201- are compatible with the Convention Rights.

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

Chief Minister

Dated: 14th March 2014

REPORT

1 *Historical background*

- 1/1 The Legislation Advisory Panel has been reviewing the law of treason in Jersey and, in particular, that part – peculiar to Jersey – whereby the hearing of any charge of treason is reserved to the Crown in Council.
- 1/2 The plenary jurisdiction of the Royal Court to hear charges of criminal offences committed in Jersey was affirmed by Orders in Council of Henry VII of 1494 and 1495, except that the Order in Council of 1495 specifically provided that, whilst a person could be arrested on suspicion of treason and held on the order of at least two Jurats, the actual trial of the accused on such a charge was to be reserved exclusively to the King in Council.¹

2 *Defects of the existing position*

- 2/1 The position described above remains to the present day, but is unsatisfactory for several reasons.
- 2/2 The investigatory process for any offence in Jersey is, necessarily, governed by Jersey law; and the offence of treason is prescribed as a “serious offence” for the purposes of –
- the Terrorism (Jersey) Law 2002;² and
 - the Police Procedures and Criminal Evidence (Jersey) Law 2003.³
- 2/3 In spite of an investigation having to be conducted in accordance with Jersey law, the hearing of any eventual charge of treason would presumably have to take place before a court in England where – quite apart from the logistical difficulties of having to bring a case to trial in a different jurisdiction – the law relating to investigative procedures and admissibility of evidence is different.
- 2/4 This leaves the process, on what is potentially the gravest of charges, in a state of uncertainty.
- 2/5 The courts of Scotland, Northern Ireland, Guernsey and the Isle of Man have jurisdiction to hear charges of treason; there is no reason why the Royal Court of Jersey, uniquely, should lack such jurisdiction.

3 *The draft Law*

- 3/1 The Legislation Advisory Panel has therefore recommended to the Chief Minister the attached draft Law which would have the following effects.

¹ *Que si aucun dedans ladite Isle commet' trahison, ou soit véhémentement soupçonné de trahison que, a donc icelui Capitaine ... pourra prendre et arrêter telle personne et le mettre en prison, et par l'avis de deux des Jurès, à tout le moins, mettre ses biens en sûreté et arrê et ainsi les faire garder jusqu'à ce que la cause de ladite trahison soit examinée et totalement déterminée par le Roi et son Conseil; laquelle examination et détermination, le Roi réserve et retient à lui et à son Conseil seulement* [That if anyone dwelling in the said Island commit treason or be vehemently suspected of treason that then the said Captain ... may take and arrest such person and put him in prison and by the advice of two of the Jurats at the least put his goods under security and arrest and thus cause them to be kept until the cause of the said treason be examined and finally determined by the King and his Council which examination the King reserves and retains to himself and his Council solely].

² Article 9(2)(a)(i).

³ Schedule 1, Part 1, paragraph 1.

- 3/2 The draft Law would –
- (i) provide for the relevant part of the Order in Council of 17th June 1495, together with any other law or custom reserving to the Crown in Council the jurisdiction to hear and determine any charge of the crime of treason, to cease to have effect;
 - (ii) confirm the jurisdiction of the Royal Court to hear and determine any charge of the crime of treason;
 - (iii) provide for a liability on conviction of treason to be sentenced to life imprisonment; and
 - (iv) make a consequential amendment of Article 2 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949.⁴
- 3/3 These provisions would not remove any jurisdiction there may be in the English court to try a charge of treason which may be connected with Jersey (given that treason is an offence against the Crown); the sole effect would be to ensure that the Royal Court also had jurisdiction in cases where criminal jurisdiction was properly exercisable by the Jersey courts – as is the case with the courts of other jurisdictions within the British Islands.

Financial and manpower implications

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

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.

⁴ Article 2 provides that the Magistrate, sitting as judge in the Magistrate’s Court, shall have power and authority to hear and determine all cases for offences “*other than those which are within the exclusive jurisdiction of Her Majesty*”. That reference would be deleted.

APPENDIX TO REPORT

Human Rights Notes on the Draft Treason (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Treason (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 (“ECHR”). **These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law is remedial in nature in that it would adjust an historical peculiarity whereby the hearing of a charge brought in Jersey of the offence of treason has to take place before the Queen in Council. It is not clear how, were such a charge to be brought, the jurisdiction of Her Majesty would actually be discharged, and upon what legal principles in procedural and evidential terms the hearing in England and Wales would proceed.

The substantive effect of the draft Law would be twofold –

- (i) it would bring a charge of treason brought in Jersey within the normal criminal jurisdiction of the Royal Court; and
- (ii) it would provide for a person convicted of treason to be liable to be sentenced to life imprisonment.

In terms of ECHR issues, neither of these elements of the draft Law gives rise to any incompatibility. On the contrary, the existing uncertainty in the process is arguably inconsistent with the right to a fair trial which article 6 of the ECHR secures. That uncertainty would be removed by bringing the process properly within the ordinary criminal jurisdiction of the Royal Court (which is a Convention compliant tribunal).

Explanatory Note

Article 1 provides that the Crown in Council shall no longer have jurisdiction to hear and determine any charge of treason to the extent that such jurisdiction was vested in it by any law or custom having effect in Jersey.

Article 2 provides that the jurisdiction to hear and determine any charge of treason shall be vested in the Royal Court.

Article 3 provides that a person convicted of treason is liable to imprisonment for life. Under Article 13(1) of the Interpretation (Jersey) Law 1954 this means that a person can be imprisoned for any term up to a maximum of life imprisonment.

Article 4 makes a consequential amendment to the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 by removing the provision that prevents the Magistrate's Court from hearing and determining offences that are within the exclusive jurisdiction of Her Majesty. This provision is made redundant by the draft Law as the only offences that are within such jurisdiction are those relating to treason.

Article 5 provides for the title of the draft Law and that it shall come into force 7 days after registration.



Jersey

DRAFT TREASON (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT TREASON (JERSEY) LAW 201-

A LAW to make provision for the Royal Court to have jurisdiction for the crime of treason

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 Hearing of charges of treason by Crown in Council

So much of the Order in Council dated 17th June 1495 and so much of any other law or custom having effect in Jersey as reserves to the Crown in Council the jurisdiction to hear and determine any charge of the crime of treason shall cease to have effect.

2 Royal Court to have jurisdiction for treason

The Royal Court shall have jurisdiction to hear and determine any charge of the crime of treason.

3 Penalty for treason

A person convicted of treason shall be liable to imprisonment for life.

4 Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 amended

In Article 2 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949¹ the words “, other than those which are within the exclusive jurisdiction of Her Majesty” shall be deleted.

5 Citation and commencement

This Law may be cited as the Treason (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹ *chapter 07.595*