

**DRAFT CRIMINAL PROCEDURE (PRESCRIPTION OF
OFFENCES) (JERSEY) LAW 199**

**Lodged au Greffe on 16th March 1999
by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

Report

In 1998 concern about time limits for criminal prosecutions was expressed in the wake of the prosecution of a number of charges under the Depositors and Investors (Prevention of Fraud) (Jersey) Law 1967 which were dismissed by the Royal Court because the proceedings had been instituted out of time. This concern was strongly echoed in the Review commissioned by the Home Secretary of financial regulation in the Crown Dependencies [the Edwards Report, section 14.5(e)].

The difficulty encountered by the prosecution was the provision in Article 2 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1978 that -

“Subject to the provisions of any other enactment, the period within which proceedings may be instituted in respect of an offence shall be three years from the date of commission of the offence”.

The 1978 Law affects *délits* and *contraventions*, but not *crimes*. The effect of Article 2 is such that, no matter how long after the offence the complaint is made, and no matter how complex the matter is, the three year period cannot be extended. The purpose of this draft Law is to remove such artificial time constraints which bear little relationship either to the gravity of the offence or the public interest. For example, fraudulently to induce the investment of money and unlawful sexual intercourse with a child are *contraventions* or are deemed by statute to rank as a *délit* and are therefore prescribed after three years whereas an assault, if it ranks as a *crime*, may be prosecuted after a period long in excess of three years.

The draft Law would provide (in effect) that all criminal offences should be imprescriptible. At the common law of England and Wales, there is no time limit for commencing a prosecution by the Crown. Therefore, in all cases where time is not limited by a specific statute, a prosecution may be commenced at any length of time after the offence. However, a delay in commencing or pursuing a prosecution may amount to an abuse of the process of the court. The law in Guernsey is to like effect. The position in Jersey is less straightforward because Jersey law (unlike that in other jurisdictions) makes a distinction for the purposes

of prescription between *crimes* on the one hand and *délits* and *contraventions* on the other hand. *Crimes* and *délits* are the customary law offences. *Crimes* are the more heinous (murder, grave and criminal assault etc.); *délits* are the less serious (common assault, breach of the peace etc.). But there is not a strict dividing line and it is difficult to know whether some offences are *crimes* or *délits*. *Contraventions* are quite simply statutory offences no matter how serious or trivial.

In many cases an offence may not be discovered within three years of its commission. Alternatively, although the offence is discovered within that period, it may not be possible to complete the investigation of it within the three year period. This is of particular relevance in complex financial fraud where investigations, of necessity, may be prolonged. Even if a decision is taken to proceed, difficulties may arise if the suspect remains out of the Island. In all these cases no prosecution can be brought after three years from the commission of the offence if the offence is a *contravention* for which there is no specific statutory period of prescription (other than under the Law of 1978).

A number of statutes provide for a different period of prescription often based upon when evidence of the offence came to light. No doubt some of these were introduced to overcome the rigour either of the pre-existing customary law period of a year and a day or the extended period of three years under the Law of 1978. Nevertheless many of these provisions are also unsatisfactory. For example Article 28 of the Misuse of Drugs (Jersey) Law 1978 provides that any prosecution for offences under that Law (for example drug trafficking) must be brought within 12 months of the commission of the offence or, if later, within 3 months of the date upon which evidence, sufficient in the opinion of the Attorney General to justify the proceedings, comes to the attention of the Finance and Economics Committee. This is nonsensical in that the Committee has no rôle to play in the prosecution process, the decision being entirely one for the Attorney General. The evidence is therefore never put to the Finance and Economics Committee. There are many statutory provisions (listed in the Schedule to the draft Law) to similar effect.

The Legislation Committee views the existing position (whether under the Law of 1978 or under those other statutes providing for different periods of prescription) as unsatisfactory and not in the interests of

justice. No useful purpose is served by maintaining a short period of prescription or, indeed, any period of prescription at all particularly when the offences may concern such fundamental matters as drug trafficking and serious financial crime. Statutory offences ought, in the opinion of the Committee, to rank alongside *crimes* insofar as prescription is concerned unless a specific decision is taken in a particular statute to introduce a prescriptive period.

The draft Law, however, does not merely relate to statutory offences: it relates also to *crimes* and *délits*.

In relation to *crimes*, there is some authority at Norman customary law to the effect that they are prescribed after 20 years although the Royal Court in Guernsey has held that this rule is not applicable under their customary law. It is not clear whether the Royal Court of Jersey would hold that the Norman customary law period of 20 years still applies or that there is now no limit of time for the institution of proceedings for a *crime*.

