

# **STATES OF JERSEY**



## **DRAFT STATUTE LAW REVISION (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-**

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**Lodged au Greffe on 18th February 2014  
by the Chief Minister**

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**STATES GREFFE**





## **DRAFT STATUTE LAW REVISION (MISCELLANEOUS PROVISIONS) (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 Statute Law Revision (Miscellaneous Provisions) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

*Chief Minister*

Dated: 17th February 2014

## REPORT

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### Introductory

As its short title indicates, the purpose of this *Projet de Loi* is to revise a number of unrelated statutory provisions. Some of the provisions are spent, others serve little or no practical purpose or have been rendered nugatory by case law. The draft Law therefore repeals or amends as necessary the Laws in which those provisions appear.

The statutory provisions concerned relate to –

1. the appointment of ‘experts’ under the *Loi (1860) sur le transfert d’héritages* (“**the 1860 Law- 2. certain redundant references in 19th Century legislation to imprisonment for debt.**

In the case of 1. above, the draft Law will remove the need for *experts* to be sworn-in by the Royal Court every 5 years, and will reduce an administrative burden that falls not only upon the Court, but upon the Parishes and the Chief Minister’s Department – *see further below*.

In the case of 2. above, the draft Law will clear the way for the removal of the reservation entered on Jersey’s behalf in relation to article 11 of The International Covenant on Civil and Political Rights (“**ICCPR**”) – *see further below*.

#### 1. The appointment of ‘experts’

- 1/1 Prior to the introduction of Ministerial Government in December 2005, the 1860 Law was administered by the Legislation Committee. Under Article 2 of the 1860 Law, the Committee was required, every 5 years, to appoint 24 *experts* – 12 *experts* from the Parish of St. Hélier and 12 *experts* from the other 11 Parishes. This function now falls upon the Chief Minister as a result of the States of Jersey Law 2005.
- 1/2 The function of the *experts* is to make a valuation when necessary of “... *les maisons, terres, et terrains situés dans la Paroisse de St. Hélier, et ... les propriétés dans les autres Paroisses*” [...] the houses, estates, and lands situated in the Parish of St. Helier, and the properties in the other Parishes]. The duly appointed *experts* are required to take oath before the Royal Court.
- 1/3 Technically it is open to a person purchasing immovable property to apply jointly with the vendor to the Royal Court for *experts* to be nominated to carry out a valuation. The Court, if it accedes to the application, must fix a date for the valuation to be presented to the Court. The valuation (*rapport des experts*) is then registered by the Court (*enregistré dans les rôles de la Cour Royale*).
- 1/4 However, this procedure now has no relevance except in relation to Articles 50 and 51 of the *Loi (1880) sur la propriété foncière* (“**Articles 50 and 51**”) which were designed to afford protection to the owner of hypothecated land in the event of a *dégrèvement* in which that owner was not the debtor, or if an hypothecary creditor sought to exercise his or her *droit de suite*.<sup>1</sup> Articles 50 and 51 enable the owner to keep the land by paying to the secured creditor the secured debt up to the value of the property either at the time the owner purchased it or at the time the creditor moves against it. The value of the land for this purpose is ascertained by invoking the procedure

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<sup>1</sup> i.e. the right to follow charged land into the hands of a third-holder.

under the 1860 Law. But for Articles 50 and 51, the procedure under the 1860 Law for the appointment of *experts* serves no purpose.

