

STATES OF JERSEY

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DRAFT CRIME (DISORDERLY CONDUCT AND HARASSMENT) (JERSEY) LAW 200

**Lodged au Greffe on 7th April 2008
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT CRIME (DISORDERLY CONDUCT AND HARASSMENT) (JERSEY) LAW 200

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 Crime (Disorderly Conduct and Harassment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

At present in Jersey, public order is primarily enforced using Common Law powers – notably arising from the offences of being Drunk and Disorderly, committing a Public Nuisance, and causing a Breach of the Peace or acting in a manner likely to cause a Breach of the Peace. Offences also exist within Statute Law – Policing of Roads, Parks and Beaches.

There are gaps however in police powers so that a person may act in a manner which is unacceptable to society, yet not unlawful under current legislation. The offence of being Drunk and Disorderly is incomplete if drunkenness cannot be proved; Public Nuisance offences require more than one person to have been affected; Breach of the Peace offences require an outbreak of violence, or imminent outbreak of such; Policing of Roads/Parks/Beaches legislation relating to public order is very limited.

Someone could therefore be abusive or threatening to individuals where no outbreak of violence is likely, and where no drunkenness is present, resulting in socially unacceptable behaviour for which the police have little or no power to deal with appropriately. In addition there is currently no offence to deal with stalking or causing harassment where one person only may be affected and where violence or a breach of the peace is unlikely to occur. The Draft Crime (Disorderly Conduct and Harassment) (Jersey) Law 200- seeks to overcome the problems identified with the existing legislative provisions.

The Draft Crime (Disorderly Conduct and Harassment) (Jersey) Law 200- creates an offence of using threatening or abusive words or behaviour, or engaging in disorderly behaviour if a person within hearing or sight would be likely to be caused alarm or distress by the words or behaviour. This offence may be committed in public or in a private place, including a dwelling (except where the other person is also within the same dwelling). A person commits an offence if he or she intends such actions to be disorderly, threatening or abusive, or is aware that they may be disorderly, threatening, or abusive.

When this matter was brought before the States on 16th January 2007 as P.151/2006 there was general support in principle for the substantive provisions of the draft Law. Concern was expressed however in respect of the scope of the term “insulting”. Much of the opposition to the scope of the draft Law centred on visible representations and such representations being defined as “insulting”, which have been addressed in this new draft.

The draft Law would introduce a statutory offence to deal with stalking or causing harassment and would legislate against a person pursuing a course of conduct that amounts to stalking or harassment of another person where he or she knows, or ought to know, that such conduct would amount to harassment. Provision is also made for restraining orders where a person has been convicted of harassment. The provisions relating to these offences replicate those in the United Kingdom Protection of Harassment Act 1997.

Financial and manpower implications

There are no financial or manpower implications for the States arising from this legislation, and the Minister has signed the relevant statement of compatibility with the European Convention on Human Rights.

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 2nd April 2008 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 Crime (Disorderly Conduct and Harassment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Article 1 defines various terms used in the Law.

Article 2 specifies that an offence is committed if a person, within the hearing or sight of another person, uses threatening or abusive words or behaviour, or engages in disorderly behaviour, if a person would be likely to be caused alarm or distress by the words or behaviour.

The offence may be committed in public or in a private place, including a dwelling, but no offence is committed where the words or behaviour are used by a person inside a dwelling and the other person is also inside that dwelling.

An offence is only committed if the defendant intended to threaten or be abusive, or engage in disorderly behaviour, or was aware that his or her conduct may be threatening or abusive. A person whose awareness is impaired by intoxication shall be taken to be aware of that of which he or she would be aware if not intoxicated, unless he or she establishes that the intoxication was involuntary or caused solely by the taking or administration of a substance in the course of medical treatment.

It is a defence if the defendant establishes that –

- (a) the defendant had no reason to believe there was a person within hearing or sight of the defendant who was likely to be caused alarm or distress by the defendant's words or behaviour;
- (b) he or she was inside a dwelling and had no reason to believe that the words or behaviour used would be heard or seen by a person outside that dwelling; or
- (c) the conduct was reasonable.

A person who commits an offence against this Article is liable to imprisonment for up to 3 months and/or a fine of up to level 3 on the standard scale (£2,000).

Article 3 sets out the offence of harassment. The offence consists of a course of conduct that amounts to harassment and which the offender knows, or ought to know, amounts to harassment. Conduct amounts to harassment if a reasonable person in possession of the same information would think it was harassment. Conduct must occur more than once to constitute harassment. Harassment of a person includes alarming or distressing a person.

A person who commits an offence against this Article shall be liable to imprisonment for up to 6 months and/or a fine of up to level 4 on the standard scale (£5,000).

Article 4 establishes a defence to the charge of harassment if a person engages in the relevant conduct so as to prevent or detect an offence, or under a law permitting the conduct, or if the conduct was reasonable in the circumstances.

Article 5 enables a restraining order to be made against a person convicted of the offence of harassment. Such an order may prohibit types of behaviour that are specified in the order, including the use of a motor vehicle, if a motor vehicle was used in the offence.

Article 6 makes it an offence to breach an order made under this Law. A person who commits an offence against this Article shall be liable to imprisonment for up to 12 months and/or a fine of up to level 4 on the standard scale.

Article 7 enables an order made under this Law to be varied or revoked.

Article 8 makes it an offence to aid or abet the commission of an offence against this Law.

Article 9 is the citation and commencement Article. The Law, if approved, shall come 7 days after it is registered.



