

# STATES OF JERSEY



## **DRAFT PRISON (AMENDMENT No. 7) (JERSEY) LAW 201-**

---

**Lodged au Greffe on 30th August 2016  
by the Minister for Home Affairs**

---

**STATES GREFFE**





Jersey

## **DRAFT PRISON (AMENDMENT No. 7) (JERSEY) LAW 201-**

### **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. 7) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy K.L. Moore of St. Peter**

*Minister for Home Affairs*

Dated: 24th August 2016

## REPORT

---

This proposed amendment to the Prison (Jersey) Law 1957 (“the Law”) is intended to provide for a number of changes, as detailed below.

### **1. Independent Prison Monitoring Board**

The Education and Home Affairs Scrutiny Panel presented its report on the Prison Board of Visitors to the States Assembly on 26th November 2015 ([S.R.9/2015](#)). The Panel made a single recommendation that the States Assembly should remove Jurats of the Royal Court from the Prison Board of Visitors and replace them with independent members.

The Minister for Home Affairs signed a Ministerial Decision (MD-HA-2015-0075) on 26th November 2015, instructing officers to provide the necessary law drafting instructions to ensure that Jersey complies with the requirements of the United Nations Optional Protocol to the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), including the establishment of an independent Prison Board of Visitors. In addition, the Deputy Chief Minister signed a Ministerial Decision (MD-C-2015-0134) on 27th November 2015, instructing officers to make arrangements for OPCAT to be extended to Jersey once all legislative and administrative actions have been taken to ensure Jersey’s compliance.

These Ministerial Decisions were reflected in the Ministerial response to the Panel’s review, as presented to the States Assembly on 18th January 2016 by the Minister for Home Affairs ([S.R.9/2015 Res.](#)).

The objective of OPCAT is to require the establishment of a system of regular visits undertaken by independent bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. There is a wider project underway in order to address the overall requirements of OPCAT in a Jersey context, including the establishment of a ‘national preventative mechanism’ covering all places of detention.

This amendment provides for the establishment of an Independent Prison Monitoring Board, which is an important step towards overall implementation of the OPCAT requirements. There would no longer be a requirement for members of the Board to be Jurats of the Royal Court, and instead the members would be persons independent from the judiciary, thus enabling compliance with Article 3 of the European Convention on Human Rights (ECHR) and the requirement for a framework that enables the thorough and effective investigation of any potential ill-treatment of prisoners, as detailed in the accompanying notes prepared by the Law Officers’ Department on the human rights aspects of this amendment.

The existing Prison Board of Visitors remains in place until the Assembly decide upon new Regulations. These draft Regulations are currently being prepared, and it is anticipated that they will be proposed to the Assembly later in the year, with a view to the new Independent Prison Monitoring Board becoming operational in early 2017.

## **2. Co-operation schemes with overseas prison services**

This amendment also introduces a new provision which would enable the Minister for Home Affairs to enter into co-operation schemes with prison services from other jurisdictions. This new provision is being introduced to allow for any circumstances where additional resources might be required to meet a special demand. Any prison officers or other employees from another prison service who may come to Jersey to help meet a special demand would be under the control of the Prison Governor. This new provision is similar those which exist already in relation to other uniform services, such as the Police.

## **3. Medical Officer and Prison Chaplain**

The amendment replicates existing provisions for the appointment of a medical officer and a chaplain, with the addition of a new provision which enables the appointment of a chaplain who is of a religious denomination other than the Church of England where circumstances determine that this is required, either by virtue of the number of prisoners from another religious denomination, or by virtue of not being able to appoint a chaplain from the Church of England despite attempts to do so.

## **4. Controlled items and updated offences**

The amendment updates provisions relating to conveying items into or out of the prison. In particular, the penalty for conveying weapons, explosives or controlled drugs into or out of the prison is increased; and definitions relating to communication devices are introduced. The offences, including those relating to escape, assisting an escape and harbouring an escaped prisoner are updated and the penalties are increased. The revised penalties within this amendment have been increased in line with similar penalties elsewhere in the British Isles, and have been reviewed by the Attorney General.

