

STATES OF JERSEY

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DRAFT CRIMINAL JUSTICE (MANDATORY MINIMUM PERIODS OF ACTUAL IMPRISONMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 19th April 2005
by the Home Affairs Committee**

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (MANDATORY MINIMUM PERIODS OF ACTUAL IMPRISONMENT) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Home Affairs Committee has made the following statement –

In the view of the Home Affairs Committee the provisions of the Draft Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

Article 6(1) of the European Convention on Human Rights provides that a defendant in a criminal case has a right to a fair trial by an independent and impartial tribunal. This Convention right was considered by the House of Lords in the case in the United Kingdom R v. Secretary of State for the Home Department (ex parte Anderson) [2001] EWCA Civ 1698.

The argument in that case involved the propositions that –

1. The imposition of a sentence is part of the trial.
2. The sentence therefore should be imposed by an independent and impartial tribunal.
3. The fixing of the tariff of a convicted murderer is legally indistinguishable from the imposition of a sentence.
4. It follows that the tariff should be fixed by an independent and impartial tribunal.
5. The Home Secretary is not an independent and impartial tribunal.
6. It follows that the Home Secretary should not fix the tariff of a convicted murderer.

In England and Wales, until 1957, the sentence passed in cases of murder was one of death. Under the 1957 Homicide Act, death continued to be the sentence mandatorily passed on those convicted of capital or multiple murders, while other convicted murderers were mandatorily sentenced to imprisonment for life. In 1965, the Murder (Abolition of Death Penalty) Act was passed as a result of which all convicted murderers were to be sentenced to imprisonment for life.

Section 61(1) of the Criminal Justice Act, 1957 conferred a discretion on the Home Secretary to release on licence a convicted murderer serving a sentence of life imprisonment if recommended to do so by the then newly created Parole Board. The present form of statutory provision is found in Section 29 of the Crime (Sentences) Act, 1997 which provides:

- “(1) If recommended to do so by the Parole Board, the Secretary of State may, after consultation with the Lord Chief Justice together with the trial judge if available, release on licence a life prisoner who is not a [discretionary life prisoner].
- (2) The Parole Board shall not make a recommendation under sub-section (1) above unless the Secretary of State has referred the particular case, or the class of case to which that case belongs, to the Board for its advice.”

At the time of the Anderson case, the arrangements then worked as follows. At the time of imposing the mandatory life sentence, the trial judge, having a detailed knowledge of the facts of the case and of the offender, would review the factors which in his expert judgment mitigated or aggravated the offence and would pass his advice to the Lord Chief Justice of the day. The Lord Chief Justice was in a position to obtain an overall view denied to any individual trial judge by reason of receiving a number of reports from trial judges up and down the country, and accordingly would then make advice known to the Home Secretary. On the basis of that advice, the Home Secretary decided how long the particular convicted murderer should remain in prison to meet the requirements of retribution and general deterrence. Usually the period so fixed were in line with the judicial recommendations, but in a small minority of cases the period set was either longer or shorter than the Judge’s recommended. This process was known colloquially as “*fixing the tariff*”.

Towards the end of the period of the tariff term, the case of the convicted murderer would be referred to the Parole Board which would consider whether it was necessary for the protection of the public that the convicted murderer should continue to be confined. If the Board concluded that it was necessary, the Home Secretary had no power under Section 29 of the 1997 Act to release the prisoner. If on the other hand the Board recommended that the convicted murderer should be released on licence, then the Home Secretary could, after consultation with the Lord Chief Justice, order his release, and indeed ordinarily did so, although the statute still provided him with a discretion.

It was this process which was considered generally by the House of Lords in the Anderson case and found to be

not compliant with Article 6 of the European Convention on Human Rights.

As a result of this decision of the House of Lords the Government in the United Kingdom decided to bring forward new legislation which would provide that the tariffs would be fixed in the future by the trial judge in respect of convictions incurred after the legislation came into effect, and for there to be a judicial body to undertake the review of existing tariffs and the setting of tariffs in cases where tariffs had not been set before the legislation came into effect.

This policy has now been put into effect by the Criminal Justice Act of 2003.

