

STATES OF JERSEY



DRAFT REPATRIATION OF PRISONERS (JERSEY) LAW 201- (P.67/2011): COMMENTS

**Presented to the States on 6th June 2011
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

1. The Education and Home Affairs Scrutiny Panel supports the introduction of this legislation, which allows for the transfer of non-British prisoners who have no connection to the Island to serve their sentences in their home jurisdictions, as well as for the return from foreign countries to Jersey of prisoners of Jersey origin or those with close ties with the Island.
2. We note that this legislation will bring the Island into line with statutory arrangements which have existed in the UK since 1984 and will comply with EU standards. Failure to implement these arrangements could leave the Island open to a Human Rights challenge.
3. Given that the largest number of “overseas” prisoners are from the UK, it is imperative that proposed reforms to align the parole systems of Jersey and the UK be progressed as fast as possible. This is likely to encourage further voluntary transfers to UK prisons. The Panel urges the Minister, or his successor, to give greater priority to these reforms.
4. The Panel has discussed the draft Law with the Minister for Home Affairs on 2 occasions (11th February and 16th May 2011). The full transcripts are available on the Scrutiny website. This note provides a summary of the key issues discussed with the Minister.

Purpose and principles of the Law

5. The purpose of the draft Law is to enable the Minister, in certain circumstances and subject to certain constraints, limitations and human rights principles, to return non-British prisoners to their home country in order to serve their sentence in accordance with the sentencing regime of that particular country. The draft Law also provides for the return from foreign countries to Jersey of prisoners of Jersey origin or those with close ties with the Island.
6. The draft Law, which gives the Island the same statutory framework which has existed in the UK since 1984¹, will enable the Island to enter into bilateral agreements with other jurisdictions in order to implement transfer arrangements.
7. Essentially, transferred prisoners will serve their original sentence given for the offence committed in the sending jurisdiction, but in accordance with whatever rules apply in the receiving country in respect of supervised release (parole). For example, if a person was transferred outside the Island serving a life sentence with a minimum recommendation, the receiving jurisdiction would be expected to abide by that recommendation. The same would apply to a person being transferred into the Island.

¹ Repatriation of Prisoners Act 1984

8. The rules for early release vary across different jurisdictions. This might mean that repatriated prisoners would be eligible for release in their home jurisdiction earlier than Jersey-based prisoners convicted of the same criminal offence. In Portugal, for example, conditional release is possible with or without supervision at the halfway point, two-thirds point, or five-sixths point of sentence. In addition, 2 months prior to these dates, the prisoner may be released on temporary licence. Under current Jersey rules, a prisoner will serve at least two-thirds of their sentence before being eligible for release (for further discussion on Jersey's current early release arrangements see paragraph 22–26 below).

Benefits to prisoners

9. The new legislation will be beneficial to the large number of foreign prisoners at H.M.P. La Moye who have no substantial ties with Jersey, who will be able to return to their home country, re-establish links with their families and receive visits². Many of these prisoners would normally be deported at the end of their sentence³. Repatriation would facilitate earlier and more effective rehabilitation into their home communities.
10. The nature of the prison population in Jersey is such that there is quite a large number of people who are drugs couriers who have virtually no ties with the Island and who are serving relatively long sentences, in accordance with the Island's drug activity policy.
11. Also, where there is a humanitarian need for transfer (for example, serious illness of a relative) the Law will allow transfers to take place directly with the home jurisdiction rather than having to go through the UK as at present. The current arrangements take too long because they have to transfer twice – once to UK (unrestricted) then to their home country under the UK's arrangements.
12. On the other hand, there may be some prisoners who claim to have close ties with the Island and who wish to stay in Jersey – the Law provides for the Minister to have regard to this before issuing a warrant (see below for further discussion on the issue of consent).

International agreements

13. The transfers must be agreed by both the sending and the receiving jurisdictions. Once the draft Law has been enacted, it will be necessary to reach agreements with the UK and foreign countries to put the transfers into effect.

² Table 1 in the Minister's report gives a figure of 49 foreign nationals as at 23rd February 2011, although some of these may be considered to have close ties with the Island.

³ Repatriation of prisoners is not an alternative to deportation. Deportation orders are applied to individuals at the end of their custodial sentences in cases where they have no close ties which would warrant their remaining in Jersey. Repatriation may occur at any time during custody. Once the sentence has been completed the individual is free to return to the Island; whereas a deportation order would prohibit an individual from returning.

14. In terms of numbers at the Prison, the key jurisdictions besides the UK will be Portugal/Madeira and Poland. As this is a principle accepted across the EU, on the basis of the Council of Europe Convention on the Transfer of Sentenced Persons (1983), there would be no resistance from EU countries to implementing the transfers.
15. Currently no arrangements for the transfer of prisoners exist between Jersey and the other Crown Dependencies.
16. An EU Framework Directive requires all Member States to have arrangements in place for the transfer of prisoners by the end of 2011⁴. Jersey is not bound by this Directive; however, application to the European Court might lead that Court to rule that the Island should comply as the basis for the EU framework decision includes Human Rights considerations.
17. Currently, the focus for implementing this Law has been within the EU and not beyond. Extending agreements internationally to countries like Thailand is not under consideration at the present.

