

STATES OF JERSEY

r

DRAFT PRISON (AMENDMENT No. 6) (JERSEY) LAW 200-

**Lodged au Greffe on 5th February 2007
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT PRISON (AMENDMENT No. 6) (JERSEY) LAW 200-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs the provisions of the Draft Prison (Amendment No. 6) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

Article 29 of the Prison (Jersey) Law 1957, the “principal Law”, affords the Minister for Home Affairs the power to make Rules in respect of the regulation and management of the prison, and attendance centres respectively, and for the classification, treatment, employment, discipline and control of people who are required to be detained there.

New Prison Rules came into force on 31st January 2006, but they do not currently include the power to carry out mandatory tests on prisoners for the presence of controlled drugs and/or alcohol; nor do they allow for employees within the prison, who are not prison officers, but have been authorised by the Governor, to conduct ‘rub down’ searches of prisoners for unauthorised property, and to seize any such property if it is found.

An amendment to the principal Law is required in order for these provisions to be included within the Rules, and that is the purpose of this draft Law.

A system of voluntary testing for the presence of controlled drugs is currently operated at the Prison, and any prisoner wishing to achieve ‘enhanced’ status needs to have tested ‘negative’ for the presence of controlled drugs for a period of three months. Whilst many prisoners volunteer for testing it is not desirable for *any* prisoner to have alcohol or controlled drugs in Prison, or to have taken alcohol or controlled drugs whilst away from the Prison on temporary release, and it is for that reason that a system of mandatory testing needs to be introduced.

The employees who may be authorised to carry out searches of prisoners in accordance with the proposed new Article 13C are those who are not Prison Officers, but nevertheless come into direct contact with prisoners on a regular basis. These will include the Officer Support Grade staff, who have been employed at the Prison to assist the Prison Officers, and the civilian instructors. It is currently only Prison Officers who are able to conduct searches of prisoners, and the purpose of affording this power to other employees, where appropriate, is to ease the burden on Prison Officers, and to help to combat the introduction of unauthorised property into the Prison.

Article 12 of the principal Law currently enables the States to make Regulations in respect of the measuring and photographing of prisoners. This draft Law, if approved, will repeal that Article, as Article 4 of the draft Law will amend Article 29 of the principal Law to the effect that the Prison Rules may include provision in respect of the measuring and photographing of prisoners.

There are no financial or manpower implications for the States arising from the enactment of the draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 31st January 2007 the Minister for Home Affairs made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Home Affairs the provisions of the Draft Prison (Amendment No. 6) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law would amend the Prison (Jersey) Law 1957 (the “principal Law”).

Article 1 defines the principal Law.

Article 2 repeals Article 12 of the principal Law (the power for the States to make Regulations as to the measuring and photography of prisoners) consequentially upon the expansion, by Article 4 of this draft Law, of the power to make Rules as to the management of prisoners so as to cover the measuring and photography of prisoners.

Article 3 inserts Articles 13A, 13B and 13C into the principal Law.

Article 13A Power to test persons detained in the prison for controlled drugs

This Article would empower a prison officer to require a person detained in the prison to provide a urine sample, or other non-intimate sample, for testing for the presence of controlled drugs, where the taking of such samples has been authorized by the Governor.

Article 13B Power to test persons detained in the prison for alcohol

This Article would empower a prison officer to require a person detained in the prison to take a breath test or to provide a urine sample or other non-intimate sample, for testing for the presence of alcohol, where the taking of such samples has been authorized by the Governor.

Article 13C Powers of search by authorized employees

This Article would enable a person employed within the prison, who is not a prison officer but who is authorized by the Governor for the purpose, to search a person detained in the prison for property that the person is not authorized to have in his or her possession. The employee can only require the person to remove external clothing, but can use reasonable force, if necessary. The employee may also seize any unauthorized property found during the search.

Article 4 amends Article 29 of the principal Law. Article 29 is the power for the Minister for Home Affairs to make Rules regarding the management of the prison and the persons detained in it. The power is expanded so that Rules may include provision for the measurement and photographing of persons detained in the prison and also for the taking of their fingerprints and biometric information. New provision is made for Rules to specify the manner in which any power conferred by the new Articles 13A to 13C is to be exercised.

Article 5 provides for the citation and commencement of the draft Law.