Délits, along with statutory offences (*contraventions*), are governed by the Law of 1978, i.e. they are prescribed after three years from the date of commission of the offence. The Legislation Committee believes that it would be unsatisfactory to maintain a distinction between the prescriptive period for a *délit* and that for a crime. This would perpetuate uncertainty as to whether or not certain customary law offences could or could not be pursued after a period of three years. Also the criticisms made of the three year period in respect of statutory offences apply with equal force to an offence which ranks as a *délit*.

The draft Law would also lay to rest any doubt as to whether *crimes* are governed by the Norman customary law period of 20 years or are imprescriptible. *Crimes* (along with *délits* and *contraventions*) would be imprescriptible and therefore able to be prosecuted at any time after the offence was committed. Although prosecutions after 20 years may be rare, they could occur in cases such as murder (where the body is found after many years) or child abuse where the victims can only bring themselves to disclose the offences in adulthood.

It is of course the case that prosecutions after a long period can in some circumstances be oppressive. In this respect there are two protections.

1. Delay is a factor which the Attorney General invariably takes into account in deciding whether or not to prosecute. It is quite common for a decision to be taken not to prosecute because of the lapse of time since the commission of the offence.
2. Irrespective of any decision by the Attorney General, the court always has the power to stay criminal proceedings if it is of opinion that any delay in commencing or pursuing the prosecution of an offence amounts to an abuse of its process.

The draft Law also contains a transitional provision so as to ensure that any offences which are prescribed as at the commencement of the Law will not be revived by the change in the Law.

Conclusion

The Legislation Committee believes that the existing periods of prescription in Jersey law in relation to criminal offences are an anachronism. They have their roots in practices and procedures followed in the 19th Century and much earlier. Far from serving any useful purpose in modern society, they impede the administration of justice. The only comfort they offer is to criminals by providing them with a means to escape justice on a legal technicality without merit.

If there is unjustifiable delay in bringing criminal proceedings, the court has discretion to stay the proceedings and it is this discretion which ought finally to determine in any particular case within what period the proceedings ought to have been brought.

Explanatory Note

The purpose of this draft Law is to provide that there shall be no time limit within which a person who commits an offence may be prosecuted. The draft Law is not retroactive and does not revive proceedings which were time barred before the Law comes into force. (*Article 2*).

“Offence” is defined to include a *crime*, a *délit* and an offence created by an enactment. (*Article 1*).

Existing prescriptive provisions for statutory offences are repealed. (*Articles 3, 4 and the Schedule*).

**CRIMINAL PROCEDURE (PRESCRIPTION OF OFFENCES)
(JERSEY) LAW 199**

A LAW to reform the law governing the prescription of criminal offences; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

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

ARTICLE 1

Definition of offence

- (1) In this Law, "an offence" means -
 - (a) a *crime*;
 - (b) a *délit*; or
 - (c) a contravention of an enactment.
- (2) A reference in this Law to an enactment includes an enactment of the United Kingdom extended to or otherwise having force of law in the Bailiwick.

ARTICLE 2

Abolition of period of prescription

Subject to the provisions of any other enactment, the time within which proceedings may be instituted in respect of an offence shall be without limit:

Provided that nothing in this Article shall revive any proceedings which were barred by prescription before the commencement of this Law.

ARTICLE 3

Repeals

Articles 2 and 3 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1978¹ are repealed.

ARTICLE 4

Amendments

The enactments in the first column of the Schedule to this Law shall be amended to the extent described in the second column opposite each of those enactments.

ARTICLE 5

Short title

This Law may be cited as the Criminal Procedure (Prescription of Offences) (Jersey) Law 199 .

¹ Volume 1975-1978, pages 483 and 484.

SCHEDULE

<u>First column</u>	<u>Second column</u>
<i>Enactment</i>	<i>Extent of repeal</i>
<i>Loi (1842) sur l'Etat Civil²</i>	In Article 67: Delete the words “, et sera instituée dans les trois ans de l’infraction”.
<i>Loi (1845) sur la régie des impôts³</i>	In Article 49: Delete the words “, mais les actions pour infraction des Règlements ne pourront être instituées après an et jour de l’infraction”.
<i>Loi (1934) sur la régie et le mode de perception de l'impôt sur le tabac⁴</i>	In Article 26: Delete the words “, mais les actions pour infraction de ces règlements ne pourront être instituées après an et jour de l’infraction”.
Revenue Duty on Oils and Spirits (Administration) (Jersey) Law 1940 ⁵	In Article 27: Delete the words “, but no such proceedings shall be instituted more than three years after the cause of action arose or the infraction was committed, as the case may be”.