### **Financial and manpower implications**

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

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Note on the Draft Prison (Amendment No. 7) (Jersey) Law 201-

#### Article 3 ECHR

1. Article 3 ECHR provides that –  
*“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”*
2. The European Court of Human Rights (“**the ECtHR**”) has found this right not only to prohibit State-sponsored torture and ill-treatment, but to place a positive obligation on contracting states to ensure that measures are in place to prevent their citizens from suffering ill-treatment by either state agents acting *ultra vires* or by private persons.
3. Contracting states are, as a result, required to promote an environment where ill-treatment cannot occur, and in the context of prisons, the ECtHR has found there to be a breach of Article 3 ECHR where the authorities have failed to carry out a thorough and effective investigation into credible allegations of ill-treatment. There is therefore a duty to have a framework in place that enables the thorough and effective investigation of any potential ill-treatment of prisoners, whether it comes at the hands of either the prison staff or other prisoners.
4. There is no suggestion that such behaviour has taken place at the prison, but Article 3 ECHR (and the Optional Protocol to the U.N. Convention against Torture (“**the Optional Protocol**”)) requires there to be robust systems in place and effective measures to investigate and prevent any such practices.
5. To mitigate against any risks of persons incarcerated in prisons from being subjected to ill-treatment, it is therefore important to establish independent visitors to monitor the prison and be available to hear complaints from prisoners.
6. The draft Law amends Article 6 of the Prison (Jersey) Law 1957 to enable the States to make Regulations providing for an Independent Prison Monitoring Board. The manner of appointment, termination, term of office and other such details shall be provided for in such Regulations. Article 6 shall no longer require the members of this Board to be Jurats of the Royal Court, and instead the members shall be persons independent from the judiciary, thus enabling compliance with Article 3 ECHR (and the Optional Protocol).
7. **The draft Law is therefore compatible with Article 3 ECHR.**

#### Article 1, Protocol 1 ECHR (“A1,P1”)

8. A1, P1 provides that –  
*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*  
*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property*

*in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

9. The draft Law engages A1, P1 as it prohibits and regulates the items of property being conveyed into the prison. However, any interferences with the proprietary rights of prisoners or persons visiting the prison is justified by the general/public interest of preventing crime through preventing any items which may be used to commit a crime from entering the prison, and also limiting any items from entering the prison which may undermine the punitive effect of prison and the strict rehabilitation programmes run by the prison (i.e. alcohol, tobacco, mobile phones).
10. The restrictions in the draft Law are framed in a manner consistent with the equivalent legislation in England and Wales. When weighed against the significant legitimate aims mentioned above, it can be concluded that the legislation is necessary and proportionate.
11. **The draft Law is therefore compatible with A1, P1.**

## Explanatory Note

---

This Law amends the Prison (Jersey) Law 1957.

*Article 1* defines “principal Law”, an expression used throughout this Law, as the Prison (Jersey) Law 1957.

*Article 2* inserts new definitions into Article 1 of the principal Law and moves some existing definitions in the principal Law to Article 1 of that Law.

*Article 3* introduces new Article 3A to the principal Law. Article 3A provides for the Minister for Home Affairs (the “Minister”) to enter into cooperation schemes with other authorities responsible for prison services outside Jersey for the provision by such other authority of the services of its prison officers or its other employees equivalent to prison officers or employees under the principal Law, when additional resources are required to meet a special demand within the prison in Jersey. An officer or employee provided by another authority would be under the control of the prison Governor and an officer would have all the powers conferred on a prison officer by Jersey’s enactments. In addition, the Minister is empowered to enter into agreements with other authorities responsible for prison services outside Jersey for the provision of prison officers or employees by the Minister to the authority.

*Article 4* amends Article 5(2) of the principal Law to replace the reference to the Board of Visitors with a reference to the Independent Prison Monitoring Board. Article 5(2) now requires the Governor of the prison to bring any entry in the visitor’s book to the attention of the Minister and to the Independent Prison Monitoring Board.

*Article 5* replaces Article 6 of the principal Law so that instead of there being a Board of Visitors, the States are required to make Regulations to establish an Independent Prison Monitoring Board. New Article 6(3) provides that all members of the Independent Prison Monitoring Board shall have free access at all times to all parts of the prison and to all prisoners and may see such prisoners as they desire, either in their cells or in a room out of sight and hearing of officers. By Article 6(4), the Prison (Board of Visitors) (Jersey) Regulations 1957 remain in force until Regulations establishing the independent Prison Monitoring Board and revoking the former Regulations come into force.

*Article 6* replaces Article 7 of the principal Law. New Article 7(1) re-enacts the requirement for the Minister to appoint a medical officer of the prison, who must be a doctor. New Article 7(2) requires the Minister to appoint a chaplain who is a clergyman of the Church of England. However, under Article 7(3), the Minister may appoint a chaplain who is a clergyman of a religious denomination other than the Church of England where the number of prisoners who belong to a religious denomination other than the Church of England is such as in the opinion of the Minister to require the appointment of a chaplain of that denomination or where, despite advertising for the position of chaplain in such manner as the Minister considers appropriate, the Minister is unable to fill the vacancy with a clergyman of the Church of England. Article 7(4) enables the States to amend Article 7 by Regulations.

*Article 7* amends Article 8 of the principal Law to enable the States to amend Article 8 by Regulations. Article 8 of the principal Law enables the chaplain and other ministers of religion to be permitted to visit prisoners if the prisoners so desire.

