

STATES OF JERSEY



DRAFT FIREARMS (AMENDMENT No. 3) (JERSEY) LAW 201-

Lodged au Greffe on 4th June 2013
by the Minister for Home Affairs

STATES GREFFE



Jersey

DRAFT FIREARMS (AMENDMENT No. 3) (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 Firearms (Amendment No. 3) (Jersey) Law 201- are compatible with the Convention Rights.

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

Minister for Home Affairs

Dated: 3rd June 2013

REPORT

Article 43 of the Firearms (Jersey) Law 2000 (“the Law”) is entitled “Prohibition on the carrying of offensive weapons without lawful authority or reasonable excuse” and reads as follows –

- (1) *Any person who without lawful authority or reasonable excuse (the proof of which shall lie on the person) has with him or her in any public place any offensive weapon, shall be guilty of an offence and liable to imprisonment for a term of 4 years and to a fine.*
- (2) *Where any person is convicted of an offence under paragraph (1) the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.*
- (3) *In this Article “offensive weapon” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him or her for such use by him or her.*

In a recent court case, a defendant was sentenced for 2 offences, one of which was having an offensive weapon (a knife) in a public place, contrary to Article 43(1) of the Law. As part of the reasoned judgment in relation to the sentencing, the Inferior Number of the Royal Court expressed the view that the wording of Article 43 of the Law was not dissimilar from Section 1 of the Prevention of Crime Act 1953. Therefore, it was felt by the Court that it was legitimate for them to have regard to decisions of the English courts on that statutory provision.

In considering the provisions of the Prevention of Crime Act 1953, the Court noted that Section 1(4) of the Act reads as follows –

In this section “public place” includes any highway, or in Scotland any road within the meaning of the Roads (Scotland) Act 1984] and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise; and “offensive weapon” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person.

Mindful that the Law does not currently contain the highlighted words, the Inferior Number of the Royal Court opined that there should be an amendment to the Law to bring the Law on an equal footing with the wording of the 1953 Act and said, “There is no obvious reason why a person should be in theory able to escape liability under Article 43 of the 2000 Law by establishing that he was carrying the offensive weapon with the intention that his friend would use it rather than that he himself would do so.”

The Draft Firearms (Amendment No. 3) (Jersey) Law 201- addresses this issue and inserts the words “or by some other person” into Article 43(3) after the words “for such use by him or her”, thereby rendering it a criminal act for a person to carry an offensive weapon for use by another person.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of 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.

APPENDIX TO REPORT

Human Rights Notes on the Draft Firearms (Amendment No. 3) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Firearms (Amendment No. 3) (Jersey) Law 201- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Article 43(3) of the Firearms (Jersey) Law 2000 (the “principal Law”), as amended by the draft Law, engages Article 1 of the First Protocol of the ECHR (“A1P1”) which guarantees the right to property.

A1P1 provides –

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A firearm is a “possession” for the purposes of A1P1 and Article 43(3), by restricting where and for what purposes that possession may be carried, provides for the control of use of such a possession. This is an interference with property which, in order to be permissible must: (i) serve a legitimate objective in the public or general interest, (ii) be proportionate to realising that objective, and (iii) comply with the principle of legal certainty.

The objective behind the measure can be identified as maintaining public safety, which has been held to be a legitimate objective within the scope of A1P1. Given the importance of this objective the interference with the A1P1 right can be regarded as proportionate to meeting that legitimate objective. Finally, the scope of the interference provided for in Article 43, as amended by the draft Law, constitutes a clear and precise legislative statement, with no obvious room for ambiguity. Accordingly, the interference instigated by Article 43 to which the draft Law contributes is “in accordance with the law”. Therefore Article 43(3), as amended by the draft Law: (i) serves a legitimate objective in the public or general interest, (ii) is proportionate, and (iii) complies with the principle of legal certainty.

Explanatory Note

It is an offence under Article 43 of the Firearms (Jersey) Law 2000 for a person to have an offensive weapon in a public place without lawful authority or reasonable excuse. An “offensive weapon” is defined as “any article made or adapted for use for causing injury to the person, or intended by the person having it with him or her for such use by him or her”. This Law amends the definition so that an article is also an offensive weapon if the person has it with him or her for use by another person for causing injury to a person.



Jersey

DRAFT FIREARMS (AMENDMENT No. 3) (JERSEY) LAW 201-

A LAW to further amend the Firearms (Jersey) Law 2000 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 Article 43 amended

In Article 43(3) of the Firearms (Jersey) Law 2000¹ after the words “for such use by him or her” there shall be added the words “or by some other person”.

2 Citation and Commencement

This Law may be cited as the Firearms (Amendment No. 3) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹ *chapter 23.200*