

STATES OF JERSEY



DRAFT SEX OFFENDERS (JERSEY) LAW 200- (P.132/2009): COMMENTS

**Presented to the States on 5th October 2009
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

At its Panel meeting on the 16th September 2009 the Education and Home Affairs Panel agreed that it wished to undertake a brief review of the Draft Sex Offenders (Jersey) Law 200-. However, as a result of the importance of the draft legislation the Panel was mindful that it did not wish to cause a delay to the debate. Following a Public Hearing with the Minister for Home Affairs and a public call for evidence the Panel is presenting the following comments to the States in advance of the debate. The Panel wishes to confirm its overall support for the draft legislation and believes that it is vital that it is introduced without further delay.

During the Public Hearing the Minister for Home Affairs outlined to the Panel that the aim of the Draft Sex Offenders (Jersey) Law 200- was to seek to ensure that sex offenders do not re-offend by managing the risk they pose, while at the same time protecting vulnerable people and children from their activities. It attempts a higher level protection against those who have previous convictions while, at the same time, attempting to safeguard an individual's rights to determine their own behaviour in a free society. The Minister reminded the Panel that this Law is by no means a panacea and will not eradicate the problem of sexual offending.

The draft Law contains provisions similar to those in the Sexual Offences Act 2003, the equivalent U.K. legislation; these include key areas such as –

Notification Requirements (Articles 3-9); convicted sex offenders must notify the relevant bodies of their whereabouts and travel plans.

Court Orders (Articles 10-12); Orders can be made to prevent a convicted sex offender acting in a particular way which could present a threat. Most notably, **Article 11** provides for Child Protection Orders, where a court has the power to make a civil order without the person having a previous criminal record. This includes situations where certain behaviour may not previously have constituted a crime under Jersey Law, but that person has acted in a way that could be seen as a precursor to a crime or cause harm.

Acts committed Abroad (Article 17); Article 17 provides for Jersey Courts to have the jurisdiction to try an offence committed outside the Island.

Notification Requirements (Article 27); Police will obtain personal information about an offender and will sometimes need to share it with other agencies and individuals. The provisions of the Data Protection (Jersey) Law 2005 contain an exemption which allows the disclosure of personal information for stated purposes under certain circumstances.

After consideration of the draft legislation the Panel wished to make States Members aware of their concerns, which are as follows –

Data protection

The Panel was concerned that particular information in relation to a sex offender could become known within Jersey's small society leading to harassment and the possibility that sex offenders would go 'underground'. This is likely to cause offenders to become more disengaged from society, possibly thereby encouraging them to re-offend. The Minister has advised the Panel that, in his opinion, the structure of the Data Protection

(Jersey) Law 2005 is adequate. However, he stated that it may be necessary in due course to re-examine it and impose greater penalties for disclosing sensitive information. At a briefing for States Members on the draft legislation on 29th September 2009, the Data Protection Registrar explained that the Data Protection (Jersey) Law 2005 was currently under review, which would include consideration of the implications of the Sex Offenders Legislation, and continued to impress upon those at the meeting the importance of a robust Data Protection Law.

The Minister made the following statement during his attendance at the Public Hearing with regards to any breach of the Data Protection Law –

“If people breach that then the only penalties are fines, which, as I say may not be a sufficient penalty.”

The Panel believes that the current fines may not be enough of a deterrent and therefore strongly recommends that tougher measures should be considered at the earliest possible opportunity.

This issue also raises the question of who information should be disclosed to. Comparisons were made to Megan’s Law in the United States. That Law allows for the disclosure of the whereabouts of sex offenders to those in the surrounding neighbourhoods. **The Panel remains concerned about the dangers of public access to this level of information in a small society, and strongly recommends that data disclosure is limited to the bare minimum number of individuals. The Panel is of the view that as far as possible the dissemination of this information should be confined to the enforcement authorities.**

Appeals procedure (Articles 18–26)

The Panel raised concerns about the process to appeal against a Child Protection Order. The Minister confirmed that currently it is the courts decision as to when it is appropriate to hold a case in private. The Panel feels that it is imperative to ensure that any appeals take place ‘in camera’ on the basis that this person would not yet have been convicted and should not have to defend themselves publicly, particularly where there has not been a previous criminal conviction.

The Panel is concerned that the current Legislation does not adequately provide for this to occur in all cases, and strongly recommends that the Minister takes appropriate action at the earliest possible opportunity.

Notification period

The notification period specified under Article 5(4) of the draft Law is as follows: *“Unless the court is satisfied that there is an exceptional reason why a shorter period would be appropriate, the period specified under paragraph (1), (2) or (3) must be a period of at least 5 years.”* The Panel is therefore concerned that there is a possibility that the notification period imposed by Court Orders retrospectively on some offenders may be greater than the time the offender has left to declare their conviction under the Rehabilitation of Offenders (Jersey) Law 2001. This could have a huge impact on offenders that are registered retrospectively, who for example may have one year left before their offence would be deemed as spent under the Rehabilitation of Offenders Law, and then have a longer notification period imposed on them by the Draft Sex Offenders (Jersey) Law 200-.

The Panel therefore strongly recommends that where possible, the Minister considers taking measures to follow the U.K. system to ensure that the notification period mirrors that under which the offence is deemed spent under the Rehabilitation of Offenders (Jersey) Law 2001.

Community based psychological support

Although it is beyond the remit of the draft legislation, the Panel is concerned about the lack of community based psychological support and offending behaviour treatment programmes that are available for sexual offenders in the Island. It is the Panel's understanding that some other jurisdictions run successful community based programmes for people that are aware of, and concerned about their sexual urges, but have not committed or been convicted of any offence, as well as programmes for those already convicted. **The Panel therefore recommends that the Minister investigates these.**

The Panel further recommends that the Minister for Health and Social Services strongly considers the appointment of a community based Chartered Forensic Psychologist who would be able to work with both sex offenders subject to notification requirements under the draft legislation, in addition to individuals wishing to receive confidential psychological support as a preventative measure prior to them having committed an offence, and subsequently falling under the remit of the draft legislation.