

# STATES OF JERSEY



## **DRAFT REPATRIATION OF PRISONERS (JERSEY) LAW 2012 (APPOINTED DAY) ACT 201-**

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**Lodged au Greffe on 13th November 2012  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

## **DRAFT REPATRIATION OF PRISONERS (JERSEY) LAW 2012 (APPOINTED DAY) ACT 201-**

### **REPORT**

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#### **Introduction**

1. The Repatriation of Prisoners (Jersey) law 2012 was registered by the Royal Court on the 2nd March 2012. The Law will facilitate the transfer between Jersey and places outside the British Islands of persons detained in prison, hospitals and other institutions by courts exercising their criminal jurisdiction.
2. The Law provides that, where “international arrangements” apply to Jersey which provide for such transfers, the Minister will issue a warrant to effect the transfer into or out of Jersey. These are arrangements by which Jersey has agreed to be bound, whether entered into between Jersey and another country or territory, or between the United Kingdom on behalf of Jersey and another country or territory. When the Draft Law was adopted by the States on the 9th June 2011, the Report explained that the relevant international arrangements in Jersey’s case would be the extension to Jersey of the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol.
3. This Appointed Day Act is being brought forward at this time because the Island has made its application through official channels in the expectation that it will be able to comply with the requirements of the Council of Europe Convention and the Additional Protocol.

#### **Financial and manpower implications**

4. The Report that accompanied the Law when it was presented to the States contained a comprehensive statement on the financial and manpower implications entitled ‘Implementation – Practical Implications’. This section updates the information provided in that report.
5. During October 2012, the average prison population was 156. This is a significant reduction from the average of 186 in the report presented when the Draft Law was lodged in April 2011. This accords with the continuing reduction in recorded crime and court appearances but it is too early to tell whether this will be an enduring trend. Of the total prison population in October 2012, there were 94 prisoners who were not ‘local to Jersey’, broken down as follows:

**Table 1: Prisoners – Foreign Nationals and UK (26th October 2012)**

Sentence	Poland	Portugal	UK	Others
0.5 < 1yr	0	1	3	1
1 < 2yrs	0	3	5 (1)	1
2 < 3yrs	3	1	3 (1)	2
3 < 4yrs	0	3	8	
4yrs + over	5 (1)	7 (2)	22	12
Remand	2	3	5	4
<b>Totals</b>	<b>10 (1)</b>	<b>18</b>	<b>46 (2)</b>	<b>20</b>

**Notes to the Table:**

1.	Others include – Australia, Bangladesh, Bulgaria, Canada, Eire, Germany, Ghana, India, Kenya, Morocco, Nigeria, and Uganda.
2.	Figures not in brackets reflect the total number of prisoners in each category.
3.	Figures in brackets relate to the number of females included in the totals.
4.	Deportation Orders – Poland – of the above total, 4 orders issued with 2 pending.
5.	Deportation Orders – Portugal – of the above total, 5 orders issued with 5 pending.
6.	Deportation Orders – Others – of the above total, 2 orders issued with 5 pending.

6. Whereas transfers under the Convention require the consent of the sentenced person, the Additional Protocol allows for transfers without consent where the sentenced person is subject to a deportation order and both the sentencing and administering States agree to the transfer. From the table, in relation to Poland and Portugal, a total of 9 deportation orders have been issued with a further 7 pending. In relation to prisoners from other foreign countries, 2 deportation orders have been issued with a further 5 pending. At present, deportation takes place on completion of a custodial sentence. Under the new arrangements, transfers for those subject to deportation orders would be sought at an earlier stage once all judicial proceedings had been completed. Those prisoners who are foreign nationals and who are not subject to a deportation order will be consulted routinely to ascertain whether they wish to be considered for repatriation.
7. The United Kingdom has had repatriation arrangements since 1984. Having consulted the Ministry of Justice about their recent experience with repatriating prisoners, their advice is that there are particular factors to be taken into account when seeking to effect repatriation to the Netherlands or Poland in particular.
8. For drug-related offences, historically, the Netherlands would seek to convert sentences. However, in recent years, it has favoured continued enforcement unless the law in the sentencing State is incompatible with the law in the Netherlands. In such circumstances, the United Kingdom's experience is that the Netherlands would adapt the sanction to one that is prescribed by its own law for a similar offence. This may result in a significant reduction in sentence and invariably does for most drug offences. The Minister would take these

factors into account when considering whether to issue a warrant of transfer. In the case of Poland, the United Kingdom has recognised their significant prison overcrowding problems and, consequently, has sought only to transfer prisoners serving indeterminate sentences. The response times from Poland have been long as every case is referred to the judiciary. Clearly, there will be particular factors to be taken into account depending upon the country involved and the Minister will need to consider repatriation on a case-by-case basis.

