

STATES OF JERSEY

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DRAFT POLICE FORCE (AMENDMENT No. 11) (JERSEY) LAW 200

**Lodged au Greffe on 28th July 2008
by the Comité des Connétables**

STATES GREFFE



Jersey

DRAFT POLICE FORCE (AMENDMENT No. 11)(JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chairman of the Comité des Connétables has made the following statement –

In the view of the Chairman of the Comité des Connétables the provisions of the Draft Police Force (Amendment No. 11) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Connétable K.P. Vibert of St. Ouen**

REPORT

A. Introductory – the present position

1. The aim of this *projet de loi* is to provide additional powers for the Honorary Police of the respective Parishes to co-operate with and assist one another.

The customary law

2. To serve in the Honorary Police is to serve one's Parish; and it has always been taken for granted that the duties and powers of honorary officers subsist only within the boundaries of the Parish in which the officer has been elected. Thus, at customary law, a Centenier, a Vingtenier or an Officier du Connétable was not possessed of policing powers outside his or her Parish.
3. In the case of Centeniers, this principle governed the charging of a person with an offence and the presentation of that person before the criminal courts: the Centenier could perform such functions and exercise such powers only in relation to matters that had occurred within his or her Parish.
4. Article 5(1) of the Police Force (Jersey) Law 1974 ("the 1974 Law") reiterated the customary law position by providing that –

"A member of the Honorary Police shall be empowered to act within the territorial limits of the Parish for which the memberis elected . . ."

The existing Police Force Law

5. But the following provisions of the 1974 Law did make some inroads into the customary law position.
6. Article 5(1) went on to provide that the territorial limits of the Parish for which a member of the Honorary Police was elected should include –

". . . the headquarters for the time being of the [States of Jersey Police] Force, any police station for the time being used by the Force, any building for the time being designated by the States as a place for use by the Magistrate's Court, the General Hospital and the States of Jersey Prison at La Moye and any new prison which may [after 1974] be built shall be deemed to form part of the said limits:

Provided that the member of the Honorary Police shall be empowered –

- (a) *to pursue into any other parish and there arrest any person who has committed, or whom the member of the Honorary Police has reasonable cause to suspect of having committed or of having been about to commit any offence; and*
 - (b) *to continue investigations into any matter in any other parish where those investigations started in the parish for which the member of the Honorary Police is elected."*
7. Article 5(2) enabled a Connétable to request another Connétable to make available members of his or her Honorary Police for the purposes of meeting any special demand on the resources of the other Parish. Any members made available in this way were then deemed to possess the powers of a member of the Honorary Police of the other Parish.

B. Deficiencies in the existing Police Force Law

Constraints on requests for assistance

8. Requests for assistance between Parishes under Article 5(2) can only be made, and granted, by the Connétable and can only be made for very limited purposes.
9. The Explanatory Note contained in the Draft Police Force (Jersey) Law 1974 – when it was debated by the States on 11th June 1974 – stated that Article 5(2) would–
" . . . enable members of the Honorary Police of one Parish to act in another Parish on a specific occasion at the request of the Constable of that Parish, for example, the Battle of Flowers."
10. Mention of Article 5(2) always brings to mind the Battle of Flowers: it is precisely that sort of specific event that Article 5(2) was intended to cover.
11. What Article 5(2) was not intended to create was any sort of Island-wide Honorary Police: there has always

been a reluctance to legislate in such a way as to change radically the parochial complexion of the Honorary Police. No such radical change is intended in this draft Law now.

12. The *Comité des Connétables* recognizes, however, that the constraints under which Article 5(2) requires the Parishes to operate are too rigid. Those constraints are that the request for assistance –
 - (i) can be made *only* by the Connétable of the requesting Parish and can be acceded to *only* by the Connétable of the responding Parish; and
 - (ii) can only be made by the requesting Parish “*for the purpose of meeting any special demand on the resources of the Honorary Police*” and cannot, therefore, be made in connection with a demand on the resources of the Parish that arises in the ordinary course of policing.

Inability to act ‘sur le champ’ in emergencies etc.