- 1/5 The Legislation Advisory Panel has consulted with various parties, including the Judicial Greffier and the Jersey Law Society. It emerges from such consultation that modern practice in respect of security and lending means that Articles 50 and 51 are “highly unlikely to be invoked”. Nonetheless, the Jersey Law Society’s view was that “... there may remain some obscure situation where the protection which Articles 50 and 51 provide might be appropriate.” However, there was no need to retain the procedure for the appointment of *experts* under the 1860 Law: instead, if a valuation were to be required, it should be able to be carried out in such manner as the Court might direct.
- 1/6 The draft Law would therefore repeal the 1860 Law and amend Article 51 of the *Loi* (1880) *sur la propriété foncière* to empower the Royal Court accordingly.
- 2. Redundant references to imprisonment for debt**
- 2/1 The ICCPR is a multilateral [treaty](#) adopted by the [United Nations General Assembly](#) on 16th December 1966, and in force from 23rd March 1976. It commits its parties to respect the [civil and political rights](#) of individuals, including the [right to life](#), [freedom of religion](#), [freedom of speech](#), [freedom of assembly](#), electoral rights and rights to due process and a fair trial. As of March 2012, the Covenant had 74 signatories and 167 parties.
- 2/2 The United Kingdom’s ratification of the ICCPR was extended to Jersey on 20th May 1976. That extension was subject to the reservation entered on Jersey’s behalf not to apply article 11 of the ICCPR (“**article 11**”). Article 11 is in these terms:
- “No-one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”*
- 2/3 On 2nd August 2006, the Jersey Government requested the United Kingdom Government to withdraw the reservation relating to article 11. The request was made on the basis that Jersey law had developed to the point where no court could properly order a debtor to be imprisoned on the ground merely of *inability to fulfil a contractual obligation*.
- 2/4 This legal position had been confirmed by the Court of Appeal in the case of *Benest v. Le Maistre* (1998) JLR 213, in which the judgment of Lord Carlisle of Bucklow made it clear that the court may not order imprisonment of a debtor if it is satisfied that he or she is in good faith and genuinely cannot do anything to pay the debt. The Court may only order imprisonment of a debtor where it is satisfied that he or she is perfectly capable of paying the debt, but is simply choosing not to do so.
- 2/5 This means that no civil court in Jersey can resort to imprisonment of a debtor “merely on the ground of inability to fulfil a contractual obligation.”
- 2/6 Notwithstanding the position under case law, there are residual – albeit redundant – references in some old Jersey statutes to imprisonment for debt that are inconsistent with the modern position; and it is necessary to expunge those references from the statute book in order finally to secure the withdrawal of the reservation on Jersey’s behalf in relation to article 11.

- 2/7 The *Loi* (1886) *sur l'emprisonnement pour dettes* actually safeguarded the position of an imprisoned debtor in as much as it limited the period for which he or she could remain incarcerated; but its provisions are redundant and would be repealed by the draft Law.
- 2/8 The *Loi* (1891) *sur la Cour pour le recouvrement de menues dettes* included provision for an Act of the Petty Debts Court to enable the plaintiff to lodge the defendant *en prison pour dettes* if the defendant did not have property that could be seized to satisfy the debt. But this too is redundant and would be repealed.
- 2/9 The *Loi* (1832) *sur les décrets* contains several antiquated references to a debtor being reduced to short rations (*petits dépens*) and related provisions which have long been superseded by post-War procedural provision made by Rules of Court.<sup>2</sup> These too would be deleted, as would certain spent provisions of the 1832 *Loi* that required a curator to act with his or her *électeurs*.<sup>3</sup>

### **Financial and manpower implications**

This Draft Law has no implications for the financial or manpower resources of the States, except insofar as the repeal of the *Loi* (1860) *sur le transfert d'héritages* will remove an administrative burden on the Chief Minister's Department and on the Royal Court (as well as on the Parishes).

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

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<sup>2</sup> Under the Royal Court (Jersey) Law 1948.

<sup>3</sup> The Mental Health (Jersey) Law 1969 abolished *curatelles*, with the result that references to *électeurs* have become redundant in relation to curators (but not in relation to *tuteurs*).

## APPENDIX TO REPORT

### **Draft Statute Law Revision (Miscellaneous Provisions) (Jersey) Law 201-**

This Note has been prepared in respect of the Draft Statute Law Revision (Miscellaneous Provisions) (Jersey) Law 201-. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR").

1. Protocol No. 4 to the ECHR secured certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto.
2. Article 1 of Protocol 4 recited that: "*No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.*"
3. It will be noted that Article 1 of Protocol 4 is in similar terms to article 11 of the ICCPR: "*No-one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.*"
4. In that connection the legal position in Jersey has been noted above in the Ministerial Report. It was held by the Court of Appeal in the case of *Benest v. Le Maistre* (1998) JLR 213, that no court may order imprisonment of a debtor if it is satisfied that he or she is in good faith and genuinely cannot do anything to pay the debt. This is consistent with the requirement of Protocol 4, Article 1, that no person be *deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation*; and the object of the draft Law – insofar as it repeals or amends statutory provisions relating to civil debt – is consistent with that ECHR requirement.
5. No provisions of the ECHR are engaged by the remainder of the draft Law.

## **Explanatory Note**

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This draft Law would remove from the statute book, or amend, various provisions which have become obsolete or unnecessary in the modern legal environment.

