

STATES OF JERSEY

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DRAFT CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) (NO. 2) (JERSEY) LAW 200

**Lodged au Greffe on 24th April 2007
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) (NO. 2) (JERSEY) LAW 200

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 Criminal Justice (Miscellaneous Provisions) (No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

During the course of the preparation of the first revised edition of the laws of Jersey, the law revisioner came across various provisions which appeared to be either obsolete or anomalous. In particular, the law revisioner noted references to the sentence of penal servitude, the death penalty, the punishment of hard labour and corporal punishment

Penal servitude and hard labour were both abolished by the Criminal Justice (Jersey) Law 1957. The death penalty was abolished by the Homicide (Jersey) Law 1986 and the Genocide (Amendment) (Jersey) Law 1987.

It is believed to be some 40 years or so since a court in Jersey last imposed corporal punishment and for it to do so now would almost certainly constitute a violation of Article 3 of the European Convention on Human Rights. Article 3 states that 'no-one shall be subjected to torture or to inhuman or degrading punishment'. In the case of *Tyrer -v- United Kingdom* (1978), the European Court of Human Rights found that a punishment of birching, imposed by a Manx court pursuant to statute law, was a degrading punishment which violated Article 3. In practice, then, the penalty of corporal punishment has fallen into permanent disuse.

This draft Law would remove references to penal servitude, hard labour and corporal punishment from the statute book.

It would also repeal an obsolete provision for the taking of depositions and an obsolete provision whereby an owner of premises who fails to retake possession of premises used by the occupier as a place of prostitution personally becomes liable for the same offence.

The effect of each repeal or amendment is set out in detail in the Explanatory Note.

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 20th April 2007 the Minister for Home Affairs made the following statement before Second Reading of this *Projet* in the States Assembly –

In the view of the Minister for Home Affairs the provisions of the Draft Criminal Justice (Miscellaneous Provisions) (No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

Article 1 repeals the Loi (1853) concernant la rédaction des dépositions, which makes provision for the writing down of a deposition before the Bailiff, Lieutenant Governor or a Jurat. This provision is now obsolete, as the court orders evidence to be taken on a deposition before the Viscount.

Article 2 repeals a provision in the Loi (1895) modifiant le droit criminel. That Law allows for the imposition of a sentence of life imprisonment for the offence of unlawful sexual intercourse with a girl under the age of 13. As an alternative to that sentence, the Law enables the Royal Court to impose a sentence of corporal punishment on a person under the age of 16 found guilty of the offence. The repeal is of the alternative sentence of corporal punishment.

Article 3 repeals Articles 1 and 2 of the Loi (1915) modifiant le droit criminel and amends Article 3 of that Loi.

Article 1 of the 1915 Loi enables a court to impose an additional sentence of corporal punishment on a man found guilty of an offence under Article 1 of the Loi (1895) modifiant le droit criminel. Article 1 of the 1895 Loi makes it an offence to induce a woman to become a prostitute or to force or mislead a woman into having unlawful sexual intercourse or to turn a girl under the age of 18 against her parent's wishes, with the intention that she should have unlawful sexual intercourse. The penalty for the offence under the 1895 Loi is and remains up to 2 years' imprisonment. The repeal is of the additional sentence.

Article 2 of the 1915 Loi provides that, where an occupier of premises is convicted of using them as a place of prostitution, the owner of the premises can retake possession of them 3 months after the conviction. If the owner does not retake possession, the owner is taken to have known that the premises were used as a place of prostitution and is liable to prosecution for the same offence, unless the owner can show that he or she took all reasonable steps to prevent the offence being committed again.

Article 3 of the 1915 Loi is amended to remove the power for the court to sentence a man to corporal punishment for a second or subsequent offence of living off the proceeds of prostitution or importuning.

Article 4 amends Articles 1 and 2 of the Loi (1938) modifiant le droit criminel (sodomie et bestialité).

As enacted –

Article 1 of the Loi confers a power to sentence a person, for the offence of sodomy or bestiality, to penal servitude of between 3 years and life or to imprisonment, with or without hard labour, for up to 2 years;

Article 2 of the Loi confers a power to sentence a person, for the offence of attempted sodomy or bestiality, to penal servitude for up to 10 years or to imprisonment, with or without hard labour, for up to 2 years.