13. A further deficiency is the absence of any power to act in another Parish other than pursuant to Article 5(2).
14. Take, e.g., the situation in which a member of the Honorary Police, outside his or her Parish, happens upon an offence actually being committed or upon the scene of a substantial incident of some sort which would have prompted the officer in his or her own Parish to have exercised police powers in the interests of public safety or order.
15. Under the law as it stands, the officer’s power to act is no more than that of an ordinary member of the public.

C. The proposed reforms

Easing constraints on who may request/grant assistance

16. The draft Law provides for any Centenier (not just the *Chef de Police*) to make the request and for any Centenier (not just the *Chef de Police*) in the responding Parish to accede to the request.
17. A Centenier acting under these powers would have to inform –
 - the *Chef de Police* (unless of course he or she were the *Chef de Police*), and
 - the Connétablewithin 24 hours of making/acceding to the request.
18. In the case of the *Chef de Police*, he or she would only have to inform the Connétable, but still within 24 hours of the power being exercised.
19. With these reforms in place, the duty Centenier would therefore be able to make or accede to a request without having first to contact the Connétable and/or the *Chef de Police*.

Easing constraints on the scope of the request

20. The scope of the request would no longer have to be limited to meeting ‘*any special demand on the resources of the Honorary Police*’ in the requesting Parish. Instead, a request would be able to be made to make officers available to meet a policing need in another Parish if to do so would help that other Parish better to meet that need.
21. In this way, a need would still have to be identified, but that need would be able to relate to any type of police activity, operation or function that would be better undertaken with assistance from, or participation by, members of the Honorary Police of another Parish (and not just to a particular event or occasion that placed a special demand on the resources of the requesting Parish).

Enabling officers to act ‘sur le champ’ in certain circumstances

22. The draft Law does **not** empower an Honorary Officer of one Parish to act as though he or she were an officer patrolling another Parish. Instead, it empowers the officer to exercise police powers only if he or she –
 - “(a) encounters a person who the member reasonably believes is in the act of committing an offence against another person or against another person’s property or to have just committed such an offence; or
 - (b) is at the scene of an incident and reasonably believes that the immediate exercise of those powers is necessary in the interests of public order or safety.”

23. A member of the Honorary Police who decides to exercise this power must inform the Connétable or a Centenier of the parish in which the powers are to be exercised –
 - (a) before acting upon that decision, or
 - (b) where it is not practicable to do so before so acting, as soon as possible afterwards.
24. There would need to be clarity, by way of a directive from the Attorney General, about the circumstances in which the power to act ‘sur le champ’ was meant to be exercised. A tentative draft of such a directive is contained as the Appendix to this Report.

Resulting issues of civil liability

25. A member of the Honorary Police placed at the disposal of another Parish possesses for the time being the powers of a member of the Honorary Police of that other parish. But this does not mean that such a member is actually deemed to be a member of the Honorary Police of that other Parish.
26. This is relevant when it comes to the wording of Article 22(1) of the 1974 Law which provides that–

“The Connétable of each parish shall be liable in respect of torts committed by members of the Honorary Police of the Connétable’s parish in performance or purported performance of their functions in the same manner as a master is liable in respect of torts committed by the master’s servants in the course of their employment, and shall in respect of any such tort be treated for all purposes as a joint tortfeasor.”
27. It is clear from this that the liability of the Connétable does not extend to a liability in respect of torts committed by members of the Honorary Police of another Parish.
28. If the Connétable has ‘borrowed’ officers from another Parish, and they commit a civil wrong, he or she will not therefore be liable, because the officers are not members of the Honorary Police of the borrowing Parish. They remain – on the present wording of the 1974 Law – members of the Honorary Police of the ‘lending’ Parish and the liability for any civil wrong committed by them attaches to the Connétable of the ‘lending’ Parish.
29. If left unchanged, this would mean that the Connétable of the lending Parish could be sued for actions taken by the ‘lent’ officers over which that Connétable had no control. It would also mean that the victim of a tort suffered in one Parish would have to sue the Connétable of another Parish.
30. The draft Law therefore amends Article 22 of the 1974 Law so that the liability of the Connétable under Article 22(1) extends to liability for torts committed by members of the Honorary Police of another Parish whilst they are acting under the direction of that Connétable or his or her *Chef de Police*.
31. It should be noted, however, that this does not extend to an officer who acts on his or her own initiative under the power to act ‘sur le champ’ in another Parish.