*Articles 8 and 9* remove definitions “controlled drug” and “intimate sample”, which are currently contained in Article 13A and 13B of the principal Law. Under *Article 2* of this Law, these definitions have been inserted into Article 1 of the principal Law.

*Articles 10 and 11* update the offences contained in Article 20 and 21 of the principal Law (concerning escape from prison) so that, now, a person who escapes, with or without the use of force, from prison or other lawful custody, shall be guilty of an offence and liable to 10 years imprisonment and to a fine.

*Article 12* substitutes Article 22 of the principal Law to amend the offence and increase the penalty, where a person assists a person to escape or attempt to escape from the prison or other lawful custody, from 2 years imprisonment and a fine to 10 years imprisonment and a fine.

*Article 13* amends Article 23 of the principal Law to increase the penalty, where a person harbours an escaped prisoner, from 2 years imprisonment and a fine to 10 years imprisonment and a fine.

*Article 14* replaces Articles 24 and 25 of the principal Law with new Articles 24, 25, 25A and 25B, which introduce revised offences and penalties in respect of items that are conveyed into or out of the prison. (“Convey” is defined in Article 1 of the principal Law to include bring or throw.)

By Article 24(2), a person is guilty of an offence if he or she conveys a Grade 1 item into or out of the prison, gives a Grade 1 item to a prisoner or leaves a Grade 1 item in a place intending it to come into the possession of a prisoner. A Grade 1 item is defined in Article 24(1) as a controlled drug, an article made or adapted for use in the ingestion of a controlled drug, an explosive, a firearm or ammunition or any other offensive weapon. These items are defined in Article 1 of the principal Law. A controlled drug or an article made or adapted for use in the ingestion of a controlled drug may be conveyed into or out of the prison by the medical officer of the prison, a doctor, a pharmacist, a police officer or a person in the employment of the prison if so authorized by the Governor; and, by Article 24(4), an explosive, firearm or other offensive weapon may be conveyed into or out of the prison by a person authorized to do so by the Chief Officer or the Deputy Chief Officer of the States of Jersey Police Force. The Governor or the Chief Officer or Deputy Chief Officer of the States of Jersey Police Force, as the case may be, may give their authorization for a particular purpose, subject to any condition that may be specified in the authorization.

By Article 24(6), a person who conveys a Grade 1 item into or out of the prison when not authorized, or does so otherwise than for the purpose specified in the authorization or otherwise than in compliance with any condition imposed shall be liable to imprisonment for a term of 10 years and to a fine.

By Article 24(7), the States may by Regulations amend the definition of “Grade 1 item” to include other items and may make provision for authorization to be given by the Governor or the Chief Officer or Deputy Chief Officer of the States of Jersey Police Force to a person or a class of person for a Grade 1 item, other than an item for which authorization is permitted under Article 24(3) or (4), to be conveyed into or out of the prison for a purpose, subject to any condition that may be specified in the authorization.

By Article 25(2), a person is guilty of an offence if he or she conveys a Grade 2 item into or out of the prison, gives a Grade 2 item to a prisoner or leaves a Grade 2 item in a place intending it to come into the possession of a prisoner. A Grade 2 item is

defined in Article 25(1) as intoxicating liquor, a personal communication device or a recording device. These items are defined in Article 1 of the principal Law. By Article 25(3), the Governor may authorize a person to convey a Grade 2 item into or out of the prison for a purpose, subject to any condition that may be specified in the authorization.

By Article 25(7), a person who conveys a Grade 2 item into or out of the prison when not authorized, or does so otherwise than for the purpose specified in the authorization or otherwise than in compliance with any condition imposed shall be liable to imprisonment for a term of 2 years and to a fine.

By Article 25(5), a person does not convey an item into or out of the prison if the person conveys it into a part of the prison designated by the Governor for the holding of items while the person is inside the prison, surrenders it to be held there, and removes it from there on leaving the prison.

Article 25(6) provides that it is a defence for the accused to show that he or she reasonably believed that he or she had authorization to do the act in respect of which the proceedings are brought; or in all the circumstances there was an overriding public interest which justified the doing of that act.

By Article 25(8), the States may by Regulations amend the definition of “Grade 2 item” in paragraph (1) to include other items, except that no amendment may be made which would result in any Grade 1 item becoming or being treated as a Grade 2 item.

By Article 25A(2), a person is guilty of an offence if he or she conveys, or causes another person to convey, a Grade 3 item into the prison intending it to come into the possession of a prisoner; conveys or causes another person to convey a Grade 3 item out of the prison on behalf of a prisoner; leaves a Grade 3 item in any place (whether inside or outside the prison) intending it to come into the possession of a prisoner; or, while inside the prison, gives a Grade 3 item to a prisoner, except where he or she is authorized to do so by the Governor under Article 25A(3). A Grade 3 item is defined in Article 25A(1) as an item that is not a Grade 1 item or a Grade 2 item. Under Article 25A(5), a person does not convey an item into or out of the prison if the person conveys it into a part of the prison designated by the Governor for the holding of items while the person is inside the prison, surrenders it to be held there, and removes it from there on leaving the prison.

