

STATES OF JERSEY



DRAFT CRIMINAL JUSTICE (MANDATORY MINIMUM PERIODS OF ACTUAL IMPRISONMENT) (AMENDMENT) (JERSEY) LAW 201-

**Lodged au Greffe on 2nd July 2013
by the Chief Minister**

STATES GREFFE



Jersey

**DRAFT CRIMINAL JUSTICE (MANDATORY
MINIMUM PERIODS OF ACTUAL
IMPRISONMENT) (AMENDMENT)
(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 Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

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

Chief Minister

Dated: 28th June 2013

REPORT

1. The Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005 (“the 2005 Law”) made provision regarding persons who had committed offences for which there was a mandatory sentence of life imprisonment. It required the Royal Court, in relation to any such person, to order a mandatory minimum period of imprisonment in respect of the offence or offences concerned.
2. The reasons for the 2005 Law were as follows –
 - 2/1 Article 6(1) of the European Convention on Human Rights provides that a defendant in a criminal case has a right to a fair trial by an independent and impartial tribunal. In a case in the United Kingdom in 2001¹ the following principles were upheld –
 - a. the imposition of a sentence is part of the trial;
 - b. the sentence therefore should be imposed by an independent and impartial tribunal;
 - c. the fixing of the tariff of a convicted murderer is legally indistinguishable from the imposition of a sentence;
 - d. it follows that the tariff should be fixed by an independent and impartial tribunal;
 - e. the Home Secretary is not an independent and impartial tribunal;
 - f. it follows that the Home Secretary should not fix the tariff of a convicted murderer.
 - 2/2 In England and Wales, since 1965, murder had been punishable with a mandatory sentence of life imprisonment. The Home Secretary, however, had a discretion to release an offender on licence if recommended to do so by the Parole Board.
 - 2/3 The arrangements worked as follows. When imposing the life sentence, the trial judge would review the factors which mitigated or aggravated the offence and would advise the Lord Chief Justice of the day. The Lord Chief Justice was in a position to obtain an overall view from reports from trial judges up and down the country, and so would advise the Home Secretary. The Home Secretary would then make the decision on how long the offender should remain in prison before being eligible for parole. Usually the period fixed was in line with the judicial recommendations, but in a small minority of cases the period set by the Home Secretary was either longer or shorter than the Judge recommended. This process was known colloquially as “*fixing the tariff*”. Towards the end of the period of the tariff term, the case of the convicted murderer would be referred to the Parole Board which would consider whether it was necessary for the protection of the public that the convicted murderer should continue to be confined. If the Board concluded that it was necessary, the Home Secretary had no

¹ *R v. Secretary of State for the Home Department (ex parte Anderson)* [2001] EWCA Civ 1698

power to release the prisoner. If on the other hand the Board recommended that the convicted murderer should be released on licence, then the Home Secretary could, after consultation with the Lord Chief Justice, order his or her release, and indeed ordinarily did so, although the Home Secretary retained a discretion.

- 2/4 It was this process that was found not to be compliant with Article 6 of the European Convention on Human Rights. As a result the Government in the United Kingdom made provision – in the Criminal Justice Act 2003 – for the tariff to be fixed instead by the trial judge.
- 2/5 In Jersey there had been a mandatory life sentence for murder since 1986.² Routinely, persons convicted were sent to the United Kingdom where they were treated as if they had been convicted before a Court in England and Wales, and therefore were eligible to be released on licence. The Jersey trial judge had a discretion to recommend a minimum period which the convicted murderer should serve, in similar fashion to the procedure which existed in England and Wales.
- 2/6 The transfer from La Moye Prison to one of Her Majesty's Prisons in England and Wales was put into effect by the Secretary of State using powers conferred by the Crime (Sentences) Act 1997. These are unrestricted transfers in the case of life sentences. This provision means that the rules of the receiving jurisdiction (England and Wales) apply for the purposes of any release on licence notwithstanding that the person incarcerated there has not been convicted before a court of England and Wales.
- 2/7 The 2005 Law – as mentioned at the outset – changed the position in Jersey so that the trial judge, in cases of mandatory life sentences, had to fix the tariff. It would not have been compliant with the European Convention on Human Rights had the Home Secretary continued to have any discretion to fix the minimum term of imprisonment which those convicted of murder in Jersey should serve. The 2005 Law therefore substantially adopted the approach followed in the Criminal Justice Act 2003. Accordingly a distinction was drawn between exceptionally serious cases where the Court could reach the view that life imprisonment should mean life; particularly serious cases, where the Court was to start at a period of 30 years' imprisonment and then increase it or reduce it having regard to particular aggravating or mitigating circumstances; and other cases where, if the offender was 18 years of age or older, the starting point was 15 years, and in the case of an offender under the age of 18, of 12 years before again the same process of an increase or reduction according to aggravating or mitigating circumstances, was applied.
- 2/8 The order of the Court which set a mandatory minimum period of imprisonment took effect as a sentence against which the accused or the Attorney General had a right to appeal to the Court of Appeal.