Until 1986, the position in Jersey was that a person convicted of murder faced a mandatory death sentence, although from the early 1960s onwards, the Home Secretary commuted at his discretion the death sentence to one of life imprisonment. However this was changed by the Homicide (Jersey) Law 1986, which removed the death penalty for murder and substituted instead a mandatory life sentence. Routinely, such prisoners were sent to the United Kingdom where they were treated as if they had been convicted before a Court in England and Wales, and therefore were eligible to be released on licence. Article 1(2) of the Homicide (Jersey) Law 1986 confers on the trial judge a discretion to recommend a minimum period which the convicted murderer should serve, in similar fashion to the procedure which existed in England and Wales.

The transfer from the La Moye Prison to one of Her Majesty's Prisons in England and Wales was put into effect by the Secretary of State using powers conferred on him by the Crime (Sentences) Act 1997. These are unrestricted transfers in the case of life sentences for murder. This provision means that the rules of the receiving jurisdiction (England and Wales) apply for the purposes of any release on licence notwithstanding that the person incarcerated there had not been convicted before a court of England and Wales.

The Committee has had to consider the best arrangements which might be put in place in Jersey having regard to the changes in the U.K. legislation, and in particular having regard to the fact that it would not be compliant with the European Convention on Human Rights if the Home Secretary were to continue to have any discretion to fix the minimum term of imprisonment which those convicted of murder in Jersey should serve.

This *Projet de Loi* substantially adopts the approach which has been followed in the Criminal Justice Act, 2003 in relation to those facing a mandatory life sentence for murder. Accordingly a distinction is drawn between exceptionally serious cases where the Court may reach the view that life imprisonment should mean life; particularly serious cases, where the Court is to start at a period of 30 years imprisonment and then increase it or reduce it having regard to particular aggravating or mitigating circumstances; and other cases where, if the offender is 18 years of age or older, the starting point is 15 years, and in the case of an offender under the age of 18, of 12 years before again the same process of an increase or reduction according to aggravating or mitigating circumstances, is applied.

The order of the Court which sets a mandatory minimum period of imprisonment is to take effect as a sentence against which the accused or the Attorney General would have a right to appeal to the Court of Appeal.

It is important for public confidence as well as for the offender and the family of the victim that the Court should openly give its reasons for the order which is made.

The *Projet* contains transitional provisions which allow for an application to be made to the Court either by the offender or by the Attorney General where a mandatory life sentence of imprisonment has been imposed but no order for a minimum period of imprisonment to be served has been met. This transitional provision has been included for convenience although it is not thought that there are any persons presently in prison in England and Wales serving a life sentence for imprisonment, having been convicted of murder in Jersey.

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 15th April 2005 the Home Affairs Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Home Affairs Committee the provisions of the Draft Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Background

An enactment may require a court that finds a person guilty of an offence against the enactment to sentence the person to life imprisonment. (Currently, the only such offence is that of murder).

A person who is sentenced in Jersey to imprisonment for life for murder would generally serve the sentence in a prison in the United Kingdom.

In the UK, “early release provisions” may apply to such a person, enabling him or her to be released from prison before his or her death. Jersey may also at some time in the future legislate to provide for such provisions for prisoners who remain in Jersey.

The purpose of this Law is to enable a Jersey court to set a period during which any such “early release provisions” of Jersey or the UK will not apply in relation to a person who has been convicted of an offence punishable for imprisonment for life. If the court sets such a period that is for less than the life of the person, it must also order that early release provisions *shall* apply to the person for the period after the end of the mandatory period of imprisonment.

The legislation is based on current UK legislation.

Part 1

Articles

Articles 1, 2 and 3 define various words and expressions used in the Law.

Part 2

Part 2 sets out the process by which a court is to determine, in relation to a person who has been sentenced to life imprisonment, the “mandatory minimum period of imprisonment” – that is, the period during which the person will not be eligible for early release under “early release provisions”. If the court sets such a period that is for less than the life of the person, it must also order that early release provisions shall apply to the person for the period of the person’s sentence that commences after the end of the mandatory period of imprisonment it has set.

Under *Article 4* the court must set a “starting point” for the calculation of such a period.

Articles 5, 6, 7 and 8 specify the suggested “starting points” to be set by a court for offences of different gravity, taking into account, in relation to murder, the victim, the circumstances of the murder and the motivation and behaviour of the murderer.

Article 9 sets out “aggravating” and “mitigating” factors in relation to an offence.

