

**DRAFT MAGISTRATE'S COURT (MISCELLANEOUS PROVISIONS) (AMENDMENT No. 8) (JERSEY) LAW  
200-**

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**Lodged au Greffe on 16th May 2000  
by the Legislation Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

## REPORT

At present, the jurisdiction of the Magistrate's Court [formerly the Police Court] is confined to imposing -

- (a) a fine of no more than £2,000; and/or
- (b) a sentence of imprisonment of no more than six months.

This draft Law would increase that jurisdiction to -

- (a) a maximum fine of £5,000; and/or
- (b) a maximum term of imprisonment of twelve months

### Historical background

Before 1853, the Royal Court had jurisdiction to deal with all criminal matters serious or trivial. However, the *Loi* (1853) *établissant la Cour pour la répression des moindres délits* made the following provision [in translation] -

*"The Bailiff, the Lieutenant Bailiff, or the Petty Debts Court judge, shall sit ..... in order to hear and to adjudicate upon 'Causes de Police' which may be heard and dealt with summarily, and for which the penalty does not exceed five pounds or eight days imprisonment. He shall hear the evidence in the more serious cases where the defendant has been arrested, in order to decide whether there are grounds to remand him in custody, or if he ought to be released, or if he should be admitted to bail; in this latter case, the Judge shall fix the amount of bail to be furnished."*

This did not create 'summary offences' as such, but it did confer a discretion on the lower court to determine whether or not, on the facts, a penalty within its jurisdiction was merited. If the offence deserved a penalty within the jurisdiction of the Royal Court, the Police Court would remand the defendant up to the Royal Court for trial. The position remains unchanged to the present day in that Jersey law still does not classify criminal offences as being triable *only* by the Magistrate or *only* by the Royal Court. It remains in the discretion of the Magistrate, on the facts before him, to decide whether he ought to deal with the offence or remand the case to the Royal Court.

What has changed, however, is the limit of the jurisdiction of the Magistrate's sentencing powers. Article 4 of the Police Court (Miscellaneous Provisions) (Jersey) Law 1949 [as it was then called] provided that the maximum penalties which could be imposed by the Magistrate should be a fine of £50 or imprisonment not exceeding three months or both. In 1960 the maximum amount of the fine was increased from £50 to £100. In 1970 the maximum fine was increased to £200 and the maximum term of imprisonment was increased to six months. In 1979 the maximum fine was increased to £500. Eventually in 1990 that maximum was increased to £2,000.

The maximum term of imprisonment remains at six months.

### Present day considerations

The Presidents' Policy Group of the States recently published a consultation document on an overall crime strategy. Amongst other things, it emphasized the need to deal with offenders at the right level of court and as quickly as practicable in the interests of both the victim and the offender. The document recommended that the sentencing powers of the Magistrate be increased. In assessing the need for such increased sentencing powers, the Legislation Committee has taken account of the following considerations.

1. There has been a considerable increase in the number of criminal cases brought before the Royal Court in recent years. There appears to be little prospect of the number of such cases diminishing.
2. It is important that cases be dealt with as quickly as possible, but in a manner consistent with a proper disposal of the case. This is important from the victim's point of view as well as from the offender's point of view. If there has been a long delay between the commission of an offence and the giving of evidence in relation to that offence, the memories of the witnesses will be less reliable. One can expect contested trials before the Magistrate's Court to take place much sooner than is possible in a trial before the Royal Court.
3. The Magistrate's Court is staffed by professional judges and there is no good reason why their sentencing powers should be less than those of Magistrates in a jurisdiction such as England and Wales. In that jurisdiction, although

the sentence for an individual offence cannot exceed six months, a Magistrates' Court can impose consecutive sentences up to a total of twelve months. Where imprisonment in default of payment of a fine is being imposed, it can be done so consecutively up to a further six months, resulting in a total of eighteen months' imprisonment.

4. There is now the facility of a legally qualified prosecutor in cases before the Magistrate. This is relevant because, in the past, concern was expressed about increasing the jurisdiction of the Magistrate's Court given the lack of proper representation of the prosecution. Now that a professional prosecutor is able to be present in the Magistrate's Court, misgivings on this front can be allayed.
5. There is a considerable increase in the amount of work involved in a case once it is committed to the Royal Court. A Law Officer or a Crown Advocate has to prepare and present the case to the Royal Court. If there is not a guilty plea, an Assize trial or trial before the Inferior Number must take place with consequent pressure on resources.

