

STATES OF JERSEY



Jersey

DRAFT CRIME (PUBLIC ORDER) (JERSEY) LAW 202-

**Lodged au Greffe on 22nd November 2023
by the Minister for Justice and Home Affairs
Earliest date for debate: 16th January 2024**

STATES GREFFE



Jersey

DRAFT CRIME (PUBLIC ORDER) (JERSEY) LAW 202-

European Convention on Human Rights

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

In the view of the Minister for Justice and Home Affairs, the provisions of the Draft Crime (Public Order) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy H.M. Miles of St. Brelade**
Minister for Justice and Home Affairs

Dated: 21st November 2023

REPORT

Background

The format of this piece of legislation has evolved from the Crime (Prejudice and Public Disorder) (Jersey) 201-. This was delayed by Covid-19 and then paused by the previous Government before the 2022 election. The current Minister for Justice and Home Affairs has decided that it would be more appropriate to progress the public order aspects of this package separately from the prejudice. The prejudice aspects will be considered further in light of the outcomes of the policy work ongoing in relation to violence against women and girls (VAWG) and may be brought to the Assembly in 2024.

Rationale for new legislation

The current public order legislation is outdated and does not cater for modern day offences. For example, the current law, [*Loi \(1797\) sur les rassemblements tumultueux*](#) is completely unsuited to any modern usage as it not only prohibits ‘riot’ in the modern sense but also any gathering of 12 or more citizens or ‘*under the pretext of, considering, declaring or representing ... any alleged grievance*’.¹ (This does not exempt political protest.) It also makes provision for the arrest and banishment of offenders. Understandably, it has not been used to charge anyone for a considerable time.

Jersey presently has no offence of threats to kill, rape or cause serious physical injury and currently such behaviour has to be captured, sometimes inadequately, by other minor offences. The Law Commission of England has recommended that “*a reformed statute governing offences of violence should include an offence of threatening to kill, cause serious injury to or rape any person....*”.

Jersey’s treatment of offensive weapons differs from that in the UK and Guernsey, as it does not recognise that possession of a knife in public without good reason is possession of an ‘offensive weapon’. In addition, the law does not explicitly state that a school is a ‘public place’ in respect of carrying such weapons.

The States of Jersey Police (SoJP) report that from 2020 to 2022 there were 1,052 logged incidents² that mentioned knives, although only 113 actual knife crimes were reported in this period, of which only 9 related to actual stabbing or slashing in any location, public or private. Of those logged incidents, about a quarter (266) were in a public place, and about 6% of those public place incidents concerned schools (17, or 2% of total incidents).

If adopted, the law will capture bladed articles within the definition of offensive weapon and school premises within the definition of public place.

This law will collate all relevant public order offences in to one area. Possession of an offensive weapon for example, currently sits within the firearms legislation which means that any conviction would reflect a firearms offence. Moving this offence within the category of public order ensures that a conviction for possession of an offensive weapon is categorised as a public order offence.

¹ [*Loi \(1797\) sur les rassemblements tumultueux*](#), unofficial translation, Jersey Legal Information Board.

² The UK’s Incident logs Crime Recording Rules define a logged incident as “*all reports of incidents, whether from victims, witnesses or third parties and whether crime related or not*”. This data reflects any record of an exchange with the police control room where terms such as ‘knife’ or ‘blade’ are used.

Breakdown of the legislation

The draft Law deals with some issues regarding public order, specifically by abolishing and replacing some customary law and statutory offences and creating new offences in statute, including the [Crime \(Disorderly Conduct and Harassment\) \(Jersey\) Law 2008](#). Breach of the peace will remain a customary offence.

The draft Law will also codify the customary offence of affray and provide powers for Centeniers to levy fines summarily at the Parish Hall in respect of some minor public order and traffic offences and the possession of small amounts of controlled drugs.

The new offences are as follows –

Riot

A riot is described as “*an occasion when 12 or more people (the “rioters”) are present and use or threaten to use unlawful violence for a common purpose*”. The offence requires that an observer, (a person of “reasonable firmness”) if there were one, would be in fear for their safety. It can be committed in a public or private place and carries a penalty of up to 10 years imprisonment and an unlimited fine. A person commits the offence if they use violence and intend to use violence, or they are aware that their conduct may be violent. It is not necessary to prove either that all 12 were using or threatening violence simultaneously or that all 12 intended to use violence, or were aware that their conduct may be violent. This negates the need to prove the intent of all involved.

A person of “reasonable firmness” provides a standard upon which the Courts can measure impact upon an observer. For example, a more fragile person might be more likely to be in fear for their safety in such circumstances than a more agile, stronger person. One should be able to apply the law to the “average” person as opposed to being based on a particular individual’s characteristic.