Under *Article 10* the “mandatory minimum period of imprisonment” is to be set by considering whether the period of the “starting point” should be extended or reduced, after any aggravating or mitigating factors are taken into account.

Under *Article 11*, a mandatory minimum period of imprisonment may be set that is for the whole of a person’s life – i.e. the court may order that the person is never to be released under early release provisions. However under that Article such a period may only be set for a person who was at least 21 years of age when he or she committed the offence to which the period is to relate. Periods spent on remand are also to be taken into account in determining such a period.

Under *Article 12* a court must order a mandatory minimum period to be set that is for the whole of the prisoner’s life if the offender is over 21 years of age and the court thinks the offence to which the period relates is so serious as to warrant the setting of such a period.

Under *Article 13* the court must state its reasons for setting the length of a mandatory minimum period.

Part 3

Part 3 contains provisions that are necessary as a consequence of the setting of minimum periods of imprisonment.

Article 14 is intended to maintain the status quo in relation to laws relating to convictions, bail and guilty pleas.

Article 15 ensures that a person who is sentenced to life imprisonment in Jersey and who is released under early

release provisions in any other British Island may return to Jersey without being taken to have failed to serve the sentence of imprisonment imposed on him or her by the Jersey court.

Articles 16 and 17 ensure that a decision of a court under this Law may be the subject of an appeal by the Attorney General or the offender in respect of whom the decision was made.

Article 18 repeals a provision in the Homicide (Jersey) Law 1986 which states that a court may set a “minimum period of imprisonment”. The provision is to be replaced by the “mandatory minimum periods” procedure set out in this Law.

Part 4

Part 4 contains transitional and concluding provisions.

Article 19 permits the States to amend any provision of this Law by Regulation, and to prescribe the provisions of Jersey or British Islands legislation that shall be “early release provisions” for the purposes of this Law.

Article 20 is a transitional provision, setting out, for the avoidance of doubt, that this Law shall apply to a person who commits an offence before this Law comes into force.

Article 21 sets out how this Law is to apply to a person who is sentenced, before this Law came into force, to life imprisonment as fixed by law. Both the Attorney General and a sentenced person may apply for an order to be made under this Law setting out the minimum period of imprisonment. For the sake of fairness, an application shall be dismissed if the person has already been released from custody under early release provisions.

Article 22 specifies the name by which the Law may be cited and that it shall come into force on a day to be appointed by the States.



Jersey

DRAFT CRIMINAL JUSTICE (MANDATORY MINIMUM PERIODS OF ACTUAL IMPRISONMENT) (JERSEY) LAW 200-

Arrangement

Article

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Jersey

DRAFT CRIMINAL JUSTICE (MANDATORY MINIMUM PERIODS OF ACTUAL IMPRISONMENT) (JERSEY) LAW 200-

A LAW prescribing the period that offenders sentenced to mandatory life imprisonment must spend in prison, 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 –

PART 1

INTERPRETATION

1 Interpretation

- (1) In this Law, unless the context otherwise requires –
 - “child” means a person who has not attained the age of 18 years;
 - “mandatory minimum period of imprisonment” has the meaning assigned to it by Article 10(2);
 - “murder which is aggravated by sexual orientation or disability” has the meaning assigned to it by Article 3;
 - “murder which is racially or religiously aggravated” has the meaning assigned to it by Article 2;
 - “prescribed” means prescribed by Regulations made under Article 19;
 - “starting point”, in relation to an offender, means a period calculated under Article 5, 6, 7 or 8 in relation to the offender.
- (2) In this Law, a sentence of life imprisonment is taken to be fixed by law if a court that finds a person guilty of the offence to which the sentence relates must by law impose that sentence.
- (3) In this Law, “early release provisions” means the prescribed provisions of any enactment of Jersey, or of any of the other British Islands, that are provisions in accordance with which an offender who is in prison, custody or detention under a sentence of life imprisonment may be released from the imprisonment, custody or detention before the completion of the sentence.
- (4) In this Law, a reference to a sentence of life imprisonment includes a sentence of custody for life or detention during Her Majesty’s pleasure.

