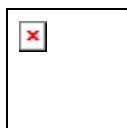


**DRAFT POWERS OF ARREST (INJUNCTIONS) (AMENDMENT) (JERSEY) LAW 200-**

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**Lodged au Greffe on 19th June 2001  
by the Legislation Committee**

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**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 Powers of Arrest (Injunctions) (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard.**

## **REPORT**

The Powers of Arrest (Injunctions) (Jersey) Law 1998 (“the 1998 Law”) provides the Viscount and police officers with a power to arrest persons who have acted, are acting, or are about to act, in breach of an injunction containing a provision (in whatever terms) -

- (a) restraining them from using violence against or molesting another;
- (b) excluding them from specified premises or from a specified area.

There are many circumstances in which injunctions are issued restraining a person from using violence against or molesting another person or excluding someone from the premises or from a specified area. The vast majority relate to family problems.

A person in breach of an injunction is guilty of contempt of court which is punishable by a fine or imprisonment. An injunction is an order of a civil court and thus the position was, prior to the enactment of the 1998 Law, that only the Viscount, through his officers, could take action. Although police officers could intervene where a breach of the peace or a criminal offence was threatened or occurred, they did not have jurisdiction as such to arrest a person for breach of a civil injunction. The absence of a power of arrest in respect of breaches of civil injunctions partially defeated the object of the injunction itself. The victim had, in effect, to await a full-blown breach of the injunction before any real sanction could be deployed, and had scant protection against a breach which was actually happening or was immediately anticipated. This weakness was addressed by giving police officers a power of arrest if they had cause to suspect that a person against whom such an injunction had been granted had acted, was acting, or was about to act in breach of that injunction.

However, the Law was expressed to apply only to the injunctions referred to in (a) and (b) above, namely, injunctions restraining the use of violence or molestation or excluding a person from specified premises or from a specified area.

Concern has recently been expressed (in particular by the Jersey Family Law Association) about the absence in Jersey of legislation similar to the Child Abduction legislation in force in the United Kingdom. Removal of children from the jurisdiction of the courts has long given rise to problems and Jersey is, of course, no exception. On Friday 23rd June 2000 the Jersey Evening Post reported a case in which a father had gone to St. Malo with his three children but had failed to return. The case was ultimately resolved, not through a judicial remedy, but by the mother employing persons to take direct action to bring the children back to the Island. Whilst a judicial remedy through the Courts might have been available, it would have been costly and time-consuming, and not necessarily effective.

The Health and Social Services Committee is presently drafting a Child Abduction and Custody Law which would help to overcome the difficulties in this area. However, the Legislation Committee agreed with the Jersey Family Law Association that, quite apart from the draft Child Abduction and Custody Law, much of the difficulty could be alleviated by a minor amendment to the 1998 Law extending it to injunctive proceedings prohibiting the removal of children from the jurisdiction. With such a power, the Immigration and Harbours and Airport Authorities and the Police would be able to act very speedily to detain a parent or other person attempting to remove a child from the Island contrary to a court injunction.

The draft Law would therefore extend the categories of injunction to which the 1998 Law applies to injunctions containing a provision, in whatever terms, restraining a person from taking out of the Island a person who had not attained the age of majority.

In the absence of specific legislation upon child abduction, the Committee believes that the extension of the powers of arrest in the 1998 Law will be a significant step forward in affording protection for children who are vulnerable to abduction from the Island.

Her Majesty’s Attorney General is of opinion that the extended power of arrest would be compatible with the provisions of the European Convention on Human Rights.

### **Financial/manpower statement**

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

### **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 18th May

2001 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 Powers of Arrest (Injunctions) (Jersey) Law 200- are compatible with the Convention Rights.

### **Explanatory Note**

The Powers of Arrest (Injunctions) (Jersey) Law 1998 enables the Viscount or a police officer to arrest without a warrant a person whom he reasonably suspects of acting or of being about to act in breach of an injunction granted by the Inferior Number of the Royal Court -

- (a) restraining a person from using violence against or molesting another person; or
- (b) excluding a person from any specified premises or area.

This power of arrest may only be exercised if the Court has attached it to the injunction when granting the latter. However, if the Court has not done so, or the power has ceased to have effect, the Bailiff may issue a warrant of arrest in the case of such an injunction.

The effect of the amendment would be to extend those powers to breaches or threatened breaches of injunctions that restrain persons from removing children (that is to say, persons under the age of 18 years) from the Island.

The amending Law would come into force on the seventh day after its registration in the Royal Court.

**POWERS OF ARREST (INJUNCTIONS) (AMENDMENT) (JERSEY) LAW 200-**

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**A LAW** to amend the Powers of Arrest (Injunctions) (Jersey) Law 1998; sanctioned by Order of Her Majesty in Council of the

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(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)

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**STATES OF JERSEY**

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The \_\_\_\_\_ day of \_\_\_\_\_ 200-

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**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

**ARTICLE 1**

For Article 2 of the Powers of Arrest (Injunctions) (Jersey) Law 1998<sup>[1]</sup> there shall be substituted the following Article -

**“ARTICLE 2**

**Application of the Law**

This Law applies to an injunction containing a provision (in whatever terms) -

- (a) restraining a person from using violence against or molesting another;
- (b) excluding a person from specified premises or from a specified area; or
- (c) restraining a person from taking out of the Island a person who has not attained the age of majority.”

**ARTICLE 2**

This Law may be cited as the Powers of Arrest (Injunctions) (Amendment) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

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<sup>[1]</sup> Volume 1998, page 726.