Offences related to unlawful assembly were abolished in England and replaced with the offences of riot and violent disorder in the English Public Order Act 1986. This new offence of riot is based on the offence in the United Kingdom (UK). This will allow local judges to take advantage of a body of the UK case law.

Affray

This is a long-standing Jersey customary law offence which shares its roots with the common law offence of affray in England. Unlike the old customary law of riot, affray is fairly frequently charged. It consists of unlawful fighting, violence or a display of force in public that might severely upset bystanders. Critically, the current customary offence differs from the English ‘affray’ in that it requires a bystander. The new statutory offence would not require any bystanders, which will mean that it can be better applied where the offence is committed in a private place. It carries a sentence of up to 5 years imprisonment and an unlimited fine.

Threats to kill, rape or to cause serious physical injury

The draft Law also provides for an offence of issuing or making threats to kill or cause serious harm. The offence will be committed if a person makes a threat with the intention that the recipient should believe that they will genuinely act on it. It is punishable by up to 10 years imprisonment and an unlimited fine.

Jersey law already makes provision for dealing with less serious threats to a certain extent in the Crime (Disorderly Conduct and Harassment) Law 2008 and threats by electronic communications in the Telecommunications Law³. The offence of threatening to rape will capture serious sexual elements of the offence and other sexual incidents should still be captured within the sexual offences legislation⁴. However, in the case of serious sexual offences, better protection is required and is provided for in many other jurisdictions.

³ [Telecommunications \(Jersey\) Law 2002](#), Article 51 - Improper use of telecommunications system

⁴ [Sexual Offences \(Jersey\) Law 2018](#) (jerseylaw.je)

In terms of jurisdiction, the Law Commission report⁵ concluded that the threatening offence should be applicable beyond the simple territorial boundaries of England and Wales. This would allow much better coverage of threats made over the internet, where jurisdictional boundaries are often a barrier to prosecution. Translating the Commission's recommendation to Jersey results in an offence that covers threats –

- Made from within Jersey to someone anywhere in the world, or
- Made by anyone anywhere but concerned some harmful action that was to be carried out in Jersey.

It carries a sentence of up to 10 years imprisonment and an unlimited fine.

Threatening, abusive or disorderly conduct & harassment

Articles 5 and 6 of the Law deal with the offence of harassment and threatening, abusive or disorderly behaviour. This offence already exists in Article 2 of the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008, and no changes (other than in increase in penalties) are made to the nature or effect of the offence by including it in this law.

Disorderly conduct offences carry a sentence of up to 10 years imprisonment and a fine of level 3 on the standard scale. Harassment offences carry a sentence of up to 5 years imprisonment and an unlimited fine.

Offensive Weapons

The draft Law will repeal and replace the offence in the Firearms (Jersey) Law 2000⁶ of carrying an offensive weapon in a public place without lawful excuse.

Currently the law provides that any person found with an “offensive weapon” must prove that they have lawful authority or reasonable excuse to possess that weapon otherwise they commit an offence. This new law provides that possession of an offensive weapon in a public place is an offence and provides a defence if the person has good reason or lawful authority. The law also specifies several defences per se, e.g., for use at work, religious reasons or as part of a national costume or on school premises, for educational purposes. It is a strict liability offence and places the onus on the defendant to provide a defence.

The new offence has been extended to cover an article that has “a blade or is sharply pointed”. This extension to ‘bladed articles’ would bring the criminal law in Jersey into line with that in the UK and Guernsey.

As detailed above, statistics from SoJP demonstrate that knife incidents do occur in schools, and in order to avoid a gap in the scope of the law the new offence will explicitly include school premises.

The movement of this offence into the draft Public Order Law would also address a concern that at present, a conviction for carrying a knife unlawfully may result in a conviction under the Firearms Law, which arguably does not correctly label the offending.

In 2008 an amendment to the Firearms (Jersey) Law 2000 was proposed, which would have introduced an equivalent offence, but the ‘offensive weapon’ component was rejected. The Hansard of the debate ([Official Report - 3rd December 2008 \(gov.je\)](#)) suggests the Assembly's objection to the offences was around the risk of criminalising people who were legitimately carrying bladed or pointed articles, and because that the amendment would have created a specific offence of “*carrying of offensive weapon or article with blade or point on school premises*”. There was also some disquiet that the offence was proposed as a part of a general updating of the Firearms Law.