Jurisdiction in disciplinary matters

32. When it comes to disciplinary matters, are the borrowed officers to be treated as members of the Honorary Police of the borrowing Parish?
33. This question has had to be addressed, as it is relevant to the Police (Complaints and Discipline) (Jersey) Law 1999 (“the 1999 Law”) Article 17 of which defines a “complaint” as –

“. . . any complaint about the conduct of a member of the Honorary Police which is submitted to the Connétable of the Parish in which that member serves –

 - (a) *by a member of the public;*
 - (b) *on behalf of, and with the written consent of, a member of the public; or*
 - (c) *by a member of the Force, Port Control Officer or member of the Honorary Police otherwise than in the course of his or her duty”.*
34. Article 20(1) of the 1999 Law requires each Connétable to “*maintain a register of complaints submitted to him or her about members of the Honorary Police serving in his or her Parish*”. If a complaint is made against an officer in respect of something done whilst he or she was at the disposal of another Parish, is the complaint and disciplinary process to take place on the basis that the officer concerned is a member of the Honorary Police of his or her ‘home’ Parish or of the ‘borrowing’ Parish?
35. The draft Law resolves this question by making it clear that, in disciplinary matters, jurisdiction remains

with the 'home' Parish of the officer concerned.

Terminating authority to act in another Parish

36. The draft Law clarifies how and when an officer 'lent' by an assisting Parish ceases to be at the disposal of the Connétable/*Chef de Police* of the 'borrowing' Parish.
37. Until the 'mandate' of the officer comes to end, he/she has, as we have seen, all the powers and duties of a member of the Honorary Police of the requesting Parish.
38. The draft Law does, however, enable the Connétable or a Centenier of an assisting Parish at any time to '*request the Connétable or the Chef de Police of the requesting Parish to order the member to stand down*'. The Connétable/*Chef de Police* must comply with such a request as soon as is practicable.
39. There is a power also in the Connétable and/or the *Chef de Police* of the requesting Parish to order a member of the Honorary Police who has been placed at the disposal of the requesting parish to stand down before the policing need is fully met. If an order to stand down is given, the Connétable/*Chef de Police* giving the order must within 24 hours inform the Connétable/*Chef de Police* of what has been done.

E. Concluding note

40. The Comité des Connétables (as already stated) does not intend by this *projet de loi* to change the parochial complexion of the Honorary Police. A person holding honorary office first and foremost serves the Parish.
41. The changes described above will, however, make it easier for honorary officers of the different Parishes to assist one another in their functions. A number of historical barriers to co-operation across the Parish boundaries will be removed.
42. This is less a matter of reform than of 'freeing-up' the honorary system in certain vital respects and to secure a more effective system of inter-Parish policing.

Financial and 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 requires the Minister 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). On 23rd July 2008 the Chairman of the Comité des Connétables made the following statement before Second Reading of this *Projet* in the States Assembly –

In the view of the Chairman of the Comité des Connétables the provisions of the Draft Police Force (Amendment No. 11) (Jersey) Law 200 are compatible with the Convention Rights.

[see paragraph 24 of the Report]