When the Criminal Justice (Jersey) Law 1957 was enacted, it abolished the sentence of penal servitude and the power to impose hard labour on a sentence of imprisonment. The 1957 Law further provided for every power to sentence an offender to penal servitude to be construed as a power to pass a sentence of imprisonment for the like term.

The combined effect of the provision for construction of references to penal servitude and of the abolition of hard labour means that the 2 Articles now must be construed as follows –

that Article 1 of the Loi confers a power to sentence a person to imprisonment for between 3 years and life or to imprisonment for up to 2 years;

that Article 2 confers a power to sentence a person to imprisonment for up to 10 years or up to 2 years.

Clearly these provisions, as now construed, are confusing in that they appear to create options as to the maximum term of imprisonment that may be imposed for the offence.

The amendment restates the sentencing powers in Articles 1 and 2 to make it clear that –

the maximum penalty under Article 1 is imprisonment for life;

the maximum penalty under Article 2, is imprisonment for 10 years.

Article 5 repeals a provision in the Court of Appeal (Jersey) Law 1961 which defers the carrying out of a sentence of death or corporal punishment until such time as the time limit for any appeal has expired. Capital punishment was abolished by the Homicide (Jersey) Law 1986 in relation to the offence of murder and by the Genocide

(Amendment) (Jersey) Law 1987 in relation to the offence of genocide. The death penalty may be imposed in disciplinary proceedings for the armed forces, but these would be conducted before a military court rather than the Royal Court. Therefore, the Royal Court no longer has power to pass the death sentence and the removal by this Law of the powers to impose a sentence of corporal punishment renders the provision obsolete.

Article 6 cites the short title of the Law and provides for the Law to come into force 7 days after it is registered in the Royal Court.



Jersey

DRAFT CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) (No. 2)(JERSEY) LAW 200-

Arrangement

Article

- 1 Loi (1853) concernant la rédaction des dépositions repealed
- 2 Loi (1895) modifiant le droit criminel amended
- 3 Loi (1915) modifiant le droit criminel amended
- 4 Loi (1938) modifiant le droit criminel (sodomie et bestialité) amended
- 5 Court of Appeal (Jersey) Law 1961 amended
- 6 Citation and commencement



Jersey

DRAFT CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) (No. 2)(JERSEY) LAW 200-

A LAW to amend the Loi (1915) modifiant le droit criminel, the Loi (1895) modifiant le droit criminel, the Loi (1938) modifiant le droit criminel (sodomie et bestialité) and the Court of Appeal (Jersey) Law 1961 and to repeal the Loi (1835) concernant la rédaction des dépositions.

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 Loi (1853) concernant la rédaction des dépositions repealed

The Loi (1853) concernant la rédaction des dépositions^[1] shall be repealed.

2 Loi (1895) modifiant le droit criminel amended

In the Loi (1895) modifiant le droit criminel^[2], the second paragraph of Article 2 shall be repealed.

3 Loi (1915) modifiant le droit criminel amended

In the Loi (1915) modifiant le droit criminel^[3] –

- (a) Articles 1 and 2 shall be repealed;
- (b) in Article 3, the words beginning “, et en cas récidive,” to the end of the Article shall be revoked.

4 Loi (1938) modifiant le droit criminel (sodomie et bestialité) amended

In the Loi (1938) modifiant le droit criminel (sodomie et bestialité)^[4] –

- (a) in Article 1, for the words following the words “sera passible” there shall be substituted the words “d’un emprisonnement à vie”;
- (b) in Article 2, for the words following the words “sera passible” there shall be substituted the words “d’un emprisonnement n’excédant pas 10 années”.

5 Court of Appeal (Jersey) Law 1961 amended

In the Court of Appeal (Jersey) Law 1961^[5], paragraph (4) of Article 32 shall be repealed.

6 Citation and commencement

This Law may be cited as the Criminal Justice (Miscellaneous Provisions) (No. 2) (Jersey) Law 200 and shall come into force on the seventh day following its registration.

[1]	<i>L.2/1853</i>
[2]	<i>chapter 08.540</i>
[3]	<i>chapter 08.560</i>
[4]	<i>chapter 08.500</i>
[5]	<i>chapter 07.245</i>