⁵ Report on Reform of Offences Against the Person, 2015, Law Commission of England, Chapter 8.18 – can be found at [Offences against the Person - Law Commission](#)

⁶ [Firearms \(Jersey\) Law 2000 \(jerseylaw.je\)](#)

The debate of the time does not seem to have fully reflected that the proposed offence recognised legitimate reasons for possession of a bladed article, (for work use, for religious reasons, as national costume, for educational purposes etc). Additionally, no reference was made at the time of the rationale behind the offence, which was to address the rare but concerning incidents of children carrying knives in school.

The offence will carry a sentence of up to 5 years imprisonment and an unlimited fine and the court may order the forfeiture or disposal of the weapon.

Restraining orders

The Disorderly Conduct and Harassment Law also provides for restraining orders. These orders can be imposed on an offender, in addition to any other sentence, when a court believes that that they are required to protect a person from harassment.

These offences are moved into this new legislation to simplify the area of law and allow the public to see the statutory provision for public disorder in a single place. This was the intention behind the UK's Public Order Act 1986, and with these changes Jersey will have a clearer and more coherent approach to such offences than most jurisdictions.

A breach of a restraining order carries a sentence of up to 5 years imprisonment and an unlimited fine.

Parish Hall Enquiries, fines for customary offences

Background

A significant proportion of public order offences in Jersey are dealt with by means of a Parish Hall Enquiry. This is a part of the prosecution process, overseen by a Centenier that allows low-level offending to be dealt with by a consensual and voluntary process as an alternative to taking the matter to court.

This has the advantage of keeping minor offenders out of the criminal justice system, and it has been generally established that the outcomes of the Enquiry process are positive in the sense of fairness and restorative justice⁷.

The sanctions that can follow an Enquiry are –

- Written caution
- Voluntary supervision
- Supervision programmes
- Deferred decision
- No further action
- Charge and bail for a Court appearance

In addition, Centeniers are able to impose fines for minor statutory offences where they are proscribed by law, including littering, speeding and some other traffic offences. While the Centeniers can deal with customary offences, they are not able to impose fines for such offences, as these have historically been developed by courts.

Changes

The new law will provide that a Centenier can impose a fine up to level 1 on the standard scale at a Parish Hall Enquiry (this will be periodically increased to account for inflation) for the following offences –

- Drunk and disorderly/incapable
- Breaches of the peace

⁷ The Conduct and Effectiveness of Parish Hall Enquiries, Miles and Raynor, 2005

- Common assault
- Being in an intoxicated condition at an aerodrome contrary to Regulation 13 of the Aerodromes (Jersey) Regulations 1965

Offences by bodies corporate etc.

An offence under this law may be committed by a limited partnership etc.

Repeals

This law repeals some outdated public order legislation and provides amendments to some traffic and drug related offences⁸ to be dealt with by way of summary fine –

- Driving without licence
- Driving without due care and attention. In order to impose a summary fine it currently requires permission of the victim, this requirement would be removed.

Misuse of Drugs amendments

The majority of first offences for possession of personal amounts of Class B and C drugs may be dealt with at Parish Hall level by way of a written caution but not a fine. This has meant that a second-time minor drug offender must be dealt with by the Magistrates Court. Article 28(A) of the Law would make a ‘consequential amendment’ to the [Misuse of Drugs \(Jersey\) Law 1978](#) to address occasional repeat drug possession offences through the imposition of a similar fine of up to level 1.

Timescale

The Law will come into force 7 days after it is registered.

Financial and staffing implications

These new arrangements for the management of public order offences are not materially more demanding than the current system. There are no additional finance or employment implications.

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.

Re-issue Note

This Project is re-issued in order to make changes to the “Rationale for new legislation” and “Offensive Weapons” paragraphs in the report accompanying the proposition.

⁸ Schedule 3 of the Road Traffic (Jersey) Law 1956 and Misuse of Drugs (Jersey) Law 1978

APPENDIX TO REPORT**Human Rights Notes on the Draft Crime (Public Order) (Jersey) Law 202-**

These notes have been prepared in respect of the Draft Crime (Public Order) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law, in the form reviewed by them, is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law, if passed, would replace existing statutory and customary law offences against public order and introduce new public order related offences which do not currently exist in Jersey. The purpose of this law is to update legislation and address current gaps in this area.

As the new offences and amendments to legislation raise different issues with respect to ECHR compliance, each article is analysed separately below.

Article 2 – Riot

Article 2 creates the offence of riot to replace the offence contained in *the Loi (1797) sur les rassemblements tumultueux*, which will be repealed by this Law.

The *mens rea* element of the offence in Article 2(1)(c) ensures that its application is limited to those circumstances where the individual intends to use violence or is aware that their conduct may be violent. This prevents a person whose actions are inadvertently violent (for example because they act to prevent injury to themselves or others) while present at the scene of a riot from committing the offence.

