

STATES OF JERSEY



DRAFT CRIME (DISORDERLY CONDUCT AND HARASSMENT) (JERSEY) LAW 200- (P.55/2008): COMMENTS

**Presented to the States on 2nd June 2008
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

The Education and Home Affairs Scrutiny Panel received a draft copy of the *Crime (Disorderly Conduct and Harassment) (Jersey) Law 200-* in October 2007. The Panel considered the draft Law on 10th December 2007 and subsequently wrote to the Minister with a set of questions that it had identified. The Minister responded on 11th January 2008. The Panel believes it would be of benefit for the Assembly to be aware of the advice it received from the Minister.

When the Panel considered the draft Law, it took into account the changes that had been made to the Law since the previous draft (lodged as P.151/2006) had been withdrawn on 16th January 2007. The Panel also examined the transcript of the debate that had occurred at that time with a view to clarifying the issues that had arisen. From this consideration, the Panel identified 6 questions. These questions, together with the information and advice provided by the Minister in response, are presented below:

When you withdrew the previous draft Law, P.151/2006, you indicated that you would consult Members. Besides with ourselves, what other consultation have you undertaken?
Since the withdrawal of P.151/2006, the Minister had consulted the States of Jersey Police; the Honorary Police; the Council of Ministers and H.M. Attorney General.

What would be the manpower and cost implications of adopting the draft Law, particularly for the States of Jersey Police; H.M.P. La Moye; and the Magistrate's Court?
The Minister indicated there were no identifiable cost and manpower implications from the implementation of this legislation. It was not envisaged that a large number of prosecutions would result from its introduction but rather that the legislation would empower the Police to respond appropriately to low-level public disorder and harassment and that an appropriate deterrent would be put in place.

How would the revised draft address the comments made by H.M. Attorney General during the debate on P.151/2006 that there could be "an element of interference with the rights of the citizen"?

The Minister reported that there was nothing particular to address as a result of comments H.M. Attorney General had made to the Assembly on 16th January 2007. However, the Minister indicated that Members could be reassured at the changes that had been made which picked up on other comments made during the debate:

The revised draft did not include the word 'insulting' in Article 2(1)(a) and (b), and also in the provisions of Article 2(1)(d) which dealt with the display of writing, signs or other visible representations that are threatening, abusive or insulting.

H.M. Attorney General's advice to the Assembly had been that it was for the Assembly to decide on the balance between – (a) the Police not performing their obligations under the Human Rights Convention; and (b) creating a structure whereby the Police could deal with the public. It had also been advised that the Human Rights Convention constraints on the Police as well as the prosecution and the Court all served to protect the rights of the citizen.

Where would the burden of proof lie for offences committed under the Law?

The Panel was advised that, in accordance with the Human Rights Convention, the burden of proving a person's guilt lies upon the prosecution; at different points within the legislation there are provisions which confer on the accused a particular defence, where the so-called 'reverse burden' would apply. Article 2(5) would be one example. Article 4 in relation to harassment charges is another example. The Minister indicated her understanding that this was Convention-compliant.

In Article 3(3) of the previous draft, a person committing an offence under Article 3(1) would have been liable to imprisonment for 6 months or a fine of level 4 on the standard scale. In the current draft, Article 3(3) indicates the person would be liable to imprisonment for 6 months and a fine of level 4. Why has this Article changed?

The Minister advised that all legislation is currently drafted in this way owing to an amendment to the *Interpretation (Jersey) Law 1954*. Article 13(3) of that Law states that: "*where, in an enactment, more than one penalty is specified for an offence, the use of the word 'and' shall, unless the contrary intention appears, mean that the penalties may be imposed alternatively or cumulatively.*"