² Under the Homicide (Jersey) Law 1986

3. On 29th October 2012, in the case of *The Attorney General v. Damien David Rzeszowski* [2012] JRC198 the accused had been acquitted of 6 counts of murder, but convicted of manslaughter by reason of diminished responsibility. It fell to the Superior Number of the Royal Court to impose sentence. If the 2005 Law had permitted, the Crown would have moved for six life sentences with a minimum period of 20 years. In the event, the Crown moved for 30 years' imprisonment in respect of each count.
4. The 2005 Law, as mentioned earlier, was based substantially on the Criminal Justice Act 2003 of the United Kingdom. Separate provision was made in that country – by the Criminal Justice and Court Services Act 2000³ – in relation to life sentences in circumstances where the sentence was not fixed by law *i.e.* where it was discretionary. That other provision was not mirrored in the 2005 Law, which was confined in its scope to sentencing in cases where the sentence was fixed by law, *i.e.* where it was mandatory. The Court in *Rzeszowski* urged that the 2005 Law be amended to make the necessary provision in relation to discretionary life sentences.
5. The purpose of this Law is to amend the 2005 Law accordingly; and to require a court that sentences an offender to a discretionary life sentence to order, in relation to the offender, a minimum period of imprisonment in respect of the offence or offences concerned.
6. The minimum period may in appropriate cases be made for the whole of the offender's life. This however would not apply in relation to an offender under 21 years of age.
7. The trial judge would always be required to state, in open court, in ordinary language, the court's reasons for making the order it did.
8. It is unnecessary to duplicate the further detail contained in the Law Draftsman's explanatory note.

Financial and manpower implications

This Draft Law has no implications for the financial or manpower resources of the States.

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.

³ inserting s.82A Powers of Criminal Courts (Sentencing) Act 2000 & amending s.28 Crime (Sentences) Act 1997

**Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment)
(Amendment) (Jersey) Law 201-**

This Note has been prepared in respect of the draft Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Amendment) (Jersey) Law 201- (“**the draft Law**”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

Article 6 ECHR

1. The draft Law engages Article 6 as it involves the determination of the minimum period a person sentenced to life imprisonment must serve before being able to benefit from early release provisions. The principal Law already provides for this in circumstances where a life sentence is required by law, and the purpose of the Amendment is simply to extend this regime to cases where the Royal Court in its discretion imposes a life sentence.
2. The draft Law only makes provision for the minimum period to be ordered by the Court and does not prescribe the actual minimum period itself, leaving this decision to the Court. This therefore guarantees that the determination, of when a person may be able to benefit from early release, shall be made by the Royal Court, a self evidently independent and impartial tribunal for the purposes of Article 6 ECHR.
3. The principal Law was introduced in 2005 to cure the Article 6 defect, as identified in a House of Lords case, whereby the Home Secretary made this determination as opposed to an independent court. For more details on the background and the Article 6 reasoning for bringing the principal Law into force, members are referred to **P.80/2005**.
4. The draft Law does not introduce anything which might undermine Article 6 ECHR but instead, it extends an already Article 6 compliant regime to discretionary life sentences, as well as statutory life sentences.
5. **The draft Law is therefore compatible with Article 6 ECHR.**
6. No other provisions of the ECHR are engaged by the draft Law. **Article 5 ECHR** provides of course for the right to liberty, but this right is qualified by allowing deprivation when a person is convicted of an offence by a competent court. This does not therefore need to be considered in detail.

Explanatory Note

This Law would amend the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005 “principal Law” so as to make provision for a court to order a minimum period of imprisonment where it has exercised its discretion to sentence an offender to life imprisonment (“discretionary sentence of life imprisonment”). Currently the principal Law makes provision for the court to order a minimum period only where the law requires it to impose a sentence of life imprisonment (“sentence of life imprisonment fixed by law”).

Article 1 is an interpretation provision.

Article 2 amends the long title of the principal Law to refer to discretionary sentences of life imprisonment and to make it clear that the principal Law makes provision for the minimum period of imprisonment to be ordered by a court (in respect of both sentences of life imprisonment fixed by law and discretionary sentences of life imprisonment) and does not itself prescribe a minimum period.

Article 3 amends the term “mandatory minimum period of imprisonment” to refer to both discretionary sentences of life imprisonment and to sentences of life imprisonment fixed by law.

Article 4 amends the heading to Part 2 of Law to make it clear that it applies only to sentences of life imprisonment fixed by law.

Article 5 deletes a provision that is no longer required by reason of the amendment made by Article 3.

Article 6 inserts a new Part 2A in the principal Law.

Part 2A requires a court, when sentencing an offender to a discretionary sentence of life imprisonment, to order a minimum period of imprisonment. The effect of such a court order is to determine when the “early release provisions” will apply. The “early release provisions” are defined in the principal Law to mean the provisions which allow an offender to be released from imprisonment before the completion of a sentence. The early release provisions are set out in the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Regulations 2005 and refer to provisions in United Kingdom and Northern Ireland legislation that allow such early release. (Under current practice, an offender who is sentenced to life imprisonment will be transferred to the United Kingdom or to Northern Ireland.)