**DRAFT DIRECTIVE BY ATTORNEY GENERAL CONCERNING
ARTICLE 5(4) OF THE POLICE FORCE (JERSEY) LAW 1974**

1. Article 5(4) of the Police Force (Jersey) Law 1974 Law empowers a member of the Honorary Police of one Parish to exercise the powers of a member of the Honorary Police in another Parish if he or she whilst in that other parish –
 - “(a) *encounters a person who the member reasonably believes is in the act of committing an offence against another person or against another person’s property or to have just committed such an offence; or*
 - (b) *is at the scene of an incident and reasonably believes that the immediate exercise of those powers is necessary in the interests of public order or safety.*”
2. Exercising the powers of a member of the Honorary Police in another Parish is not the same as being a member of the Honorary Police of that other Parish. An honorary officer must not think of Article 5(4) as empowering that officer to patrol another Parish.
3. The power under Article 5(4) should therefore be exercised with caution and only within the limits set by the Article, which covers two types of situation.
 - 4.1 **The first type of situation:**
“encounters a person who the member reasonably believes is in the act of committing an offence against another person or against another person’s property or to have just committed such an offence”
 - 4.2 In ordinary language, this means catching someone ‘red-handed’ or, in the language of Jersey law, ‘*en flagrant délit*’.
 - 4.3 The offence being committed must be against another person (e.g. assault) or against someone else’s property (e.g. breaking and entering premises or maliciously damaging a vehicle or other property).
 - 4.4 Suspicion that an offence is going to happen is not enough. But, of course, there is nothing in Article 5(4) that prevents an Officer from doing what he or she can as an ordinary citizen to assist the police.
 5. **The second type of situation:**
“at the scene of an incident and reasonably believes that the immediate exercise of those powers is necessary in the interests of public order or safety”
 - 5.1 There are 2 requirements under this head:
 - There must have been an incident, and
 - Intervention must be necessary in the interests of public order or safety.
 - 5.2 *An ‘incident’:*
 Somebody jumping traffic lights or driving carelessly or whilst using a mobile telephone should not normally be regarded, of itself, as a sufficient cause for the exercise of police powers outside an officer’s own Parish. It isn’t really ‘an incident’.
 - 5.3 *‘In the interests of public order or safety’:*
 The classic situation this is meant to cover is when an Honorary Officer comes upon the scene of a road traffic accident in another Parish, and the police have yet to arrive or yet to be called.
 - 5.4 The Honorary Officer in such a case may exercise the powers of a member of the Honorary Police in the relevant Parish in order to contain the situation until a member of the Honorary Police of that Parish or a member of the States of Jersey Police Force arrives.
 6. **In summary:**
 - 6.1 The power under Article 5(4) is not a power to be exercised as though an officer were discharging routine policing duties, but in sudden cases of real necessity to prevent or alleviate damage to person or property where no other means of doing so is to hand, or to keep the peace.

Explanatory Note

Article 1 defines the Police Force (Jersey) Law 1974 as the “principal Law”.

Article 2 makes 2 changes.

Firstly, it extends the jurisdiction of a member of the Honorary Police to act outside his or her parish. The new provision allows a member of the Honorary Police to exercise his or her powers in another parish in the circumstances described in paragraph (4)(a) or (b) of the substituted Article 5. A member of the Honorary Police who decides to exercise the new powers in another parish must inform the Connétable or a Centenier of that parish before acting or, if that is not practicable, as soon as possible.

Secondly, in the inserted Article 5A, the arrangements for one parish to request policing assistance from another are extended. New provision is made allowing a Centenier to make a request (a Connétable already has that power) and the circumstances in which a request may be made are widened so as to cover any policing need in the requesting parish. The procedures for ordering a member of the Honorary Police to stand down from service in a requesting parish, and for informing the Connétables and Chefs de Police of actions taken under Article 5A are expanded and clarified.

Article 3 has the effect that, whilst a member of the Honorary Police is placed at the disposal of a requesting parish, liability rests with that parish for any torts committed by the member whilst serving there.

Article 4 amends the Police Complaints and Discipline (Jersey) Law 1999 so as to make it clear that any complaint about a member of the Honorary Police goes to the Connétable of the parish in which the member was elected, even if the complaint relates to the member’s actions in another parish.

Article 5 provides for the citation and commencement of this draft Law.



Jersey

DRAFT POLICE FORCE (AMENDMENT No. 11)(JERSEY) LAW 200

Arrangement

Article

- 1 [Interpretation](#)
- 2 [Article 5 substituted](#)
- 3 [Article 22 amended](#)
- 4 [Police \(Complaints and Discipline\) \(Jersey\) Law 1999 amended](#)
- 5 [Citation and commencement](#)



Jersey

DRAFT POLICE FORCE (AMENDMENT No. 11)(JERSEY) LAW 200

A LAW to amend further the Police Force (Jersey) Law 1974 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 Police Force (Jersey) Law 1974^[1].