Jersey

DRAFT PRISON (AMENDMENT No. 6) (JERSEY) LAW 200-

Arrangement

Article

- 1 Interpretation
- 2 Article 12 repealed
- 3 Articles 13A , 13B and 13C inserted
- 4 Article 29 amended
- 5 Citation and commencement



Jersey

DRAFT PRISON (AMENDMENT No. 6) (JERSEY) LAW 200-

A LAW to amend further the Prison (Jersey) Law 1957

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 Interpretation

In this Law, “principal Law” means the Prison (Jersey) Law 1957^[1].

2 Article 12 repealed

Article 12 of the principal Law shall be repealed.

3 Articles 13A , 13B and 13C inserted

After Article 13 of the principal Law there shall be inserted the following Articles –

“13A Power to test persons detained in the prison for controlled drugs

- (1) The Governor may issue an authorization empowering any prison officer, at the prison, to require any person who is detained in the prison to provide a sample of urine for the purpose of ascertaining whether the person has any controlled drug in his or her body.
- (2) An authorization under paragraph (1) may further empower any prison officer, at the prison, to require a person who is detained in the prison to provide a sample of any other description specified in the authorization, not being an intimate sample, whether instead of or in addition to a sample of urine.
- (3) An authorization under paragraph (1) shall be in writing.
- (4) In this Article –

‘controlled drug’ has the meaning given in Article 3 of the Misuse of Drugs (Jersey) Law 1978^[2];

‘intimate sample’ has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003^[3].

13B Power to test persons detained in the prison for alcohol

- (1) The Governor may issue an authorization empowering any prison officer, at the prison, to require any person who is detained in the prison to provide a sample of breath for the purpose of ascertaining whether the person has alcohol in his or her body.
- (2) An authorization under paragraph (1) may further empower any prison officer, at the prison, to require a person who is detained in the prison –
 - (a) to provide a sample of urine, whether instead of or in addition to a sample of breath; and
 - (b) to provide a sample of any other description specified in the authorization, not being an intimate sample, whether instead of or in addition to a sample of breath, a sample of urine or both.
- (3) An authorization under paragraph (1) shall be in writing.
- (4) In this Article, ‘intimate sample’ has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

13C Powers of search by authorized employees

- (1) An authorized employee at the prison shall have the power to search any person detained in the prison for the purpose of ascertaining whether the person has any unauthorized property on his or her person.
- (2) An authorized employee searching a person detained in the prison by virtue of this Article –
 - (a) shall not be entitled to require a person to remove any of his or her clothing other than an outer coat, jacket, headgear, gloves and footwear;
 - (b) may use reasonable force where necessary; and
 - (c) may seize and detain any unauthorized property found on the person in the course of the search.
- (3) The Governor –
 - (a) may authorize employees for the purposes of paragraphs (1) and (2); and
 - (b) shall take such steps as he or she considers appropriate to notify to persons detained who are detained in the prison of the employees who are for the time being so authorized.
- (4) In this Article –

‘employee’ means a person, other than a prison officer, who is employed within the prison, under the Employment of States of Jersey Employees (Jersey) Law 2005^[4];

‘unauthorized property’, in relation to a person, means property which he or she is not authorized by Rules made under Article 29 or by the Governor, to have in his or her possession or, as the case may be, in his or her possession in a particular part of the prison.”.

4 Article 29 amended

- (1) In Article 29 of the principal Law, after paragraph (1) there shall be inserted the following paragraphs –
 - “(1A) Without prejudice to the generality of paragraph (1), Rules made under this Article may

include provision for any person detained in the prison to be required to be measured, photographed, have his or her fingerprints taken and have such other measurements taken so as to provide biometrical information about the person.

(1B) Where Rules make provision for any of the matters described in paragraph (1A) they shall also make provision –

- (a) as to the manner in which any requirement under paragraph (1A) is to be imposed;
- (b) requiring the keeping and destruction of a record of any information obtained; and
- (c) requiring a record of any information obtained to be kept confidential unless its release is authorized by the Rules, either subject to or without conditions.

(1C) Without prejudice to the generality of paragraph (1), Rules made under this Article may include provision as to the manner in which any power conferred by Article 13A, 13B or 13C is to be exercised.”.

(2) In Article 29 of the principal Law, after paragraph (7) there shall be added the following paragraph–

“(8) In this Article –

‘biometric information’ means data about an individual’s external characteristics, including, in particular, the features of an iris or of any other part of the eye;

‘fingerprints’ shall have the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

5 Citation and commencement

This Law may be cited as the Prison (Amendment No. 6) (Jersey) Law 200~~0~~ and shall come into force on such day or days as the States by Act appoint.

-
- [1] *chapter 23.775*
- [2] *chapter 08.680*
- [3] *chapter 23.750*
- [4] *chapter 16.325*