## **Conclusion**

The Committee believes that it is right to propose this increase in the jurisdiction of the Magistrate. The Committee has considered the argument against the proposal, namely that, at present, a person charged with an offence likely to attract a sentence exceeding six but not exceeding twelve months and who wishes to plead not guilty is tried by a jury or (for a statutory offence) by Jurats in the Inferior Number. The Committee shares the view of the Crime Strategy Group that the need to ensure a timely disposal of criminal cases is of primary importance. In any event, a trial before a professionally qualified Magistrate, assuming the presence of a legally qualified prosecutor, is not of itself unsatisfactory. When coupled with the need to use scarce resources in a more effective manner, the Committee believes the arguments in favour of the change outweigh the argument against.

Accordingly, this draft Law would increase the Magistrate's jurisdiction to that of imposing a maximum fine of £5,000 and/or a term of imprisonment not exceeding twelve months.

## **Compensation orders**

The Magistrate is empowered also to award compensation orders. Originally he had power to award damages up to a maximum amount which was parallel with his jurisdiction insofar as fines were concerned. Article 2(3) of the Criminal Justice (Compensation Orders) (Jersey) Law 1994 therefore fixed compensation orders at a maximum of £2,000. However the States were empowered under that Article to fix a different sum by Regulations.

Draft Regulations would increase that sum to £5,000 in line with the increase in jurisdiction in relation to fines.

## **Amendment relating to summonses**

Article 8(1) of the 1949 Law provides that -

*“Any person who has committed or is suspected of having committed an offence for which he is liable by law to be fined in an amount not exceeding £2,000 or to be imprisoned for a term not exceeding six months may, instead of being arrested, be summoned at the instance of the Constable, to appear before the [Magistrate's] Court”.*

If this provision were applied strictly, the use of the summons procedure would be restricted to those cases in which the maximum statutory penalty fell within the jurisdiction of the Magistrate. The draft Law would amend Article 8(1) so that it would read -

*“Any person who has committed or is suspected of having committed an offence may, instead of being arrested, be summoned at the instance of the Constable, to appear before the [Magistrate's] Court”.*

The Attorney General has advised that there is no good reason for restricting the issuing of a summons to cases where the statutory maximum falls within the Magistrate's Court. Accordingly this amendment would enable cases to be commenced by summons (instead of arrest) in any case in which that course of proceeding was deemed appropriate without actually expanding the jurisdiction of the Magistrate as such.

### **Explanatory Note**

The effect of this draft Law is to increase the maximum penalties which may be imposed by the Magistrate's Court from a fine of £2,000 and/or 6 months imprisonment to a fine of £5,000 and/or 12 months' imprisonment. It also removes the restriction whereby a summons could only be issued in lieu of arresting an alleged offender where the offence concerned carried maximum penalties within the sentencing limits of the Magistrate's Court.

**MAGISTRATE’S COURT (MISCELLANEOUS PROVISIONS) (AMENDMENT No. 8) (JERSEY) LAW 200-**

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**A LAW** to amend further the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949; sanctioned by Order of Her Majesty in Council of the

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(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)

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**STATES OF JERSEY**

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The \_\_\_\_\_ day of \_\_\_\_\_ 200-

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

**ARTICLE 1**

In this Law “principal Law” means the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949, as amended.<sup>[1]</sup>

**ARTICLE 2**

In Article 4(1) of the principal Law<sup>[2]</sup> -

- (a) for the words “two thousand pounds” there shall be substituted the word “£5,000”; and
- (b) for the words “six months” there shall be substituted the words “12 months”.

**ARTICLE 3**

In Article 8(1) of the principal Law<sup>[3]</sup> the words from “for which he is liable” to “six months” shall be deleted.

**ARTICLE 4**

The Police Court (Miscellaneous Provisions) (Amendment No. 4) (Jersey) Law 1990<sup>[4]</sup> is repealed.

**ARTICLE 5**

This Law may be cited as the Magistrate’s Court (Miscellaneous Provisions) (Amendment No. 8) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

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<sup>[1]</sup> Tome VII, page 545, Volume 1984-1985, page 9, Volume 1990-1991, page 133, Volume 1994-1995, pages 24 and 53, Volume 1996-1997, pages 171, 489 and 959 and Volume 1999, page 217.

<sup>[2]</sup> Tome VII, page 546, Volume 1990-1991, page 133 and Volume 1996-1997, page 489.

<sup>[3]</sup> Tome VII, page 548 and Volume 1990-1991, page 133.

<sup>[4]</sup> Volume 1990-1991, page 133.