

STATES OF JERSEY

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CRIME (SENTENCES) ACT 1997: EXTENSION TO JERSEY

**Lodged au Greffe on 14th September 2007
by the Chief Minister**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to agree, in accordance with the provisions of Article 31 of the States of Jersey Law 2005, that Section 4 and Schedule 1 and Section 56(2) and Schedule 6 of the Crime (Sentences) Act 1997, (so far as relating to the repeal of Part III of the Criminal Justice Act 1961) should extend to Jersey.

CHIEF MINISTER

REPORT

This is a slightly unusual proposition made necessary as a result of Article 31 of the States of Jersey Law 2005 and an omission on the part of the U.K. administration in Whitehall, recently corrected at our request.

Process

For several centuries there has been a procedure by which Orders in Council, Royal Warrants or Letters of whatsoever nature emanating from the Crown or the Privy Council should not be put into effect until they had first been presented to the Royal Court to be registered and published. As concerns Acts of Parliament in which the Island is named, given that the Islanders have no representative in Parliament, all such Acts, as soon as they are printed, are to be transmitted to the Island with an Order of the Privy Council annexed thereto, directing the registration and publication of these Acts.

History shows that over a period of time the States sometimes took action themselves to suspend the registration of Orders in Council. An example is on 15th August 1694: *“The States suspended the registration of an Order in Council of 8th June, 1694, obtained by one Francis Watts, on the grounds that he had obtained it on a groundless information and that it was derogatory to the principles and constitutions of the country.”* (See ‘A Constitutional History of Jersey’ by F. De Lisle Bois, OBE at page 177.)

For quite some time, Orders in Council were presented to the States for registration. However, by certainly the middle of the 19th century, if not earlier, it had become the practice to apply to the Royal Court for registration of such instruments. Similarly, where the Royal Court was of the view that it would be inappropriate to register an Order in Council, the practice arose for the Court to refer the matter to the States for consideration. This practice was followed in some of the constitutional clashes that took place in the 19th century, the latest of which was the Prison Board case.

In the case of Bristow [1960] 35 PC 115, the Royal Court had to consider whether Section 123 of the Bankruptcy Act 1914 applied in Jersey enabling the Royal Court of Jersey to give orders in aid of the Bankruptcy Court in England notwithstanding the fact that at that time the 1914 Act had not been registered in the Rolls of the Royal Court. The issue arose in the context of a challenge by Mr. Bristow to the lawfulness of his arrest pursuant to an order of the English Bankruptcy Court. The Royal Court when delivering judgment, which is not a reasoned judgment, said that *““Qu’il n’est rien qui prescrit qu’ un Acte de Parlement s’appliquant en termes exprès à cette Ile ne peut tirer son effet à moins qu’il ne soit enregistré dans les rôles de la Cour Royale.”* (which in translation means *“There is nothing that stipulates that an Act of Parliament expressly applying to this Island cannot take effect unless it has been registered by the Royal Court.”*).

In its conclusion in this case, the Royal Court said:

“ “La Cour, sans se prononcer sur la question, à savoir, si ledit remonstrant a été illégalement saisi et illégalement détenu a jugé que le “warrant” dont s’agit est un qu’il incombe à l’autorité compétente à Jersey d’endosser.”

(In translation: *“The Court, without expressing its opinion on the question at issue, that is to say, whether the said representor had been illegally arrested and detained, judged that the warrant in question was one which it was incumbent on the competent authority in Jersey to back.”*).

Different views have been taken about the strength of the Bristow judgment, particularly in the light of the fact that there is no reasoned judgment available for consideration. Members will be aware of the advice previously given to the States by H.M. Attorney General on whether or not Parliament may enact legislation binding on Jersey without its consent, and his conclusion that it could not do so.

Whether the Bristow decision would be followed today or not, the law has undoubtedly moved on since 1960. In particular, Article 31 of the States of Jersey Law 2005 which has received Royal Assent provides—

“(1) Where it is proposed –

- (a) *that any provision of a draft Act of the Parliament of the United Kingdom should apply directly to Jersey; ...*

the Chief Minister shall lodge the proposal in order that the States may signify their views on it.

- (2) *Where, upon transmission of an Act of the Parliament of the United Kingdom containing a provision described in paragraph (1)(a) ... to the Royal Court for registration, it appears to the Royal Court that the States have not signified their agreement to the substance of the provision ...*

- (a) *the Royal Court shall refer the provision ... to the Chief Minister; and*

- (b) *the Chief Minister shall, in accordance with paragraph (1), refer it to the States.”*

The Crime (Sentences) Act 1997, (“the 1997 Act”) is expressed to apply to Jersey in limited respects – Section 41 and Schedule 1, and Section 56(2) and Schedule 6 (so far as relating to the appeal of Part III of the Criminal Justice Act 1961) are the only provisions which apply. The substance of the matter is described below. However, it is right to say that there was extensive consultation between Her Majesty’s Government in the United Kingdom and the Island Authorities in Jersey from 1996 onwards in this respect. In particular it had been noted that although, in 1996, the Bailiff had power under the Prison (Jersey) Law 1957 to direct the removal of a prisoner to a place in Jersey for certain specified purposes, that authority did not enable the Bailiff to direct the removal of a prisoner to a place outside the Island where there is no power to compel the prisoner’s return, and where Jersey prison officers would not have any legal authority. Similarly, the power of the Secretary of State of the United Kingdom was also limited. Section 26(2) of the Criminal Justice Act 1961, which was registered in Jersey enabled the Secretary of State to order the transfer to a prison in the United Kingdom of a person who had been sentenced to imprisonment in Jersey. Section 27(2) permitted the Secretary of State to make an order for temporary transfer of such a prisoner. However those powers only arose following the imposition of a sentence of imprisonment and did not apply to remand prisoners.