9. The table also shows that there are 46 'UK prisoners' serving sentences in the Prison. In the previous report, it was noted that it is this category which provides the greatest potential for making financial savings. It was explained that, since the introduction of the Crime Sentences Act 1997, all transfers to the United Kingdom have been carried out on a 'restricted' basis, meaning that in whichever United Kingdom jurisdiction a sentence imposed by a Jersey court is being served, the sentenced person is subject to the Jersey custodial regime. During the debate on the 9th June 2011, the Minister gave notice to the Assembly that it would be his intention, for the reasons explained during the debate, to move to a system of 'unrestricted' transfers once the Repatriation of Prisoners (Jersey) Law 2012 was being operated. This will remove any disparity in treatment with those foreign prisoners subject to repatriation whereby enforcement of the sentence is governed by the law of the administering (receiving) State. It will also bring Jersey into line with both Guernsey and the Isle of Man who have always transferred prisoners to the United Kingdom on an unrestricted basis.
10. In his address to the States when the law was debated, the Minister described the move to unrestricted transfers of prisoners to the United Kingdom as a "secondary effect" of introducing the Repatriation of Prisoners (Jersey) Law 2012. It is important to clarify that there is no direct relationship between this law and the transfer arrangements for UK prisoners under the Crime Sentences Act 1997. The provisions in the Law relating to overseas transfers, cannot be conflated with those in the 1997 Act in relation to transfers between the British Islands and the United Kingdom. The 2 are quite separate and not designed to be operated in tandem. Both are relevant, however, to the practical effect which their implementation has on the future prison population since, in both cases, their use involves the return of prisoners to serve the remaining part of their sentence in their home jurisdiction.
11. As part of the Comprehensive Spending Review, the Home Affairs Department has a savings target of £370,000 linked to the introduction of the Repatriation of Prisoners (Jersey) Law 2012. The majority of this saving consists of 5 prison officer posts and one management post. The achievement of this saving is wholly dependent upon a further reduction in the prison population through a proportion of both foreign and United Kingdom prisoners returning to their home jurisdictions to serve out the remainder of their sentences. The Department estimates that 20-30 UK prisoners will opt for a transfer on unrestricted terms; the repatriation of foreign prisoners will be more gradual and take place over a longer period. Once these arrangements are in place, however, the saving should be sustainable provided we do not experience an unexpected rise in the prison population over a short period of time.

12. As alluded to in the financial and manpower implications noted in the previous report, the Prison Development Plan needs to be reviewed in the light of the anticipated reduction in the prison population. The remaining project in the 2016 capital programme – the Gatehouse and Administrative Block – will need to proceed as planned. The prison has benefitted from significant investment in recent years; however, it has to be capable of accommodating different categories of prisoner in separate accommodation. The challenge will be to achieve that in a cost-effective way taking into account the small numbers of female prisoners and young offenders.

## **Explanatory Note**

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This Act will bring the Repatriation of Prisoners (Jersey) Law 2012 into force on 1st January 2013.





Jersey

## **DRAFT REPATRIATION OF PRISONERS (JERSEY) LAW 2012 (APPOINTED DAY) ACT 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 17 of the Repatriation of Prisoners (Jersey) Law 2012<sup>1</sup>, have made the following Act –

### **1 Commencement of Law**

The Repatriation of Prisoners (Jersey) Law 2012<sup>2</sup> shall come into force on 1st January 2013.

### **2 Citation**

This Act may be cited as the Repatriation of Prisoners (Jersey) Law 2012 (Appointed Day) Act 201-.

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- <sup>1</sup> *L.6/2012*  
<sup>2</sup> *L.6/2012*