By Article 25A(3), the Governor may authorize any person to convey a Grade 3 item into or out of the prison for a purpose, subject to any condition that may be specified in the authorization or in a Rule made under Article 29.

Article 25A(6) provides that it is a defence for the accused to show that he or she reasonably believed that he or she had authorization to do the act in respect of which the proceedings are brought; or in all the circumstances there was an overriding public interest which justified the doing of that act.

By Article 25A(7), a person who conveys a Grade 3 item into or out of the prison when not authorized, or does so otherwise than for the purpose specified in the authorization or otherwise than in compliance with a condition imposed shall be liable to a fine of level 3 on the standard scale.

Article 25B(1) provides that it is an offence for a person to record an image (whether still or moving) or sound while the person is inside the prison or using a device that is inside the prison; transmit, or cause to be transmitted, any image or any sound from inside the prison by electronic communication for simultaneous reception outside the

prison; bring or otherwise convey a restricted document out of the prison, or cause a restricted document to be brought or conveyed out of the prison; or transmit, or cause to be transmitted, from inside the prison by means of electronic communication a restricted document, or any information derived from a restricted document, except where he or she is authorized to do so by the Governor under *Article 25B(5)*.

Article 25B(2) defines “restricted document” to include a photograph taken or sound recording made inside the prison or other documents and information described in the definition.

By Article 25B(5), the Governor may authorize any person to do an act described in Article 25B(1) for a purpose, subject to any condition that may be specified in the authorization, or in a Rule made under Article 29.

By Article 25B(6), a person who is authorized under Article 25B(5) to do an act described in paragraph (1) shall be guilty of an offence if he or she fails to comply with a condition subject to which the authorization is given.

Article 25B(7) provides that it is a defence for the accused to show that he or she reasonably believed that he or she had authorization to do the act in respect of which the proceedings are brought; or in all the circumstances there was an overriding public interest which justified the doing of that act.

By Article 25B(8), a person who is guilty of an offence under paragraph (1) or (6) shall be liable to a fine of level 3 on the standard scale.

*Article 15* amends Article 26 of the principal Law to add the new penalties in Articles 24, 25, 25A and 25B to the list of penalties, to which persons committing offences under the principal Law are liable, that must be contained in a notice affixed in a conspicuous place outside the prison.

*Article 16* amends Article 28 of the principal Law to replace the reference to the Board of Visitors with a reference to the Independent Prison Monitoring Board. Article 28 makes provision for an offender who has been sentenced to youth detention to be treated as though he or she had been sentenced to imprisonment where the offender has been reported to the Independent Prison Monitoring Board as exercising a bad influence on the other persons detained in the young offender institution or as behaving in a disruptive manner to the detriment of those other persons.

*Article 17* amends Article 29 of the principal Law to enable the Rules made under that Article to include a power for the Minister to give directions to the Governor in pursuance of any Rule.

*Article 18* gives the name of this Law and provides for all provisions to come into force 7 days after it is registered apart from Articles 4 and 16 (both of which change the references to the Board of Visitors to the Independent Monitoring Board), which will come into force on the date that Regulations are made under Article 6(1) of the principal Law, as amended by this Law.

Under the Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016 (not yet in force – see the Draft Appointed Day Act, [P.75/2016](#), which, it is expected, will be debated on 13th September 2016) the maximum amount of fine within the jurisdiction of the Magistrate’s Court £10,000. Level 1 on the standard scale of fines is 2% of that jurisdiction (£200); level 2 is 10% of that jurisdiction (£1,000); and level 3 of that jurisdiction is 100% of that jurisdiction (£10,000).





Jersey

## DRAFT PRISON (AMENDMENT No. 7) (JERSEY) LAW 201-

### Arrangement

---

#### Article

|    |                                      |    |
|----|--------------------------------------|----|
| 1  | Interpretation .....                 | 15 |
| 2  | Article 1 amended .....              | 15 |
| 3  | Article 3A inserted .....            | 17 |
| 4  | Article 5 amended .....              | 18 |
| 5  | Article 6 amended .....              | 18 |
| 6  | Article 7 amended .....              | 19 |
| 7  | Article 8 amended .....              | 19 |
| 8  | Article 13A amended .....            | 19 |
| 9  | Article 13B amended.....             | 19 |
| 10 | Article 20 repealed .....            | 19 |
| 11 | Article 21 amended .....             | 19 |
| 12 | Article 22 substituted .....         | 20 |
| 13 | Article 23 amended .....             | 20 |
| 14 | Articles 24 and 25 substituted ..... | 20 |
| 15 | Article 26 amended .....             | 25 |
| 16 | Article 28 amended .....             | 25 |
| 17 | Article 29 amended .....             | 25 |
| 18 | Citation and commencement.....       | 25 |





Jersey

## DRAFT PRISON (AMENDMENT No. 7) (JERSEY) LAW 201-

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<sup>1</sup>.