The key ECHR rights which may be engaged by Article 2 of the draft Law are Articles 9 (right to freedom of religion), 10 (right to freedom of expression) and 11 (right to freedom of assembly and association). The most likely to be restricted is Article 11, right to freedom of assembly and association, which states:

- “1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”*

There are two points that prevent Article 2 of the draft Law infringing an individual’s Article 11 rights. Firstly, Article 11 of the ECHR only protects the right to “peaceful” assembly. As such Article 11 does not cover a demonstration where the organisers and participants have violent

intentions, incite violence or otherwise reject the foundations of a democratic society. Article 2 of the draft Law makes specific reference to the use of “unlawful violence” and for someone present to “fear for their safety”. As such, there is sufficient distinction from “peaceful assembly” which ensures that the provision does not interfere with Article 11 of the ECHR.

Article 2(1)(b) of the draft Law means that only those who actually use violence will commit the riot offence, even where the original assembly was peaceful. An individual would not cease to enjoy their own right to freedom of peaceful assembly as a result of violence committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour. The offence of riot contained in Article 2 would serve to protect the Article 11 rights of those who remain peaceful in their actions and intentions by prohibiting violence.

Secondly, Article 11 is not an absolute right; it can be subject to restrictions in accordance with Article 11(2) (see above). Any such restrictions must be prescribed by law, in pursuance of a legitimate aim, and necessary in a democratic society. Article 2 seeks to protect public safety and prevent crime and disorder by only criminalising those who actually use violence and have the intention to use unlawful violence or are aware that their conduct may be violent, rather than imposing a blanket restriction on assemblies.

Article 11 is also considered in conjunction with Article 10, right to freedom of expression. Article 10 provides:

- “1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

Despite the importance attached to the right to free expression, it is possible for restrictions on the right to be justified under Article 10(2). For the same reasons as those outlined in relation to Article 11, the offence created in Article 2 of the draft Law is considered to be proportionate interference with Article 10(1) ECHR and fulfils the pressing social need of protecting members of the public from harm and preventing crime and disorder whilst balancing this with an individual’s right to freedom of expression by only criminalising those who use or threaten violence.

Article 9 of the ECHR (the freedom of thought, conscience and religion) may also be engaged by Article 2. Article 9 states:

- “1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

For the same reasons as outlined in relation to Article 11, to the extent that Article 9(1) might be said to be engaged, the offence created in Article 2 is considered proportionate to the legitimate aims listed in Article 9(2) ECHR, particularly as Article 2 is limited in such a way as to only restrict the exercise of Article 9 rights if the individual uses violence and intends to do so or is aware that their conduct may be violent.

In relation to penalties, the maximum penalty imposed by Article 2(6) is 10 years' imprisonment. The penalty imposed is proportionate to the seriousness of the offence and in pursuance of the aims of preventing crime and disorder and protecting the rights of others.

Taking into account the points above, Article 2 is compliant with Articles 9, 10 and 11 of the ECHR.

Article 3 – Affray

Article 3 of the draft Law replaces the customary law offence of Affray which addresses the use or threatening of unlawful violence towards another causing a person of reasonable firmness to fear for his safety, although there is no requirement for a person of reasonable firmness to actually be present.

The key ECHR rights which may be engaged by Article 3 of the draft Law are Article 9, 10 and 11. Restrictions on such rights may be justified if such restrictions are prescribed by law, pursue a legitimate aim and are necessary in a democratic society.

The offence of affray created by Article 3 is considered to be proportionate to the aim of protecting the rights of others, protecting public safety and preventing crime and disorder. The *mens rea* element of the offence in Article 3(1)(c) ensures that only those who intend to use or threaten violence can be guilty of an offence of affray, thereby protecting ECHR rights unless the individual has violent intentions. Article 3(1) also limits the offence so that a person will only be guilty of affray if a person of reasonable firmness present at the scene would fear for his or her personal safety. This balances the rights of the individual and the rights of the public.

Article 3(4) prescribes a maximum penalty of 5 years' imprisonment and an unlimited fine. The penalty is proportionate having regard to the range of potential offending conduct that might be covered by the offence and in pursuance of the aims of preventing crime and disorder and protecting the rights of others.

Taking into account the points above, Article 3 is compliant with Articles 9, 10 and 11 of the ECHR.

Article 4 – Threats to kill, rape or cause serious physical injury

Article 4 of the draft Law creates the offence of threatening to kill, rape or cause serious injury. Article 4(1)(a) requires the person to intend that the other person would believe that the threat would be carried out to that other person or to a third person.

