

STATES OF JERSEY



DRAFT MAGISTRATE'S COURT (MISCELLANEOUS PROVISIONS) (AMENDMENT No. 10) (JERSEY) LAW 201-

Lodged au Greffe on 21st October 2010
by the Chief Minister

STATES GREFFE



Jersey

**DRAFT MAGISTRATE'S COURT
(MISCELLANEOUS PROVISIONS) (AMENDMENT
No. 10) (JERSEY) LAW 201-**

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Magistrate's Court (Miscellaneous Provisions) (Amendment No. 10) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

REPORT

This amendment is intended to overcome a problem with Article 10 of the existing Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949, which reads as follows –

“10 Service of summons

- (1) Every summons ... shall be served by –
 - (a) registered post or by the recorded delivery service; or
 - (b) a member of the police on the person to whom it is directed by delivering the same to that person personally or by leaving the same with some person for the person to whom it is directed at that person’s last or most usual place of abode.
- (2) A member of the police who serves a summons under paragraph (1)(b) shall sign a record of service of the summons which shall be produced to the Magistrate’s Court at the time and place mentioned in the summons.”.

The problem concerns the return of summonses on Friday afternoons for non-payment of parking fines. The way that recorded delivery works is such that, if nobody signs for receipt of the letter containing the summons, a docket is left at the address inviting the addressee to come to the Post Office to collect the letter. If the addressee does not do so within so many days, the letter is returned – undeliverable – to the sender.

The Magistrate has ruled that if a summons is neither delivered to, nor collected by, the defendant, the summons cannot be said to have been ‘served’. As the Law stands, therefore, if the addressee does not collect the letter from the Post Office containing a summons for non-payment of a parking fine, he or she can effectively avoid the fine. Indeed, a summons for any other purpose under the Law might be ignored in this way, and liability potentially avoided or at least delayed.

An amendment to the Law is therefore proposed so that the service of summonses can be evidenced by a record of first class post (or equivalent) as in England and Wales. Rule 4.4 of the English Criminal Procedure Rules 2010 provides as follows –

“4.4 Service by leaving or posting a document

- (1) A document may be served by leaving it at the appropriate address for service under this rule or by sending it to that address by first class post or by the equivalent of first class post.
- (2) The address for service under this rule on –
 - (a) an individual is an address where it is reasonably believed that he or she will receive it;”.

A similar provision would overcome the problem with Article 10.

In order to effect the change needed, it is proposed that Article 10 of the 1949 Law is repealed. Instead, the amendment would expand the powers for the Superior Number to make the rules of court. Specifically, Articles 29(b) and (d) of the 1949 Law empower the Court to make rules regulating its practice and procedure; and generally for carrying the purposes and provisions of the 1949 Law into effect. However, the amendment would make additional provision to enable the Superior Number to make

the rules of court allowing for the service of documents, as well as enabling the consequential amendment or repeal of enactments that relate to any matter for or with respect to which rules are made. This provision is already provided under the Royal Court (Jersey) Law 1948.

Such enabling powers for the Superior Number to make the rules of court, rather than the Law itself, would make the necessary provision in relation to the service of summonses. It is then, subject to the view of the Court, a matter for the Superior Number to make provision for Rule 4.4 of the Criminal Procedure Rules 2010.

Financial and manpower implications

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

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 1st October 2010 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Magistrate's Court (Miscellaneous Provisions) (Amendment No. 10) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law replaces Article 29 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 –

- (a) to allow provision to be made by rules of court for the service of documents;
- (b) to enable rules of court to be made amending other enactments consequentially on the making of rules of court; and
- (c) to remove a provision about amendments and revocations of rules (because these matters are dealt with in Article 11(3) of the Interpretation (Jersey) Law 1954) and about tabling and disallowance (because these matters are dealt with in the Subordinate Legislation (Jersey) Law 1960).

Article 10 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949, which currently makes provision about service of a summons, is repealed.



Jersey

DRAFT MAGISTRATE'S COURT (MISCELLANEOUS PROVISIONS) (AMENDMENT No. 10) (JERSEY) LAW 201-

A LAW to amend further the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949.

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 10 repealed

Article 10 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949¹ shall be repealed.

2 Article 29 substituted

For Article 29 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 the following Article shall be substituted –

“29 Rules of Court

The Superior Number of the Royal Court may make rules of court for or with respect to any of the following –

- (a) forms to be used for the purposes of this Law;
- (b) practice and procedure in any proceedings under this Law;
- (c) the rates or scales of payment of any costs which are payable under Article 19 and the conditions under which any such costs may be allowed;

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- (d) the service of any application, summons, order, notice, or other instrument or document, issued under this Law or under rules of court made under this Article;
 - (e) consequentially amending any enactment (other than this Article) that relates to any matter for or with respect to which rules of court are made under this Article;
 - (f) generally carrying the purposes and provisions of this Law into effect.”.

3 Citation and commencement

This Law may be cited as the Magistrate's Court (Miscellaneous Provisions) (Amendment No. 10) (Jersey) Law 201- and shall come into force on the seventh day after it is registered.

¹ *chapter 07.595*