2 Meaning of “racially or religiously aggravated murder”

- (1) For the purposes of this Law, a murder is racially or religiously aggravated if –
 - (a) at the time of, or immediately before or after, committing the murder the offender demonstrates towards the victim of the offence hostility based on the victim’s membership of (or presumed membership of), or association with, a racial or religious group; or
 - (b) the offence is motivated wholly or partly by hostility –
 - (i) towards members of a racial or religious group based on their membership of that group, or
 - (ii) towards persons who associate with a racial or religious group.
- (2) For the purposes of paragraph (1)(a) or (b), it is immaterial whether or not the offender’s hostility is also based, to any extent, on –
 - (a) the fact or presumption that any person or group of persons belongs to any racial or religious group; or
 - (b) any other factor not mentioned in that sub-paragraph.
- (3) In this Article –

“presumed” means presumed by the offender;

“racial group” means a group of persons that may be defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins;

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief.

3 Meaning of “murder aggravated by sexual orientation or disability”

- (1) For the purposes of this Law, a murder is aggravated by sexual orientation or disability if –
 - (a) at the time of, or immediately before or after, committing the murder, the offender demonstrates towards the victim of the offence hostility based on –
 - (i) the sexual orientation (or presumed sexual orientation) of the victim, or
 - (ii) a disability (or presumed disability) of the victim; or
 - (b) the offence is motivated wholly or partly –
 - (i) by hostility towards persons who are of a particular sexual orientation, or
 - (ii) by hostility towards persons who have a disability or a particular disability.
- (2) In this Article –

“disability” means any physical or mental impairment;

“presumed” means presumed by the offender;

“sexual orientation” of a person includes whether the person engages in prostitution.

PART 2

MANDATORY MINIMUM IMPRISONMENT ORDERS

4 Starting points

A court that, after this Law comes into force, sentences an offender to life imprisonment as fixed by law for

an offence or offences shall fix, in accordance with Articles 5, 6, 7 and 8, as the case may be, the appropriate starting point in relation to the offender for the purposes of Article 10.

5 Starting point for exceptionally serious cases

- (1) The appropriate starting point in relation to an offender who is sentenced to life imprisonment as fixed by law for an offence or offences shall be the whole of the offender's life if –
 - (a) the offender was 21 years of age or older when he or she committed the offence or offences to which the starting point relates; and
 - (b) the court considers that the offender's offence, or the combination of the offender's offence and other offences of the offender that are associated with the offence, is exceptionally serious.
- (2) Without limiting the generality of paragraph (1), cases that would normally be regarded as exceptionally serious include the following –
 - (a) murder of 2 or more persons, where each murder involves any of the following –
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim,
 - (iii) sexual or sadistic conduct;
 - (b) murder of a child, if the murder involves the abduction of the child or sadistic or sexual motivation;
 - (c) murder for the purposes of advancing a political, religious or ideological cause;
 - (d) murder by an offender previously convicted of murder.

6 Starting point for particularly serious cases

- (1) The appropriate starting point in relation to an offender who is sentenced to life imprisonment as fixed by law for an offence or offences shall be the period of 30 years if –
 - (a) the court does not consider that the offender's case falls within Article 5(1);
 - (b) the offender was 18 years of age or older when he or she committed the offence or offences to which the starting point relates; and
 - (c) the court considers that the offender's offence, or the combination of the offender's offence and other offences of the offender that are associated with the offence, is particularly serious.
- (2) Without limiting the generality of paragraph (1), cases that would normally be regarded as particularly serious include the following –
 - (a) murder of a police officer, or prison officer, in the course of the officer's duty;
 - (b) murder involving the use of a firearm or explosives;
 - (c) murder for gain (such as murder in the course of a robbery or burglary, or for payment or in the expectation of gain as a result of death);
 - (d) murder done with the intention of obstructing or interfering with the course of justice;
 - (e) murder involving sexual or sadistic conduct;
 - (f) murder of 2 or more persons;
 - (g) murder which is racially or religiously aggravated;
 - (h) murder which is aggravated by sexual orientation or disability.

7 Starting point for other cases where offence committed while offender was an adult

The appropriate starting point in relation to an offender who is sentenced to life imprisonment as fixed by law for an offence or offences shall be the period of 15 years if–

- (a) the court does not consider that the offender's case falls within Article 5(1) or 6(1); and
- (b) the offender was 18 years of age or older when he or she committed the offence or offences to which the starting point relates.