2 Article 5 substituted

For Article 5 of the principal Law there shall be substituted the following Articles–

“5 Jurisdiction

- (1) A member of the Honorary Police of a parish shall be empowered to act within the territorial limits of that parish.
- (2) For the purposes of paragraph (1), the territorial limits of a parish include–
 - (a) the headquarters for the time being of the Force;
 - (b) any police station for the time being used by the Force;
 - (c) any designated Customs custody facility;
 - (d) any building for the time being designated by the States as a place for use by the Magistrate’s Court;
 - (e) the General Hospital;
 - (f) the prison (as defined in the Prison (Jersey) Law 1957^[2]).
- (3) A member of the Honorary Police of a parish shall also be empowered –
 - (a) to pursue into any other parish and there arrest any person who has committed, or whom the member of the Honorary Police has reasonable cause to suspect of having committed, or of having been about to commit, any offence; and
 - (b) to continue investigations into any matter in any other parish, where those investigations started in the parish for which he or she is such a member.

- (4) A member of the Honorary Police of a parish shall also be empowered to exercise the powers of a member of the Honorary Police of another parish if the member, whilst in that other parish –
 - (a) encounters a person whom the member reasonably believes is in the act of committing an offence against another person or against another person's property or to have just committed such an offence; or
 - (b) is at the scene of an incident and reasonably believes that the immediate exercise of those powers is necessary in the interests of public order or safety.
- (5) A member of the Honorary Police who decides to exercise the powers conferred by paragraph (4) shall inform the Connétable or a Centenier of the parish in which the powers are to be exercised –
 - (a) before acting upon that decision or,
 - (b) where it is not practicable to do so before so acting, as soon as possible afterwards.

5A Requests for assistance

- (1) The Connétable or a Centenier of a parish (the 'requesting parish') may request the Connétable or a Centenier of another parish (the 'assisting parish') to place at the disposal of the requesting parish members of the Honorary Police of the assisting parish, for the purpose of meeting any policing need in the requesting parish.
- (2) A Centenier of a requesting parish shall, no later than 24 hours after he or she has made a request under paragraph (1), inform the Connétable and (unless the Centenier is the Chef de Police) the Chef de Police of the requesting parish.
- (3) A Centenier of an assisting parish who accedes to a request under paragraph (1) shall, no later than 24 hours after doing so, inform the Connétable and (unless the Centenier is the Chef de Police) the Chef de Police of the assisting parish.
- (4) A member of the Honorary Police of an assisting parish shall, from the time when he or she is placed at the disposal of a requesting parish to the time when he or she is ordered to stand down, have all the powers and duties of a member of the Honorary Police of the requesting parish.
- (5) The Connétable or a Centenier of an assisting parish may, at any time when a member of the Honorary Police of that parish is placed at the disposal of a requesting parish, request the Connétable or the Chef de Police of the requesting parish to order the member to stand down.
- (6) A Connétable or Chef de Police shall comply with a request made under paragraph (5) as soon as is practicable.
- (7) The Connétable or Chef de Police of a requesting parish may order a member of the Honorary Police who has been placed at the disposal of the requesting parish to stand down before the policing need is fully met.
- (8) A Connétable or Chef de Police who orders a member of the Honorary Police to stand down under paragraph (7) shall, no later than 24 hours after doing so, inform the Connétable or Chef de Police of the assisting parish of the order.”.

3 Article 22 amended

After paragraph (4) of Article 22 of the principal Law there shall be added the following paragraph-

- “(5) In this Article –

- (a) any reference to a member of the Honorary Police of a parish includes a reference to a member of the Honorary Police of another parish whilst he or she is placed at the disposal of the first-mentioned parish pursuant to Article 5A; and
- (b) any reference to a tort committed by a member of the Honorary Police of a parish includes, where the member of the Honorary Police is acting as described in subparagraph (a), a reference to a tort committed by that member whilst so acting.”.

4 Police (Complaints and Discipline) (Jersey) Law 1999 amended

In the Police (Complaints and Discipline) (Jersey) Law 1999^[3] –

- (a) in Article 17, for the words “in which that member serves” there shall be substituted the words “for which that member is elected”;
- (b) in Article 20(1), for the word “serving” there shall be substituted the words “elected to serve”.

5 Citation and commencement

This Law may be cited as the Police Force (Amendment No. 11) (Jersey) Law 200 and shall come into force 7 days after it is registered.

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- [1] *chapter 23.375*
- [2] *chapter 23.775*
- [3] *chapter 23.325*