### 2 Article 1 amended

(1) In Article 1 of the principal Law –

(a) in paragraph (1) –

(i) immediately before the definition “attendance centre” there is inserted the following definition –

“ ‘ammunition’ has the meaning given in Article 1(1) of the Firearms (Jersey) Law 2000<sup>2</sup>;”

(ii) after the definition “attendance centre order” there are inserted the following definitions –

“ ‘authorization’ means written authorization;

‘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;

‘controlled drug’ has the meaning given in Article 3 of the Misuse of Drugs (Jersey) Law 1978<sup>3</sup>;

‘cooperation scheme’ means a scheme for ensuring that assistance may be provided between the Minister and an overseas prison authority, to enable the Minister and the overseas prison authority to perform their functions;

‘convey’ includes bring and throw;

‘electronic communication’ has the meaning given in Article 1(1) of the Electronic Communications (Jersey) Law 2000<sup>4</sup>;

‘explosive’ has the meaning given to ‘explosives’ in Article 1(1) of the Explosives (Jersey) Law 1970<sup>5</sup>;

‘fingerprints’ has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>6</sup>;

‘firearm’ has the meaning given in Article 1(1) of the Firearms (Jersey) Law 2000<sup>7</sup>;”,

(iii) after the definition “Governor” there are inserted the following definitions –

“ ‘Independent Prison Monitoring Board’ means the Independent Prison Monitoring Board established in Regulations made under Article 6;

‘intimate sample’ has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>8</sup>;

‘intoxicating liquor’ has the meaning given in Article 1(1) of the Licensing (Jersey) Law 1974<sup>9</sup>;

‘medical officer’ means the officer appointed under Article 7(1);”,

(iv) after the definition “Minister” there are inserted the following definitions –

“ ‘offensive weapon’ has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>10</sup>;

‘overseas prison authority’ means an authority (by whatever name it is called) that performs in a place outside Jersey any functions that are equivalent to or of the same kind as those of the Minister under this Law;

‘personal communication device’ means –

- (a) a mobile telephone;
- (b) any other device that is capable of transmitting or receiving an electronic communication;
- (c) a component part of a device described in paragraph (a) or (b); or
- (d) an item designed or adapted for use with a device described in paragraph (a) or (b),

and it is irrelevant whether or not a personal communication device forms part of another device of any kind;

‘photograph’ means a recording on any medium on which an image (including a moving image) is produced or from which such an image may by any means be produced;”,

(v) after the definition “prison officer” there are inserted the following definitions –

“ ‘recording device’ means –

- (a) a camera;
- (b) any other device that is capable of recording a sound, a still image or a moving image (in combination or otherwise);
- (c) a component part of a device described in paragraph (a) or (b); or
- (d) an item designed or adapted for use with a device described in paragraph (a) or (b),

and it is irrelevant whether or not a recording device forms part of another device of any kind;

‘sound-recording’ means a recording of sounds on any medium from which the sounds may by any means be reproduced;”;

- (b) after paragraph (4) there is added the following paragraph –  
“(5) The States may by Regulations amend paragraph (1).”.

### 3 Article 3A inserted

After Article 3 of the principal Law there is inserted the following Article –

#### “3A Cooperation schemes with overseas prison authorities

- (1) The Minister may enter into a cooperation scheme with an overseas prison authority.
- (2) A cooperation scheme may include provision –
  - (a) for the overseas prison authority, at the request of the Minister, to place its officers or employees at the Minister’s disposal for the purpose of enabling the Minister to meet any special demand on his or her resources in relation to this Law;
  - (b) for the Minister, at the request of the overseas prison authority, to place prison officers or employees at the overseas prison authority’s disposal for the purpose of enabling that authority to meet any special demand on its resources; and
  - (c) for apportioning between the Minister and the overseas prison authority any expenses incurred in taking measures to secure the operation of the scheme.
- (3) Paragraph (4) applies to a person who is an officer or employee of an overseas prison authority, while serving a period of duty in Jersey under a provision of a cooperation scheme made under paragraph (2)(a).

- (4) The person is to be treated for the purposes of any enactment (including the provisions of this Law other than this Article) as a prison officer or employee under this Law, and accordingly –
  - (a) is subject to the authority and under the control of the Governor; and
  - (b) if an officer of the overseas prison authority, has the duties and powers of a prison officer under this Law.
- (5) In this Article a reference to an officer or employee of an overseas prison authority means a person (by whatever name that person’s post is called) who carries out functions for the overseas prison authority that are equivalent to those of a prison officer or employee, as the case may be, under this Law.”.