Jersey

DRAFT CRIME (DISORDERLY CONDUCT AND HARASSMENT) (JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Threatening, abusive or disorderly conduct</u>
<u>3</u>	<u>Harassment</u>
<u>4</u>	<u>Defence to charge of harassment</u>
<u>5</u>	<u>Restraining order may be made if harassment has occurred</u>
<u>6</u>	<u>Breach of order</u>
<u>7</u>	<u>Amendment or revocation of restraining order</u>
<u>8</u>	<u>Parties to offences</u>
<u>9</u>	<u>Citation and commencement</u>



Jersey

DRAFT CRIME (DISORDERLY CONDUCT AND HARASSMENT) (JERSEY) LAW 200

A LAW to create an offence of threatening, abusive, or disorderly conduct and an offence of harassment, to enable restraining orders to be imposed in respect of persons convicted of harassment, and for related purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

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

1 Interpretation

In this Law, unless the contrary intention appears –

“dwelling” means any structure or part of a structure occupied as part of a person’s home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“intoxication” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means;

“motor vehicle” means a motor vehicle within the meaning of the Motor Vehicle Registration (Jersey) Law 1993^[1].

2 Threatening, abusive or disorderly conduct

- (1) A person commits an offence if he or she –
 - (a) uses words that are threatening or abusive;
 - (b) behaves in a threatening or abusive way; or
 - (c) engages in disorderly behaviour,

within the hearing or sight of another person likely to be caused alarm or distress by the words or behaviour.

- (2) An offence under paragraph (1) may be committed in a public or a private place (including a dwelling), except that no offence is committed if the words, or behaviour, are used by a person inside a dwelling and the other person is also inside that dwelling.
- (3) A person commits an offence under paragraph (1) only if –

- (a) in a case referred to in paragraph (1)(a) or (b), he or she intends his or her words, or behaviour to be threatening or abusive, or is aware that the words, or the behaviour, may be threatening or abusive; or
 - (b) in a case referred to in paragraph (1)(c), he or she intends his or her behaviour to be, or is aware that it may be, disorderly.
- (4) For the purposes of this Article a person whose awareness is impaired by intoxication shall be taken to be aware of that of which he or she would be aware if not intoxicated, unless he or she shows either that his or her intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.
- (5) It is a defence for the accused to prove that –
- (a) he or she had no reason to believe that there was any person within hearing or sight who was likely to be caused alarm or distress;
 - (b) he or she was inside a dwelling and had no reason to believe that the words or behaviour used would be heard or seen by a person outside that dwelling; or
 - (c) his or her conduct was reasonable.
- (6) A person who commits an offence under paragraph (1) shall be liable to imprisonment for a term of 3 months and a fine of level 3 on the standard scale.

3 Harassment

- (1) A person commits an offence if he or she pursues a course of conduct –
- (a) that amounts to harassment of another person; and
 - (b) that he or she knows, or ought to know, amounts to harassment of another person.
- (2) For the purposes of this Article, a person ought to know that his or her course of conduct amounts to harassment of another person if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.
- (3) A person who commits an offence under paragraph (1) shall be liable to imprisonment for a term of 6 months and a fine of level 4 on the standard scale.
- (4) In this Article, to harass a person includes to alarm the person or to cause the person distress.
- (5) In this Article and Article 4, a course of conduct –
- (a) includes speech;
 - (b) includes conduct of a kind that occurs on one occasion and conduct of a different kind that occurs on another occasion; and
 - (c) does not include conduct that occurs on only one occasion.

4 Defence to charge of harassment

It is a defence for a person who is accused of an offence under Article 3(1) in relation to a course of conduct pursued by the person if the person proves that –

- (a) the course of conduct was pursued for the purpose of preventing or detecting an offence;
- (b) the course of conduct was pursued under an enactment or customary law or so as to comply with a condition or requirement imposed by a person under an enactment or customary law; or
- (c) in the particular circumstances the pursuit of the course of conduct was reasonable.

5 Restraining order may be made if harassment has occurred

- (1) If a court convicts a person of an offence under Article 3(1), a person presenting or prosecuting the case against the convicted person may apply to the court to make a restraining order against the convicted person.
- (2) A court to which an application is made under paragraph (1) may, in addition to any other order or penalty that the court may make or impose, make a restraining order against the person to whom the application relates if the court is satisfied on the balance of probabilities that it is appropriate to do so in order to ensure that the person will not commit a further offence under Article 3(1).
- (3) A restraining order shall prohibit the person against whom it is made from engaging in conduct of the kind specified in the order.
- (4) A restraining order made against a person may prohibit the driving of a motor vehicle by the person or the driving of a motor vehicle by the person other than in circumstances specified in the order, if a motor vehicle was used by the person in committing an offence under Article 3(1).
- (5) A restraining order shall specify the period for which it is to remain in force (which period may be specified to be of an indeterminate period).

6 Breach of order

- (1) A person against whom an order is made under Article 5 who breaches the order commits an offence.
- (2) A person who commits an offence under paragraph (1) shall be liable to imprisonment for 12 months and a fine of level 4 on the standard scale.

7 Amendment or revocation of restraining order

- (1) A person against whom an order is made under Article 5 may apply to the court by which the order was made to have the order amended or revoked.
- (2) A court to which an application is made under paragraph (1) in relation to an order made under Article 5 may amend or revoke the order if it is satisfied that it is appropriate to do so.

8 Parties to offences

Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

9 Citation and commencement

This Law may be cited as the Crime (Disorderly Conduct and Harassment) (Jersey) Law 200 and shall come into force 7 days after it is registered.