The suggestion which the then Attorney General made to the Home Office in 1996 was that while some changes could be made to the Prison Law in Jersey, that would deal with insular legislation only and it would be necessary for the United Kingdom to amend its legislation in tandem.

In fact the Government in the United Kingdom was proposing changes to sentencing arrangements there, and a drafting brief was prepared in 1996 which took into account the need to tackle the particular problems arising on the transfer of prisoners between Jersey and the United Kingdom. The Island Authorities were consulted on the proposed drafting brief by an official letter in July 1996 and those instructions were referred to the Policy and Resources Committee of the day which had no comments to make upon them, taking the view that the detailed arrangements for the transfer and supervision of prisoners were matters for the Prison Board and the Attorney General to consider [a memorandum from the Chief Adviser to the States to the Deputy Greffier of the States dated 16th August 1996 confirms this position].

On 9th October 1996, the Home Office sent an official letter to His Excellency the Lieutenant Governor enclosing a copy of the latest Crime (Sentences) Bill and further demi-official correspondence took place with the Attorney General on those provisions. This culminated with a final draft of the Bill being sent to the Attorney General on 21st March 1997, and to a subsequent letter confirming that the Island Authorities agreed the substance of the provisions as provided in Schedule 1 of the Bill, following which some subordinate legislation would then be required in the United Kingdom. This is indeed what took place, again in extensive consultation with the Law Officers’ Department in Jersey. However, by an oversight, the 1997 Act, was not sent to the Island Authorities for registration in the Royal Court. This omission having been identified, the Ministry of Justice has been asked to send the Act formally to Jersey for registration, and on 21st August 2007, an official letter was sent to His Excellency the Lieutenant-Governor enclosing a formal copy of the Act and requesting the Island Authorities to have the Act registered in the Rolls of the Royal Court.

By virtue of Article 31(2) of the States of Jersey Law 2005, I consider that I am under a duty to refer the matter to the States in order that the States may signify their views upon it. In doing so, I should like to emphasize that

there was full discussion between the Island Authorities and Her Majesty's Government in the United Kingdom in the development of those provisions of the Act which would apply to Jersey, and there has never been any doubt at all that the provisions were made directly at the Island's request.

Substance

Section 41 of the 1997 Act introduces Schedule 1, which makes provision with respect to the transfer of prisoner within the British Islands, and confirms that Schedule 1 shall have effect.

Section 56(2) provides that the enactments specified in Schedule 6 to the Act are repealed to the extent specified in the third column of that Schedule.

Section 57(5) provides that Section 41 and Schedule 1, and Section 56(2) and Schedule 6, so far as relating to repeal of Part III of the Criminal Justice Act 1961, apply to the Channel Islands.

The detailed provisions for the transfer of prisoners within the British Islands therefore appear in Schedule 1. This Schedule gives the Secretary of State the power to order the transfer of any convicted or remand prisoner in any part of the United Kingdom to another part of the United Kingdom or to any of the Channel Islands either pending his trial for an offence or to serve his sentence. The Secretary of State has a similar power where a person is remanded in custody in any of the Channel Islands or has been sentenced to imprisonment in any of the Channel Islands, to make an order for the transfer of that person to any part of the United Kingdom either pending trial or to serve his sentence or the remainder of it.

Similar powers arise where a transfer of prisoners is desirable in the interests of justice or for the purposes of any public enquiry.

Similarly the Secretary of State is conferred power to make an order as between the United Kingdom and the Channel Islands for the transfer of the supervision of any released prisoner.

In practice, arrangements are made by the Prison Governor in Jersey with his counterparts in the United Kingdom.

The overall scheme in relation to prisoners transferred to the United Kingdom from Jersey is that the rules governing the release of such prisoners in the sentencing jurisdiction (i.e. Jersey) prevail over the rules which would otherwise apply to the prisoner, had he or she been sentenced in the United Kingdom. The only exception to this is the case of prisoners sentenced to life imprisonment where the general rule is that unconditional transfers are made, and such prisoners are then subject to the supervision arrangements of the receiving jurisdiction, which is the United Kingdom. In this context, the States will recall approving the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005, which deals specifically with mandatory life sentences.

Paragraph 17 of Schedule 1 of the 1997 Act extends provisions of the Prison Act 1952, the Prisons (Scotland) Act 1989 and the Prison Act (Northern Ireland) Act 1953. The provisions of these Acts which are extended to the Island are limited to those which enable the automatic arrest by a police officer in Jersey of a person who is unlawfully at large in the United Kingdom, without the need for any warrant from a U.K. Court in this respect. This is an important provision. If a person escapes from prison in the United Kingdom or is otherwise unlawfully at large, and comes to Jersey, it is appropriate that the police should be able to arrest him without the need for any warrant from the United Kingdom Courts requesting such arrest. A legal basis for the arrest of such a person in Jersey without a warrant and without any offence having been committed here is clearly essential for the purposes of the Human Rights (Jersey) Law 2000.

The repeal of those parts of Part III of the Criminal Justice Act 1961 is consequential upon the creation of new powers contained in the 1997 Act.

Resource implications

There are no financial or manpower implications arising from this proposition.

Summary

In the circumstances members are asked to approve this proposition as a technical but important formality made necessary by the provisions of Article 31 of the States of Jersey Law 2005 and the inadvertent omission of a request from Her Majesty's Government to us following the passage of the 1997 Act to have the Act registered in the Rolls of the Royal Court in Jersey.