The ECHR right which may be engaged by Article 4 of the draft Law is Article 10. Restrictions on Article 10 may be justified if they are prescribed by law and are necessary in a democratic society. The offence created in Article 4 is considered proportionate to the aims of public safety, prevention of crime and disorder and protection of the rights of others (specifically Article 2 and Article 8 ECHR). The *mens rea* element of the offence ensures that only those who intend that

the other person will believe that the threat will be carried out will be guilty of an offence. This balances the Article 10 rights of the individual and the rights of the public generally.

Article 4(2) imposes a maximum penalty of 10 years' imprisonment and an unlimited fine. The penalty is proportionate to the seriousness of the offence and in pursuance of the aims of preventing crime and disorder and protecting the rights of others.

Taking into account the points above, Article 4 is compliant with Article 10 of the ECHR.

Article 5 – Threatening, abusive or disorderly conduct

Article 5 amends the offence of threatening, abusive or disorderly conduct currently contained in Article 2 of the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 (the "2008 Law"), which will be repealed by the draft Law, to increase the maximum penalty from 3 months' imprisonment and a fine of level 3, to 12 months' imprisonment and a fine of level 3.

The increase in penalty for this offence may engage Article 10 ECHR, however the increase would be considered proportionate to the seriousness of the offence and the aim being pursued under Article 10(2) of public safety, prevention of crime and disorder and protecting the rights of others.

Taking into account the points above, Article 5 is compliant with Article 10 of the ECHR.

Article 6 - Harassment

Article 6 amends the offence of harassment contained in Article 3 of the 2008 Law to increase the maximum penalty from 2 years' imprisonment and a fine to 5 years' imprisonment and a fine.

The increase in penalty for this offence may engage Article 10 ECHR, however the increase would be considered proportionate to the seriousness of the offence and the aim being pursued under Article 10(2) of public safety, prevention of crime and disorder, and protecting the rights of others, in particular Article 8 rights. The increased penalty is required to reflect the significant impact that harassment might have on the victim, including the increasing prevalence of harassment on-line.

Taking into account the points above, Article 6 is compliant with Article 10 of the ECHR.

Article 7 – Prohibition on the carrying of offensive weapons without lawful authority or reasonable excuse

Article 7 amends the provisions in Article 43 of the Firearms Law in relation to carrying offensive weapons to include bladed articles. It also extends the application of this Article to school premises as well as public places more generally. Article 13(3)(c) of the draft Law deletes Article 43 from the Firearms Law in order to ensure that the labelling of the conviction is accurate.

The ECHR right most likely to be engaged by Article 7 is Article 1 of Protocol 1 (A1P1), right to property, which provides:

- “1. *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.*
2. *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.”*

To be deemed compatible with A1P1 an interference must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised.

The prohibition on carrying offensive weapons, including bladed articles, in a public place may be considered control over use of possessions and therefore infringe peaceful enjoyment of possessions.

It is considered that the potential interference with A1P1 rights is proportionate to the legitimate aim of protecting the public from harm. This is addressed in the fact that the prohibition on carrying offensive weapons is only restricted to public places and school premises. Although the definition of ‘public place’ under Article 7(5) of the draft Law increases the scope of this offence in comparison to Article 43 of the Firearms Law, this is considered proportionate as it still restricts the prohibition to areas to which ‘the public or a section of the public’ have access at the material time. This increased scope is intended to capture places like hospitals, sports clubs or private members clubs, which may not previously have been captured by the definition of ‘public place’, but to which a section of the public have access at particular times.

The introduction of ‘school premises’ into Article 7 also extends the scope in comparison to Article 43 of the Firearms Law. However, this is considered proportionate in response to the increase in knife-related crime in Jersey in recent years, in particular crimes committed by young offenders. The extension of this offence into school premises seeks to satisfy the legitimate aim of protecting children, and the public generally, from harm and is proportionate for this purpose.

Further, the potential infringement on A1P1 is minimised by the defences to carrying an offensive weapon contained in Article 7(2) and Article 7(3). The defence in Article 7(3)(b) also accounts for any potential challenge under Article 9 ECHR by creating a defence for religious reasons.

In our view, taking into account the points above, Article 7 is compliant with the ECHR.

Articles 8, 9 and 10 – Restraining orders

Articles 8 and 9 amend the provisions in Article 5 and 6 of the 2008 Law in relation to restraining orders. Article 9 increases the maximum penalty for breach of a restraining order from 2 years’ imprisonment and a fine to 5 years’ imprisonment and a fine.