The new Part 2A in the principal Law provides that if a court orders a minimum period of imprisonment for the whole of an offender’s life, the early release provisions can never apply. If a court orders a minimum period of imprisonment for less than the whole of the offender’s life, the early release provisions apply after the minimum period is spent.

Under the new Part 2A, a court may order a minimum period of imprisonment that is the whole of an offender’s life only if the offence (by itself or with associated offences) was sufficiently serious and the offender was over 21 at the time the offence was committed. In determining the length of a minimum period of imprisonment, the court may take into account such matters as it thinks fit, including the seriousness of the offence (by itself or with associated offences) and any period of time that the offender has previously spent on remand in relation to the offence.

Part 2A also requires that, when a court makes an order for a minimum period of imprisonment, it must state its reasons in open court.

Article 7 makes a consequential amendment so as to apply an existing provision in the principal Law relating to the effect of release in another jurisdiction to discretionary sentences of life imprisonment.

Article 8 sets out the title of the Law and provides that it shall come into force 7 days after it is registered.



Jersey

**DRAFT CRIMINAL JUSTICE (MANDATORY
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Arrangement

Article

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Jersey

**DRAFT CRIMINAL JUSTICE (MANDATORY
MINIMUM PERIODS OF ACTUAL
IMPRISONMENT) (AMENDMENT)
(JERSEY) LAW 201-**

A **LAW** to amend the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005 so as to make provision for a court to order a minimum period of imprisonment when it exercises its discretion to impose a sentence of life imprisonment and for connected 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

In this Law “principal Law” means the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005¹.

2 Long title amended

In the long title of the Law for the words “prescribing the period that offenders sentenced to mandatory life imprisonment must spend in prison” there shall be substituted the words “to make provision for a minimum period of imprisonment to be ordered by a court when a person is sentenced to life imprisonment”.

3 Article 1 amended

In Article 1(1) of the principal Law for the definition “mandatory minimum period of imprisonment” there shall be substituted the following definition –

“ ‘mandatory minimum period of imprisonment’ means the period specified in an order under Article 10(1) or Article 13A(1), as the case may be, in relation to an offender during which the early

release provisions shall not apply to the offender in respect of the offence or offences to which the order relates;”.

4 Part 2 heading amended

For the heading to Part 2 of the principal Law there shall be substituted the following heading –

“MANDATORY MINIMUM IMPRISONMENT ORDERS FOR LIFE SENTENCES AS FIXED BY LAW”.

5 Article 10 amended

In Article 10 of the principal Law, paragraph (2) shall be deleted.

6 Part 2A inserted

After Part 2 of the principal Law there shall be inserted the following Part –

“PART 2A

MANDATORY MINIMUM IMPRISONMENT ORDERS FOR DISCRETIONARY LIFE SENTENCES

13A Court to order mandatory minimum period of imprisonment

- (1) Where a court sentences an offender to a discretionary sentence of life imprisonment for an offence or offences, it shall order, in relation to the offender, a minimum period of imprisonment in respect of that offence or offences.
- (2) If the court orders a minimum period of imprisonment under paragraph (1), early release provisions shall not apply in relation to the offender in respect of the offence or offences to which the order relates –
 - (a) until the end of the period; or
 - (b) if the order is made for the whole of the offender’s life, at any time during the remainder of the offender’s life.
- (3) If the court orders a mandatory minimum period of imprisonment that is less than the whole of the offender’s life, the court shall order that early release provisions shall, after the end of the mandatory minimum period of imprisonment specified under paragraph (1), apply in relation to the offender in respect of the offence or offences to which the order relates.
- (4) In this Article ‘discretionary sentence of life imprisonment’ means a sentence of life imprisonment which, not being a sentence of life imprisonment taken to be fixed by law under Article 1(2), the court has imposed in respect of an offence.

13B Determination of mandatory minimum period of imprisonment

- (1) The court may, under Article 13A, order a minimum period of imprisonment of any length, including a period that is the whole of the offender's life.
- (2) Notwithstanding paragraph (1), the court shall only order a minimum period of imprisonment that is the whole of the offender's life if –
 - (a) the offender was 21 years of age or older when he or she committed the offence or offences to which the order relates; and
 - (b) the court is satisfied that early release provisions should not apply to the offender at any time because of the seriousness of the offence or the seriousness of the combination of the offence and other offences associated with the offence.
- (3) In determining the length of a minimum period of imprisonment in relation to an offender, the court may take into account such matters as it thinks fit, including any of the following –
 - (a) the seriousness of the offence;
 - (b) the seriousness of the combination of the offence and other offences associated with the offence; and
 - (c) any period that, before the offender was sentenced for the offence to which the minimum period of imprisonment relates, the offender spent on remand in relation to the offence.

13C Court must give reasons for order made

After making an order under Article 13A the court shall state, in open court, in ordinary language, its reasons for making the order.”.

7 Article 15 amended

In Article 15 of the principal Law the words “as fixed by law” shall be deleted.

8 Citation and commencement

This Law may be cited as the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Amendment) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹

chapter 08.335