#### 4 Article 5 amended

In Article 5(2) of the principal Law, for the words “Board of Visitors” there are substituted the words “Independent Prison Monitoring Board”.

#### 5 Article 6 amended

For Article 6 of the principal Law there is substituted the following Article –

##### “6 Independent Prison Monitoring Board

- (1) The States shall make Regulations providing for the establishment of an Independent Prison Monitoring Board, which shall consist of such persons appointed at such times, in such manner and for such terms as may be specified in the Regulations.
- (2) Regulations made under paragraph (1) shall specify the functions of the Independent Prison Monitoring Board and include provision for –
  - (a) visits to the prison by members of the Board;
  - (b) inspection of any part of the prison, including any cell, by members of the Board;
  - (c) the reporting to the Minister of any matter which he or she considers it expedient to report.
- (3) All members of the Independent Prison Monitoring Board –
  - (a) shall have free access at all times to all parts of the prison and to all prisoners; and
  - (b) may see such prisoners as they desire, either in their cells or in a room out of sight and hearing of officers.
- (4) Despite the coming into force of Article 5 of the Prison (Amendment No. 7) (Jersey) Law 201<sup>-11</sup> –
  - (a) the Prison (Board of Visitors) (Jersey) Regulations 1957<sup>12</sup> (“1957 Regulations”) shall remain in force until they are revoked by Regulations made by the States under paragraph (1); and

- (b) the members of the Board of Visitors may continue to visit at any time the prison or any part thereof, and any prisoner, until the 1957 Regulations are revoked.”.

## **6 Article 7 amended**

For Article 7 of the principal Law there is substituted the following Article –

### **“7 Medical officer and chaplain**

- (1) The Minister shall appoint a medical officer of the prison who shall be a doctor.
- (2) Subject to paragraph (3), the Minister shall appoint a chaplain who is a clergyman of the Church of England.
- (3) The Minister may appoint a chaplain who is a clergyman of a religious denomination other than the Church of England –
  - (a) where the number of prisoners who belong to a religious denomination other than the Church of England is such as in the opinion of the Minister to require the appointment of a chaplain of that denomination; or
  - (b) where, despite advertising for the position of chaplain in such manner as the Minister considers appropriate, the Minister is unable to fill the vacancy with a clergyman of the Church of England.
- (4) The States may by Regulations amend this Article.”.

## **7 Article 8 amended**

In Article 8, after paragraph (3), there shall be inserted the following paragraph –

- “(4) The States may by Regulations amend this Regulation.”.

## **8 Article 13A amended**

Article 13A(4) of the principal Law is deleted.

## **9 Article 13B amended**

Article 13B(4) of the principal Law is deleted.

## **10 Article 20 repealed**

Article 20 of the principal Law is repealed.

## **11 Article 21 amended**

In Article 21 of the principal Law –

- (a) for the words “without force” there are substituted the words “whether with or without the use of force”;
- (b) for the words “to a fine, or to imprisonment for a term not exceeding 2 years, or both” there are substituted the words “to imprisonment for a term of 10 years and to a fine”.

## 12 Article 22 substituted

For Article 22 of the principal Law there is substituted the following Article –

### “Assisting prisoner to escape

Any person who aids any person in escaping or attempting to escape from the prison or other lawful custody or who, with intent to facilitate the escape of any such person, conveys any thing into the prison or places any thing anywhere outside the prison with a view to its coming into the possession of any such person, shall be guilty of any offence and liable imprisonment for a term of 10 years and to a fine.”.

## 13 Article 23 amended

In Article 23(1) of the principal Law, for the words “to a fine, or to imprisonment for a term not exceeding 2 years, or both” there are substituted the words “to imprisonment for a term of 10 years and to a fine”.

## 14 Articles 24 and 25 substituted

For Articles 24 and 25 of the principal Law there are substituted the following Articles –

### “24 Conveyance of Grade 1 item into or out of prison

- (1) A Grade 1 item is any of the following –
  - (a) a controlled drug;
  - (b) an article made or adapted for use in the ingestion of a controlled drug;
  - (c) an explosive;
  - (d) a firearm or ammunition;
  - (e) any other offensive weapon.
- (2) A person is guilty of an offence if he or she –
  - (a) conveys a Grade 1 item into or out of the prison;
  - (b) causes another person to convey a Grade 1 item into or out of the prison;
  - (c) leaves a Grade 1 item in any place (whether inside or outside the prison) intending it to come into the possession of a prisoner; or

- (d) knowing a person to be a prisoner, gives a Grade 1 item to that person,

except where he or she is authorized to do so under paragraph (3) or (4).