The ECHR right most likely to be engaged by this amendment is Article 8 ECHR, which provides:

- “1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

The imposition of a restraining order may infringe the right to private life of person on whom it is imposed. However, the imposition of a restraining order following conviction for an offence may pursue legitimate aims falling within the scope of Article 8(2) ECHR and also serves to protect the Article 8(1) ECHR rights of potential victims of harassment or threatening conduct. Where it is proposed that a restraining order should be made, the court will be required to balance competing Article 8(1) ECHR rights to ensure that the extent of any restriction imposed by a restraining order is proportionate. This requirement is reflected in Article 8(3) of the draft Law which makes it clear that the court can only make a restraining order where it is satisfied, on the

balance of probabilities, that it is appropriate to make the order to protect a person from conduct that would amount to harassment or would be likely to cause the person to be in fear of violence.

The requirement for the court to balance competing Article 8 ECHR rights when exercising its powers to make, vary or discharge a restraining order also arises from Article 6(1) of the Human Rights (Jersey) Law 2000. That Article requires the court to act in a manner compatible with Convention rights, including Article 8 ECHR and the right to a fair hearing under Article 6 ECHR.

The increase in penalty for breach of restraining order is considered proportionate to the offence due to the potential harm to the victim. The increase in maximum penalty reflects the seriousness of the breach and the potential consequences for the other person.

Taking into account the points above, Articles 8, 9 and 10 of the draft Law are compatible with the ECHR as any interference with Article 8(1) ECHR rights arising from it will be in accordance with the law and should only be such as is necessary in a democratic society for the protection of the rights of others.

Article 11 - Power to impose fines summarily

Article 11 creates a power to impose fines summarily, by a Centenier at Parish Hall, in relation to Article 5 of the draft Law; Regulation 13 of the Aerodromes (Jersey) Regulations 1965; and the customary law offences of being drunk and disorderly, committing a breach of the peace and common assault.

As was made clear by the Royal Court in *Attorney-General v Devonshire Hotel Ltd*, Parish Hall enquiries are not criminal trials. A Parish Hall Enquiry is the process of preliminary investigation conducted by a Centenier to ascertain whether there is sufficient evidence to justify a prosecution and whether or not it is in the public interest to present the matter before the Court. For that reason, the fair trial provisions in Article 6 of the ECHR do are not engaged. Article 11(1) provides that the person must accept the decision of the Centenier, if they do not wish to accept the decision, the person may reject the proposal to pay a fine and elect for an Article 6 compliant trial in the criminal Courts.

The level of fine that a Centenier can impose is restricted to level 1 which places a further safeguard on this provision, ensuring that more serious offences are dealt with through the court system at public hearings. Parish Hall Enquiries also need to comply with the Attorney General's guidance on the conduct of [Parish Hall Enquiries](#).

Taking into account the points above, Article 11 is compatible with the ECHR.

The draft Law does not raise any further ECHR issues.

EXPLANATORY NOTE

This draft Law, if passed, will create public order offences and make various minor amendments to the criminal law.

Part 1 and *Article 1* are interpretative, containing definitions of certain terms used in the Law.

Part 2 sets out public order offences, some of which are already part of Jersey law. *Article 2* creates an offence of riot to replace the offence contained in the Loi (1797) sur les rassemblements tumultueux, which is repealed by this Law (*Article 13(1)(a)*). The offence is committed if a person present at a riot uses unlawful violence for the common purpose of the riot and intends to use violence or is aware that their conduct may be violent or threaten violence. A riot is an occasion at which 12 or more people are present and use or threaten to use violence for a common purpose that would cause a person of reasonable firmness to fear for their safety. The offence attracts a penalty of imprisonment for up to 10 years and/or a fine.

Article 3 creates an offence of affray to replace the customary law offence. Affray is committed if a person uses or threatens unlawful violence against another that would cause a person of reasonable firmness to fear for their personal safety. The offence carries a penalty of up to 5 years' imprisonment and/or a fine.

Article 4 creates a new offence of threatening to kill, rape or cause serious physical injury intending the other person to believe it would be carried out. The offence carries a term of imprisonment for up to 10 years and/or a fine.

Article 5 re-enacts an existing offence of intentionally using threatening or abusive words, threatening or abusive behaviour or disorderly behaviour within the hearing or sight of another person likely to be caused alarm or distress. There is no offence if both parties are inside a dwelling. There are defences if the person proves there was no reason to believe there was anyone within hearing or sight to be caused alarm or distress, that the person was in a dwelling and had no reason to believe that the words or behaviour would be seen or heard by anyone outside, or that the conduct was reasonable. The offence carries imprisonment for up to 12 months and/or a fine of up to £10,000 (level 3 on the standard scale).

Article 6 reproduces the offence of harassment from the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 which carries up to 5 years' imprisonment and/or a fine. The Article also contains the defence to a charge, namely proving that the course of conduct concerned was pursued to prevent or detect an offence, to comply with the law or that it was reasonable.