Consent

18. The draft Law provides for transfers to take place on the basis of consent or without consent of the prisoner. Where the transfer is to return a sentenced person to a jurisdiction in which the individual is resident, there is no requirement for that individual to give consent to the transfer. This is consistent with the latest amendments to the Council of Europe Convention, and is accordance with Human Rights advice provided that the transfer is 'necessary and proportionate'.
19. There are certain safeguards –
 - (a) there must be agreement between both the sending and receiving jurisdictions so it will not be possible to unload individuals without substantial ties on the receiving jurisdiction. This applies of course to individuals who have been sentenced elsewhere being transferred back to Jersey, as well as vice versa. If they are going to be accepted in Jersey they must have substantial links with the Island in the first place;
 - (b) the decision to transfer will be subject to judicial review challenge as to whether or not it is a reasonable decision; and
 - (c) the individual may make representations to the receiving side if he/she disagrees with the transfer.

Human Rights

20. Due consideration must be given to the Human Rights of the individual in respect of –

⁴ Council Framework Decision 2008/909/HA. There is, however, a 5 year derogation in the case of Poland for compliance with the latest EU Directive to make allowance for the large number of expatriate Polish workers throughout Europe.

- (a) the right to family life and the ties that an individual may have formed in the sentencing jurisdiction. Jersey authorities regularly consider these factors in a slightly different context in relation to deportation orders;
- (b) the right not to be sent to a country where they would be subject to torture or to inhuman or degrading treatment or punishment. This already applies in Jersey to consideration of returning illegal immigrants; and
- (c) the assurance that any incoming individual had been properly dealt with by an independent criminal court.

Temporary return of prisoners

- 21. The draft Law makes provision for the temporary return of a prisoner. This enables a jurisdiction to recall a prisoner for the purposes of giving evidence, for example, in relation to a subsequent case.

Potential savings for the Home Affairs Department

- 22. The cost of the transfer of prisoners is met by the sending jurisdictions; the ongoing costs of accommodating the prisoners become the responsibility of the receiving jurisdiction.
- 23. As an outcome of this Law, it is expected that there will be a net reduction in the number of prisoners at H.M. Prison La Moye as the number of foreign prisoners will far outweigh the number of returning Jersey offenders. Consequently there are potentially substantial savings to the Home Affairs Department.
- 24. The Minister informed the Panel that major savings could be made if it were possible to close a Wing at H.M.P. La Moye. A reduction of 20 prisoners, which could be feasible under the repatriation legislation, could result in the closure of a Wing, with a saving of 3.5 officers and an approximate saving of £140,000. The closure of a larger Wing accommodating 40 prisoners would enable savings in the region of £250,000 to £300,000. However, such a reduction would only be possible if there were transfer of prisoners to the UK⁵.

Review of 'Restricted' transfer arrangements for UK prisoners

- 25. As a consequence of implementing this Law, it will be necessary to review the current arrangements for transfer of prisoners to the UK, as the basis for their transfer currently differs from the transfer arrangements under the repatriation legislation.

⁵ Table 1 in the Minister's report shows that there were 49 UK prisoners as at 23rd February 2011.

26. All transfers to UK prisons since 1997 have been on a 'restricted' basis, meaning that they continue to serve their sentences in accordance with Jersey's parole system, not that of the UK. Under current Jersey rules, a prisoner will serve at least two-thirds of their sentence before being eligible for release, whereas the majority of prisoners in England and Wales serving one year or more will be released automatically at the halfway point under the supervision of the Probation Service.
27. This arrangement was introduced in order to remove a disparity in the treatment of prisoners serving the same sentence for the same offence, yet one being eligible for release earlier because of their transfer to the UK. For example, for a prisoner returning to the UK serving a 6 year sentence, there could be a difference of one year in time served between the 2 jurisdictions. Jersey prisoners, not unnaturally, felt disadvantaged.
28. Restricted transfers, however, have resulted in non-local prisoners losing enthusiasm for transfer to the UK, as the Jersey Prison is seen as a good place to serve a sentence in comparison to many UK prisons.
29. The principle of the Council of Europe Convention is that prisoners should serve their sentence on the basis of the principles of the country in which they are serving their sentence. Therefore, it seems logical that Jersey should be consistent with that principle in respect of prisoners transferred to the UK and revert to the previous system of unrestricted transfer of prisoners. This means that there would once again be an incentive, under current arrangements, for prisoners from the UK to transfer back to the UK; however, Jersey prisoners would again feel some resentment at being at a disadvantage.

Review of Jersey's parole system

30. The obvious corollary to the introduction of the Law, therefore, would be to bring Jersey's parole conditions into alignment with those of the UK, from where the majority of non-Jersey prisoners originate.
31. The Criminal Justice Policy proposes a parole system which would potentially be activated after half of a sentence, with prisoners remaining on parole until up to two-thirds of a sentence. There has been some work done in this direction by the Minister for Home Affairs; however, he told the Panel that this had been deferred in order to progress work on the repatriation legislation. It would be up to the next Minister to continue the work on the parole system.