- (3) The Governor may authorize –

- (a) the medical officer;
- (b) a doctor;
- (c) a pharmacist;
- (d) a police officer; or
- (e) a person in the employment of the prison,

to convey a Grade 1 item described in paragraph (1)(a) or (1)(b) into or out of the prison for a purpose (including for the purpose of leaving it in a place in the prison intending it to come into the possession of a prisoner or for the purpose of giving it to a prisoner), subject to any condition that may be specified in the authorization.

- (4) The Chief Officer or the Deputy Chief Officer of the States of Jersey Police Force may authorize a person to convey a Grade 1 item described in paragraph (1)(c), (1)(d) or (1)(e) into or out of the prison for a purpose, subject to any condition that may be specified in the authorization.

- (5) A person who is authorized under paragraph (3) or (4) to convey a Grade 1 item into or out of the prison shall be guilty of an offence if he or she so conveys it for a purpose other than for the purpose authorized or fails to comply with a condition subject to which the authorization is given.

- (6) A person who is guilty of an offence under paragraph (2) or (5) shall be liable to imprisonment for a term of 10 years and to a fine.

- (7) The States may by Regulations –

- (a) amend the definition “Grade 1 item” in paragraph (1) to include other items;
- (b) amend this Article to make provision for authorization to be given by the Governor or the Chief Officer or Deputy Chief Officer of the States of Jersey Police Force to a person or a class of person for a Grade 1 item (other than an item for which authorization is permitted under paragraph (3) or (4)) to be conveyed into or out of the prison for a purpose, and subject to any condition specified in the authorization.

## **25 Conveyance of Grade 2 item into or out of prison**

- (1) A Grade 2 item is any of the following –

- (a) intoxicating liquor;
- (b) a personal communication device;
- (c) a recording device.

- (2) A person is guilty of an offence if he or she –
- (a) conveys a Grade 2 item into or out of the prison;
  - (b) causes another person to convey a Grade 2 item into or out of the prison;
  - (c) leaves a Grade 2 item in any place (whether inside or outside the prison) intending it to come into the possession of a prisoner; or
  - (d) knowing a person to be a prisoner, gives a Grade 2 item to that person,
- except where he or she is authorized to do so under paragraph (3).
- (3) The Governor may authorize any person to convey a Grade 2 item into or out of the prison for a purpose (including for the purpose of leaving it in a place in the prison intending it to come into the possession of a prisoner or for the purpose of giving it to a prisoner), subject to any condition that may be specified in the authorization.
- (4) A person who is authorized under paragraph (3) to convey a Grade 2 item into or out of the prison shall be guilty of an offence if he or she so conveys it for a purpose other than for the purpose authorized or fails to comply with a condition subject to which the authorization is given.
- (5) For the purpose of paragraph (2)(a) and (b) a person does not convey an item into or out of the prison if the person conveys it into a part of the prison designated by the Governor for the holding of items while the person is inside the prison, surrenders it to be held there, and removes it from there on leaving the prison.
- (6) In proceedings for an offence under this Article it is a defence for the accused to show that –
- (a) he or she reasonably believed that he or she had authorization to do the act in respect of which the proceedings are brought; or
  - (b) in all the circumstances there was an overriding public interest which justified the doing of that act.
- (7) A person who is guilty of an offence under paragraph (2) or (4) shall be liable to imprisonment for a term of 2 years and to a fine.
- (8) The States may by Regulations amend the definition “Grade 2 item” in paragraph (1) to include other items, except that no amendment may be made which would result in any Grade 1 item becoming or being treated as a Grade 2 item.

#### **25A Conveyance of Grade 3 item into or out of prison**

- (1) A Grade 3 item is any item that is not a Grade 1 item or a Grade 2 item.
- (2) A person is guilty of an offence if he or she –

- (a) conveys a Grade 3 item into the prison intending it to come into the possession of a prisoner;
- (b) causes another person to convey a Grade 3 item into the prison intending it to come into the possession of a prisoner;
- (c) conveys a Grade 3 item out of the prison on behalf of a prisoner;
- (d) causes another person to convey a Grade 3 item out of the prison on behalf of a prisoner;
- (e) leaves a Grade 3 item in any place (whether inside or outside the prison) intending it to come into the possession of a prisoner; or
- (f) knowing a person to be a prisoner gives a Grade 3 item to that person,

except where he or she is authorized to do so under paragraph (3).