Article 7 expands the provision that was previously Article 43 in the Firearms (Jersey) Law 2000 to include knives and to extend it beyond public places to schools. The offence of having an offence weapon in a public place carries a penalty of up to 5 years' imprisonment and/or a fine and a power for the court to order forfeiture or disposal of the weapon. It is a defence for the accused to prove that they had good reason or lawful authority for having the offensive weapon in a public place. It is also a defence for the person to prove that they had the weapon for use at work, for religious reasons, as part of a national costume or, in the case of school premises, for educational purposes. An "offensive weapon" means an article (a) made or adapted for use to cause injury to a person, or intended by the person who has it, for that use by that person or anyone else; or (b) that has a blade or is sharply pointed other than a folding pocketknife with a blade that has a cutting edge of no more than 3 inches.

Part 3 contains a variety of provisions.

Article 8 is reproduced from existing law and enables a prosecutor to apply to a court, following a person's conviction, to make a restraining order prohibiting the subject from engaging in conduct specified in the order. A restraining order may be imposed - in addition to another penalty if the court is satisfied it is appropriate to do so - to protect the victim of the offence, or any other

person named in the order from conduct by the subject of the order that would amount to harassment, or put the victim or other person in fear of being subjected to violence.

Article 9 makes it an offence to breach a restraining order, carrying a penalty of up to 5 years' imprisonment and/or a fine.

Article 10 enables a restraining order to be amended or revoked on the application of the Attorney General or the person against whom the order was made.

Article 11 gives a Centenier jurisdiction in respect of an offence under *Article 5*, an offence of being intoxicated at an aerodrome or the customary law offences of being drunk and disorderly, committing a breach of the peace or common assault. The Centenier may inflict and levy summarily a fine of level 1 on the standard scale (£200). Half the fine is to be paid into the Consolidated Fund and half is for the benefit of the parish in which the Centenier had jurisdiction. The offences covered by the provision may be varied by Regulations.

Article 12 is a standard provision about offences by bodies corporate or limited liability partnerships.

Article 13 repeals the Loi (1797) sur les rassemblements tumultueux and the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 because the offences contained in those Laws are repeated in this new Law. A provision that mirrors *Article 11* is inserted into the Misuse of Drugs (Jersey) Law 1978, giving a Centenier power to inflict and levy fines summarily in the case of possession of Class B and Class C drugs. There are also some minor amendments to the Firearms (Jersey) Law 2000 to remove a redundant definition and following the creation of Article 7.

Article 14 abolishes the customary law offence of affray.

Article 15 provides for how the Law is to be cited and for it to come into force 7 days after its registration.



Jersey

DRAFT CRIME (PUBLIC ORDER) (JERSEY) LAW 202-

Contents

Article

PART 1	17
PRELIMINARY	17
1 Interpretation	17
PART 2	18
PUBLIC ORDER OFFENCES	18
2 Riot.....	18
3 Affray	18
4 Threats to kill, rape or cause serious physical injury	19
5 Threatening, abusive or disorderly conduct.....	19
6 Harassment.....	20
7 Prohibition on having an offensive weapon in a public place or on school premises without lawful authority or reasonable excuse.....	20
PART 3	21
MISCELLANEOUS	21
8 Restraining orders.....	21
9 Breach of restraining order.....	21
10 Amendment or revocation of restraining order	22
11 Power to impose fines summarily	22
12 Offences by bodies corporate etc.....	22
13 Repeals and minor amendments.....	23
14 Abolition of customary law offence.....	24
15 Citation and commencement	24



Jersey

DRAFT CRIME (PUBLIC ORDER) (JERSEY) LAW 202-

A **LAW** to create statutory offences relating to public order, to consolidate offences on disorderly conduct, to enable Centeniers to impose fines for certain minor offences, to repeal redundant Laws and to make minor amendments to other Laws, and for connected purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

PRELIMINARY

1 Interpretation

In this Law –

“dwelling” means that part of a structure used by anyone as living accommodation;

“intoxication” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means;

“motor vehicle” has the same meaning as in the [Motor Vehicle Registration \(Jersey\) Law 1993](#);

“structure” includes a tent, caravan, vehicle, vessel and other temporary or movable structure.