8 Starting point for other cases where offence committed while offender was a child

The appropriate starting point in relation to an offender who is sentenced to life imprisonment as fixed by law for an offence or offences shall be the period of 12 years if the offender had not attained the age of 18 years when he or she committed the offence or offences to which the starting point relates.

9 Aggravating and mitigating factors

- (1) After having fixed a starting point in relation to an offender, the court shall take into account any aggravating or mitigating factors, to the extent that it has not allowed for those factors in fixing the starting point.
- (2) Aggravating factors that may be relevant to the offence of murder include the following –
 - (a) the factors mentioned in Articles 5(2) and 6(2);
 - (b) a significant degree of planning or premeditation;
 - (c) that the victim was particularly vulnerable because of age or disability;
 - (d) mental or physical suffering inflicted on the victim before death;
 - (e) the abuse of a position of trust;
 - (f) the use of duress or threats against another person to facilitate the commission of the offence;
 - (g) that the victim was providing a public service or performing a public duty;
 - (h) concealment, destruction or dismemberment of the body.
- (3) Mitigating factors that may be relevant to the offence of murder include the following –
 - (a) an intention to cause serious bodily harm rather than to kill;
 - (b) lack of premeditation;
 - (c) that the offender suffered from any mental disorder or mental disability which, although not within Article 3(1) of the Homicide (Jersey) Law 1986, ^[1] lowered the degree of culpability of the offender;
 - (d) that the offender was provoked (for example by prolonged stress) in a way not amounting to the defence of provocation;
 - (e) that the offender acted to any extent in self-defence;
 - (f) a belief by the offender that the murder was an act of mercy;
 - (g) the age of the offender.

10 Court to order mandatory minimum period of imprisonment

- (1) The court shall, after having –
 - (a) fixed under Article 4 a starting point in relation to an offender who is sentenced to life imprisonment as fixed by law for an offence or offences; and
 - (b) considered under Article 9 aggravating or mitigating factors in relation to the offender,order in relation to the offender a mandatory minimum period of imprisonment in respect of the offence or offences.
- (2) A mandatory minimum period of imprisonment in relation to an offender is the period specified in an order under paragraph (1) in relation to the offender during which early release provisions shall not

apply in relation to the offender in respect of the offence or offences to which the order relates.

- (3) If the court orders a mandatory minimum period of imprisonment under paragraph (1), early release provisions shall not apply in relation to the offender in respect of the offence or offences to which the order relates –
 - (a) until the end of the period; or
 - (b) if the order is made for the whole of the offender's life – at any time during the remainder of the offender's life.
- (4) If the court orders a mandatory minimum period of imprisonment that is less than the whole of the offender's life, the court shall order that early release provisions shall, after the end of the mandatory minimum period of imprisonment specified under paragraph (1), apply in relation to the offender in respect of the offence or offences to which the order relates.

11 Determination of duration of mandatory minimum period of imprisonment

- (1) The court may, under Article 10, order a mandatory minimum period of imprisonment of any length including a period that is the whole of the offender's life, irrespective of the starting point fixed by the court.
- (2) Notwithstanding paragraph (1), the court shall only order a mandatory minimum period of imprisonment that is the whole of the offender's life if the offender was 21 years of age or older when he or she committed the offence or offences to which the order relates.
- (3) In determining the length of a mandatory minimum period of imprisonment in relation to an offender, the court may take into account any period that, before the offender was sentenced for the offence or offences to which the mandatory minimum period of imprisonment relates, he or she spent on remand in relation to the offence or offences.

12 When court shall order mandatory minimum period of imprisonment to be for whole of offender's life

- (1) The court shall, under Article 10, order a mandatory minimum period of imprisonment that is the whole of an offender's life if –
 - (a) the offender was 21 years of age or older when he or she committed the offence or offences to which the order relates; and
 - (b) the court is satisfied that early release provisions should not apply to the offender at any time because of the seriousness of the offence or the seriousness of the combination of the offence and other offences associated with the offence.
- (2) In determining whether to make an order under Article 10 of a mandatory minimum period of imprisonment that is the whole of an offender's life, the court shall have regard to the principles set out in Articles 5, 6, 7, 8 and 9.

13 Court must give reasons for order made

After making an order under Article 10(1) the court shall state in open court, in ordinary language, its reasons for making the order.