- (3) The Governor may authorize any person to convey a Grade 3 item into or out of the prison for a purpose (including for the purpose of leaving it in a place in the prison intending it to come into the possession of a prisoner or for the purpose of giving it to a prisoner), subject to any condition that may be specified in the authorization.
- (4) A person who is authorized under paragraph (3) to convey a Grade 3 item into or out of the prison shall be guilty of an offence if he or she so conveys it for a purpose other than for the purpose authorized or fails to comply with a condition subject to which the authorization is given.
- (5) For the purpose of paragraph (2)(a) and (b) a person does not convey an item into or out of the prison if the person conveys it into a part of the prison designated by the Governor for the holding of items while the person is inside the prison, surrenders it to be held there, and removes it from there on leaving the prison.
- (6) In proceedings for an offence under this Article it is a defence for the accused to show that –
  - (a) he or she reasonably believed that he or she had authorization to do the act in respect of which the proceedings are brought; or
  - (b) in all the circumstances there was an overriding public interest which justified the doing of that act.
- (7) A person who is guilty of an offence under paragraph (2) or (4) shall be liable to a fine of level 3 on the standard scale.
- (8) The States may by Regulations amend this Article.

**25B Other offences relating to information and recordings**

- (1) A person is guilty of an offence if he or she –
  - (a) records an image (whether still or moving) or sound while the person is inside the prison or using a device that is inside the prison;
  - (b) transmits, or causes to be transmitted, any image or any sound from inside the prison by electronic communication for simultaneous reception outside the prison;
  - (c) brings or otherwise conveys a restricted document out of the prison, or causes a restricted document to be brought or conveyed out of the prison; or
  - (d) transmits, or causes to be transmitted, from inside the prison by means of electronic communication –
    - (i) a restricted document, or
    - (ii) any information derived from a restricted document,except where he or she is authorized to do so under paragraph (5).
- (2) In paragraph (1) “restricted document” means the whole or any part of –
  - (a) a photograph taken inside the prison;
  - (b) a sound-recording made inside the prison;
  - (c) a record required by Rules under Article 29 to be prepared and maintained in relation to a prisoner, irrespective of whether that person is still a prisoner at the time of any alleged offence; or
  - (d) a document or other item in which there is recorded, by whatever means, any information falling within paragraph (3).
- (3) Information falls within this paragraph if –
  - (a) it is derived from a record falling within paragraph (2)(c);
  - (b) its disclosure would or might prejudice the interests of an identified or identifiable individual, to whom the information relates and who is or has been –
    - (i) a prisoner or a person working at the prison, or
    - (ii) a member of such a person’s family or household; or
  - (c) it relates to any matter connected with the prison or its operation, and its disclosure would or might prejudice the security or operation of the prison.
- (4) For the purposes of paragraphs (1)(a), (2)(a) and (2)(b), it is immaterial where the recording medium is located.
- (5) The Governor may authorize any person to do an act described in paragraph (1) for a purpose and subject to any condition that may be specified in the authorization or in a Rule made under Article 29.

- (6) A person who is authorized under paragraph (5) to do an act described in paragraph (1) shall be guilty of an offence if he or she fails to comply with a condition subject to which the authorization is given.
- (7) In proceedings for an offence under this Article it is a defence for the accused to show that –
  - (a) he or she reasonably believed that he or she had authorization to do the act in respect of which the proceedings are brought; or
  - (b) in all the circumstances there was an overriding public interest which justified the doing of that act.
- (8) A person who is guilty of an offence under paragraph (1) or (6) shall be liable to imprisonment for a term of 2 years and to a fine.”.

#### **15 Article 26 amended**

In Article 26 of the principal Law for the words “Articles 20, 21, 22, 23, 24 and 25” there are substituted the words “Articles 21, 22, 23, 24, 25, 25A and 25B”.

#### **16 Article 28 amended**

In Article 28 of the principal Law, for the words “Board of Visitors” there are substituted the words “Independent Prison Monitoring Board”.

#### **17 Article 29 amended**

In Article 29 of the principal Law –

- (a) in the heading, after the word “Rules” there are inserted the words “and directions”;
- (b) after Article 29(1C) there is inserted the following paragraph –
  - “(1D) Any Rules made under this Article may include a power for the Minister to give a direction to the Governor in pursuance of any such Rule.”;
- (c) paragraph (7) is deleted.

#### **18 Citation and commencement**

This Law may be cited as the Prison (Amendment No. 7) (Jersey) Law 201- and –

- (a) Articles 1, 2, 3, 5 to 15, 17 and 18 come into force 7 days after it is registered; and

- (b) Articles 4 and 16 come into force on the date that Regulations made under Article 6 of the principal Law (as amended by this Law) come into force.

- 
- 1 *chapter 23.775*
  - 2 *chapter 23.200*
  - 3 *chapter 08.680*
  - 4 *chapter 04.280*
  - 5 *chapter 23.125*
  - 6 *chapter 23.750*
  - 7 *chapter 23.200*
  - 8 *chapter 23.750*
  - 9 *chapter 11.450*
  - 10 *chapter 23.750*
  - 11 *P.89/2016*
  - 12 *chapter 23.775.15*