References to imprisonment for debt on the grounds of inability to fulfil a contractual obligation would be removed by *Articles 1 and 3*, and by the repeal of the *Loi (1886) sur l'emprisonnement pour dettes* effected by *Article 4*. In particular, for Article 2 of the *Loi (1832) sur les décrets* there would be substituted an Article which may be translated as follows:

“A creditor who has obtained against a debtor an act or judgment (whether of the Royal Court or of the Petty Debts Court) for the payment or acknowledgment of an existing or contingent bond, account, or other debt, or for the settlement of an account or fixing of quantum of damages, may, on application to the Royal Court within no later than one month, authorize the Viscount to give notice to the said debtor that he must satisfy his creditor within two months of the said notice, on pain of judgment against all his personal and heritable property.”.

An unwieldy and rarely used procedure for the appointment in each Parish of “Experts” in the valuation of land would be abolished by the repeal of the *Loi (1860) sur le transfert d'héritages* (*Article 4*) and by a substitution of Article 51 in the *Loi (1880) sur la propriété foncière* (*Article 2*).

*Article 5* provides for the citation of this Law and for its coming into force.



## **DRAFT STATUTE LAW REVISION (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-**

### **Arrangement**

#### **Article**

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## **DRAFT STATUTE LAW REVISION (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-**

**A LAW** to repeal the *Loi (1860) sur le transfert d'héritages* and the *Loi (1861) sur l'emprisonnement pour dettes*, and to amend certain provisions of the *Loi (1832) sur les décrets*, the *Loi (1880) sur la propriété foncière* and the *Loi (1890) sur la Cour pour le recouvrement de menues dettes*

*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      Amendment of the *Loi (1832) sur les décrets***

In the *Loi (1832) sur les décrets*<sup>1</sup> –

- (a) in Article 1, for the words “dans l’un des deux cas suivants:

1. S’il a été réduit aux petits dépens.
2. S’il”

there shall be substituted “s’il”;

- (b) for Article 2 there shall be substituted the following –

“Le créancier qui aura obtenu contre un débiteur un acte ou jugement (soit de la Cour Royale soit de la Cour pour le Recouvrement de Menues Dettes) pour le paiement ou la reconnaissance d’une obligation actuelle ou contingente, compte, ou autre dette, ou pour le règlement d’un compte, ou statuant le montant des dommages-intérêts, pourra, en s’adressant un mois après à la Cour Royale, faire autoriser le Vicomte à signifier audit débiteur, qu'il ait à satisfaire son créancier dans deux mois de ladite signification, sous peine que tous ses biens-meubles et héritages soient adjugés renoncés.”;

- (c) in Article 3, for the words “un acte de prison” there shall be substituted the words “un acte ou jugement visé à l’Article 2”;

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- (d) in Article 4, for the words “prisonnier ou de l’absent” there shall be substituted the word “débiteur”;
  - (e) in Article 5 –
    - (i) the words “ou curateur” shall be deleted;
    - (ii) for the words “acte de prison” there shall be substituted the words “acte ou jugement visé à l’Article 2 de la présente Loi”;
    - (iii) in each place in which they occur, the words “ou de l’interdit” shall be deleted.

## 2 Amendment of the *Loi (1880) sur la propriété foncière*

In the *Loi (1880) sur la propriété foncière*<sup>2</sup>, for Article 51 there shall be substituted the following Article –

“Les évaluations dont il est parlé dans l’Article précédent se feront de telle manière que la Cour Royale pourra de temps en temps déterminer.”.

## 3 Amendment of the *Loi (1891) sur la Cour pour le recouvrement de menues dettes*

In the *Loi (1891) sur la Cour pour le recouvrement de menues dettes*<sup>3</sup> –

- (a) in Article 14, the second paragraph shall be deleted;
- (b) Article 18 shall be deleted.

## 4 Repeals

The *Loi (1860) sur le transfert d’héritages*<sup>4</sup> and the *Loi (1886) sur l’emprisonnement pour dettes*<sup>5</sup> shall be repealed.

## 5 Citation and commencement

This Law may be cited as the Statute Law Revision (Miscellaneous Provisions) (Jersey) Law 201-, and shall come into force 7 days after the day on which it is registered.

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- <sup>1</sup> *chapter 18.225*  
<sup>2</sup> *chapter 18.495*  
<sup>3</sup> *chapter 07.210*  
<sup>4</sup> *L.2/1860 (chapter 18.300)*  
<sup>5</sup> *L.2/1886 (chapter 04.320)*