PART 3

APPLICATION IN RELATION TO OTHER LAWS

14 Law not to restrict application of certain other laws

Nothing in this Law restricts the application of any law relating to previous convictions, bail or a guilty plea.

15 Effect of release in another jurisdiction on sentence in Jersey

If a person who is sentenced by a court in Jersey to a term of life imprisonment as fixed by law –

- (a) serves part of that term in a prison in any of the other British Islands; and
- (b) returns to Jersey after being released from custody,

the person is not to be taken to be unlawfully at large in Jersey only because he or she has not served all of the sentence ordered by the court in Jersey.

16 Appeal to Privy Council not restricted

Nothing in this Law shall be taken to restrict a right that a person or the Attorney General has to appeal to the Privy Council.

17 Court of Appeal (Jersey) Law 1961 amended

In Article 24 of the Court of Appeal (Jersey) Law 1961^[2] –

- (a) for the words “A person” there shall be substituted the words “(1) A person;”
- (b) at the end there shall be added the following paragraphs –

“(2) The reference in paragraph (1)(c) to a sentence fixed by law shall not be taken to include a reference to an order imposed under the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 200.

(3) The Attorney General may, with the leave of the Court of Appeal, appeal against a sentence insofar as it consists of an order imposed under the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 200, on the grounds that the order does not impose a mandatory minimum period of imprisonment of sufficient length, having regard to the circumstances of the offence or offences in relation to which the order relates.”.

18 Homicide (Jersey) Law 1986 amended

In Article 1 of the Homicide (Jersey) Law 1986^[3] paragraph (2) shall be deleted.

PART 4

CONCLUDING PROVISIONS

19 Regulations

The States may make Regulations –

- (a) amending any provision of this Law; or
- (b) prescribing anything that this Law specifies shall be prescribed.

20 Transitional provision – application to offences

Nothing is to be taken to prevent or limit the application of this Law to a person who commits an offence before this Law comes into force.

21 Transitional provisions – applications for orders

- (1) A person who, before this Law came into force, was sentenced by a court in Jersey to a term of life imprisonment that is fixed by law may apply to the Royal Court to order a mandatory minimum period of imprisonment in relation to the person in respect of the offence or offences to which the sentence relates.
- (2) The Attorney General may apply to the Royal Court to order a mandatory minimum period of imprisonment in relation to a person in respect of an offence or offences for which the person was, before this Law came into force, sentenced by a court in Jersey to a term of life imprisonment that is fixed by law.
- (3) An application may be made under paragraph (1) or (2) in relation to a person whether or not any minimum period has been set by the court under Article 1(2) of the Homicide (Jersey) Law 1986^[4] in relation to the person in respect of the offence or offences to which the application relates.
- (4) At the hearing of an application under paragraph (1) or (2) in relation to a person, the Royal Court shall deal with the person under this Law as if the court had just sentenced him or her to life imprisonment for the offence or offences in respect of which the application is made.
- (5) The Royal Court shall, at the hearing of an application under paragraph (1) or (2) in relation to a person, dismiss the application if the person has, in accordance with any early release provisions or on compassionate grounds, been released from custody in relation to the offence or offences to which the application relates, whether or not the person has subsequently been taken into custody for any reason.
- (6) In determining the length of a mandatory minimum period of imprisonment to order under Article 10 in relation to a person to whom an application under paragraph (1) or (2) relates, the Royal Court may, in addition to taking into account any other matter that a court shall take into account in accordance with this Law, take into account any period that the person has spent in prison for the offence or offences to which the order is to relate.
- (7) If a mandatory minimum period of imprisonment is, in accordance with this Article, set under Article 10 in relation to a person, any minimum period set by the court under Article 1(2) of the Homicide (Jersey) Law 1986^[5] in relation to the person ceases to be of effect.

22 Citation and commencement

This Law may be cited as the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 200 and shall come into force on a day to be appointed by the States.

[1] *Volume 1986-1987, page 18.*

[2] *Volume 1961-1962, page 110, Volume 1984-1985, page 187 and Volume 2001, page 48.*

[3] *Volume 1986-1987, page 17.*

[4] *Volume 1986-1987, page 17.*

[5] *Volume 1986-1987, page 17.*