² Tomes I-III, page 118.

³ Tomes I-III, page 167.

⁴ Tome VII, page 95.

⁵ Tome VII, page 331.

Borrowing (Control) (Jersey) Law 1947 ⁶	In the Schedule: Repeal sub-paragraph (1) of paragraph (3)
Motor Traffic (Third Party Insurance) (Jersey) Law 1948 ⁷	In Article 2: Repeal paragraph (4)
Housing (Jersey) Law 1949 ⁸	Article 14: Repeal paragraphs (3) and (4)
Oil in Territorial Waters (Jersey) Law 1950 ⁹	In Article 6: Repeal paragraph (1)
Pharmacy, Poisons and Medicines (Jersey) Law 1952 ¹⁰	In Article 27: Repeal paragraphs (3) and (4)
Firearms (Jersey) Law 1956 ¹¹	Repeal Article 30
Income Tax (Jersey) Law 1961 ¹²	Repeal Article 140
Food and Drugs (Jersey) Law 1966 ¹³	Repeal Article 50
Health Insurance (Jersey) Law 1967 ¹⁴	In Article 45: Delete paragraphs (1) and (2)
Family Allowances (Jersey) Law 1972 ¹⁵	Article 23: Repeal paragraphs (1) and (2)

⁶ Tome VII, page 391.

⁷ Tome VII, page 485.

⁸ Tome VII, page 543.

⁹ Tome VII, page 652.

¹⁰ Tome VIII, page 139.

¹¹ Tome VIII, page 492.

¹² Volume 1961-1962, page 298.

¹³ Volume 1966-1967, page 198.

¹⁴ Volume 1966-1967, page 578.

¹⁵ Volume 1970-1972, page 428.

Customs and Excise (General Provisions) (Jersey) Law 1972 ¹⁶	Repeal Article 61
Attendance Allowance (Jersey) Law 1973 ¹⁷	In Article 11: Repeal paragraphs (1) and (2)
Agricultural Land (Control of Sales and Leases) (Jersey) Law 1974 ¹⁸	In Article 7: Repeal paragraphs (3) and (4)
Social Security (Jersey) Law 1974 ¹⁹	In Article 37: Delete paragraphs (1) and (2)
Invalid Care and Disability Allowances (Jersey) Law 1978 ²⁰	In Article 14: Delete paragraphs (1) and (2)
Misuse of Drugs (Jersey) Law 1978 ²¹	Repeal Article 28
Collective Investment Funds (Jersey) Law 1988 ²²	In Article 15: Repeal paragraphs (4) and (5)
Banking Business (Jersey) Law 1991 ²³	Article 49: Repeal paragraphs (4) and (5)
Medicines (Jersey) Law 1995 ²⁴	Repeal Article 108

¹⁶ Volume 1970-1972, page 493.

¹⁷ Volume 1973-1974, page 54.

¹⁸ Volume 1973-1974, page 253.

¹⁹ Volume 1973-1974, page 350.

²⁰ Volume 1975-1978, page 443.

²¹ Volume 1975-1978, page 468.

²² Volume 1988-1989, page 155.

²³ Volume 1990-1991, page 540.

²⁴ Volume 1994-1995, page 567.

Insurance Business (Jersey) Law
1996²⁵

Article 37:
Repeal paragraphs (7)
and (8)

Disability Transport Allowances
(Jersey) Law 1997²⁶

In Article 12:
Repeal paragraphs (1)
and (2)

Investment Business (Jersey)
Law 1998²⁷

In Article 38:
Repeal paragraphs (7)
and (8)

²⁵ Volume 1996-1997, page 127.

²⁶ Volume 1996-1997, page 497.

²⁷ Volume 1998, page 572.

**P.34/99 Draft Criminal Procedure (Prescription of Offences)
(Jersey) Law 199**

Page 10 -

In the item in the second column of the Schedule opposite the item "Health Insurance (Jersey) Law 1967" in the first column substitute the word "Repeal" for the word "Delete".

Page 11 -

In the items in the second column of the Schedule opposite the items "Social Security (Jersey) Law 1974" and "Invalid Care and Disability Allowances (Jersey) Law 1978" in the first column substitute the word "Repeal" for the word "Delete".