

# STATES OF JERSEY



## DRAFT SEX OFFENDERS (AMENDMENT No. 2) (JERSEY) LAW 201-

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Lodged au Greffe on 20th May 2014  
by the Minister for Home Affairs

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STATES GREFFE





Jersey

## **DRAFT SEX OFFENDERS (AMENDMENT No. 2) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Sex Offenders (Amendment No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator B.I. Le Marquand**

*Minister for Home Affairs*

Dated: 19th May 2014

## REPORT

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The Draft Sex Offenders (Amendment No. 2) (Jersey) Law 201- ('the draft Law') makes a number of amendments to the principal Law, the Sex Offenders (Jersey) Law 2010 ('the Law') concerning appeals.

When the Law received Royal Assent on 21st July 2010, a number of issues were raised by the Ministry of Justice Legal Advisers, which they felt could reasonably be subject to a challenge in the European Court of Human Rights. One of the concerns that they had was that Article 18 of the Law provided, *inter alia*, that appeals under Articles 20, 21, 22 and 24 of the Law would be dealt with by way of criminal proceedings rather than civil proceedings; whereas under UK law, measures like these are treated as civil, preventative measures rather than criminal measures.

In order to deal with this issue, and others, the Minister for Home Affairs brought the Draft Sex Offenders (Amendment) Law 201- to the States in June 2011 ([P.68/2011](#)). Article 8 of the Amendment Law would have had the effect of repealing Article 18(3) of the Law, which currently states –

- (3) *An appeal under Article 19, 20, 21, 22, 24, 25 or 26 shall be taken to be an appeal in criminal proceedings while an appeal under Article 23 shall be taken to be an appeal in civil proceedings.*

However, during the debate on P.68/2011, the Minister withdrew Article 8 of the Amendment Law. The last-minute change was made because it was realised that to repeal Article 18(3) would have resulted in a situation where appeals from the same decision could effectively be sent to 2 different courts: the criminal aspect of the appeal to the Superior Number of the Royal Court and the civil aspect to the Court of Appeal, which would be unsatisfactory.

Accordingly, a revised version of Article 18 was required, which addresses the concerns of the Ministry of Justice and also prevents the Superior Number having concurrent jurisdiction with the Court of Appeal on a parallel appeal under Part 5 of the Law.

Article 3 of the draft Law amends Article 18 of the Law so that when an appeal against sentence for a sexual offence is to be heard by the Superior Number of the Royal Court, a related appeal under the Law may be heard by the same tribunal, even though the matter under the Law is inherently a civil, rather than a criminal matter.

### **Financial and manpower implications**

There are no additional financial or manpower implications 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.

**Human Rights Note on the Draft Sex Offenders (Amendment No. 2) (Jersey)  
Law 201-**

1. This Note has been prepared in respect of the Draft Sex Offenders (Amendment No. 2) (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**

2. The draft Law amends the Sex Offenders (Jersey) Law 2010 (“**the principal Law**”). The effect of the amendment to Article 18 of the principal Law shall be that any appeal against a decision or order by the Royal Court under the Law, which is made at the same time as or in connection with a criminal sentence, shall lie to the Superior Number of the Royal Court as opposed to the Court of Appeal.
3. This revision ensures that an appellant, who appeals both his criminal sentence and any connected order made under the principal Law, has such an appeal heard by the same appellate body.
4. Such a provision potentially engages Article 6 ECHR. Article 6 provides that –  

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”*
5. The Royal Court may make decisions or orders under the principal Law which may, *inter alia*, subject a person to the notification requirements under the Law and specify a minimum period before the notifier may apply to no longer be subject. An order made under the principal Law may also restrict the person’s movements and/or interactions with other persons.
6. The first instance decision therefore engages Article 6 ECHR as there will clearly be a determination of a person’s civil rights. The principal Law is compatible with Article 6 ECHR though because the Royal Court is a self-evidently independent and impartial tribunal. Any appeal against such a decision, under the principal Law as it is currently in force, is also compliant, because the Court of Appeal too satisfies the criteria for Article 6 ECHR.
7. The draft Law will simply provide that appeals against such civil decisions as described above will be heard by the Superior Number of the Royal Court, concurrently with any appeal against criminal sentence. The Superior Number consists of the Bailiff, the Deputy Bailiff or an Ordinary Judge of the Court of Appeal (or a Commissioner) and no less than 5 Jurats (Article 23, Court of Appeal (Jersey) Law 1961). This emanation of the Royal Court is therefore clearly capable, just like the Inferior Number and Court of Appeal, of satisfying the criteria of independence and impartiality under Article 6 ECHR. Further protection is provided for in Article 16 of the Court of Appeal (Jersey) Law 1961, which provides that no person may sit on the hearing of an appeal

to the Superior Number if that person sat as part of the court below in passing the sentence or the court hearing any proceedings preliminary or incidental to such appeal.

- 8. For the reasons set out above, it is considered that the draft Law is compatible with Article 6 ECHR.**
- 9. No further ECHR issues arise under the draft Law.**

## Explanatory Note

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This short draft Law would make provision to clarify that when an appeal against sentence for a sexual offence is to be heard by the Superior Number of the Royal Court, a related appeal under Article 18 of the Sex Offenders (Jersey) Law 2010 may be heard by the same tribunal (even though the matter under the Sex Offenders (Jersey) Law 2010 is inherently a civil and not a criminal matter). *Article 1* would amend Article 18 to this effect.

*Article 2* would give the short title for this Law.







Jersey

## DRAFT SEX OFFENDERS (AMENDMENT No. 2) (JERSEY) LAW 201-

A LAW to amend further the Sex Offenders (Jersey) Law 2010

*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 Article 18 amended

In Article 18 of the Sex Offenders (Jersey) Law 2010<sup>1</sup> –

- (a) in paragraph (2), for the words “the Royal Court or the Court of Appeal, as the case may be” there shall be substituted the words “the court by which the appeal is heard”;
- (b) for paragraph (3) there shall be substituted the following paragraphs –
  - “(3) Paragraph (4) applies where –
    - (a) a person (‘the appellant’) has a right of appeal against sentence which, under the proviso to Article 24(1) of the Court of Appeal (Jersey) Law 1961<sup>2</sup>, lies to the Superior Number of the Royal Court; and
    - (b) the appellant also has a right of appeal under this Part against an order (including the terms of an order) or decision of the Royal Court made at the same time as, or in connection with, that sentence.
  - (4) Where this paragraph applies –
    - (a) the appeal under this Part shall lie to the Superior Number of the Royal Court (and may be heard by the Superior Number concurrently with the appeal against sentence); and
    - (b) references in this Part to the Court of Appeal shall be construed as references to the Superior Number.”.

**2 Citation**

This Law may be cited as the Sex Offenders (Amendment No. 2) (Jersey) Law 201-.

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<sup>1</sup> *chapter 23.815*  
<sup>2</sup> *chapter 07.245*