PART 2

PUBLIC ORDER OFFENCES

2 Riot

- (1) A person commits an offence if –
 - (a) the person is present at a riot;
 - (b) at the riot, the person uses unlawful violence for the common purpose of the riot; and
 - (c) the person intends to use violence or is aware that their conduct may be violent.
- (2) In this Article, “riot” means an occasion when –
 - (a) 12 or more people (the “rioters”) are present and use or threaten to use unlawful violence for a common purpose; and
 - (b) taken together the conduct of the rioters would cause anyone of reasonable firmness also present to fear for their safety.
- (3) In determining whether a riot has occurred, it is immaterial whether –
 - (a) the rioters use or threaten unlawful violence simultaneously;
 - (b) the rioters intend to use or threaten violence, or are aware that their conduct may be violent or threaten violence;
 - (c) the riot occurs in a public or private place; and
 - (d) a person of reasonable firmness is present or is likely to be present.
- (4) If a person’s awareness is impaired by intoxication, for the purpose of paragraph 1(c) the person is taken to have the same awareness that they would have were they not intoxicated, unless the person shows that the intoxication –
 - (a) was induced without the person’s knowledge or consent; or
 - (b) was caused solely by the taking or administering of a substance in the course of medical treatment.
- (5) Whether an action was taken for a common purpose may be inferred from conduct.
- (6) A person who commits an offence under this Article is liable to imprisonment for 10 years and to a fine.

3 Affray

- (1) A person commits an offence if –
 - (a) the person uses or threatens (other than by words alone) to use unlawful violence against another person;
 - (b) this conduct (whether by the person alone or jointly with other people) would cause anyone of reasonable firmness present at the scene to fear for their safety; and
 - (c) the person intends to use or threaten violence, or is aware that their conduct may be violent or threaten violence.
- (2) In determining whether an offence under this Article has been committed it is immaterial whether –

- (a) the offence occurs in a public or private place; or
 - (b) a person of reasonable firmness is present or is likely to be present.
- (3) If a person's awareness is impaired by intoxication, for the purpose of paragraph (1)(c) the person is taken to have the same awareness that they would have were they not intoxicated, unless the person shows that the intoxication –
- (a) was induced without the person's knowledge or consent; or
 - (b) was caused solely by the taking or administering of a substance in the course of medical treatment.
- (4) A person who commits an offence under this Article is liable to imprisonment for 5 years and to a fine.

4 Threats to kill, rape or cause serious physical injury

- (1) A person commits an offence if –
- (a) without lawful excuse, the person threatens another person by any means, intending the other person to believe that the threat would be carried out; and
 - (b) the threat is to kill, rape or cause serious physical injury to any person.
- (2) A person who commits an offence under paragraph (1) is liable to imprisonment for 10 years and to a fine.

5 Threatening, abusive or disorderly conduct

- (1) A person commits an offence if the person, within the hearing or sight of another person likely to be caused alarm or distress by the person doing so –
- (a) uses words that are threatening or abusive intending the words to be, or being aware that they may be, threatening or abusive;
 - (b) behaves in a threatening or abusive way intending the behaviour to be, or being aware that it may be, threatening or abusive; or
 - (c) engages in disorderly behaviour intending the behaviour to be, or being aware that it may be, disorderly.
- (2) The offence may be committed in a public or a private place (including a dwelling), but no offence is committed if the words or behaviour are used by a person inside a dwelling and the other person is also inside that dwelling.
- (3) If a person's awareness is impaired by intoxication, for the purpose of paragraph (1) the person is to have the same awareness that they would have were they not intoxicated, unless the person shows that the intoxication –
- (a) was induced without the person's knowledge or consent; or
 - (b) was caused solely by the taking or administering of a substance in the course of medical treatment.
- (4) It is a defence for the accused to prove that –
- (a) they had no reason to believe that there was a person within hearing or sight who was likely to be caused alarm or distress;
 - (b) they were inside a dwelling and had no reason to believe that the words or behaviour used would be heard or seen by a person outside that dwelling; or
 - (c) their conduct was reasonable.

- (5) A person who commits an offence under paragraph (1) is liable to imprisonment for 12 months and a fine of level 3 on the standard scale.

6 Harassment

- (1) A person commits an offence if the person pursues a course of conduct –
- (a) that amounts to harassment of another person; and
 - (b) that the person ought to know amounts to harassment of another person.
- (2) For the purposes of this Article, a person ought to know that a course of conduct amounts to or involves harassment of another person if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.
- (3) It is a defence for a person charged with an offence under paragraph (1) in relation to a course of conduct pursued by the person to prove that –
- (a) the course of conduct was pursued for the purpose of preventing or detecting an offence;
 - (b) the course of conduct was pursued under an enactment or customary law or to comply with a condition or requirement imposed by a person under an enactment or customary law; or
 - (c) in the particular circumstances the pursuit of the course of conduct was reasonable.
- (4) A person who commits an offence under paragraph (1) is liable to imprisonment for 5 years and to a fine.
- (5) In this Article –
- (a) to harass a person includes to cause them alarm or distress;
 - (b) a course of conduct –
 - (i) includes speech,
 - (ii) includes conduct of a kind that occurs on one occasion and conduct of a different kind that occurs on another occasion, but
 - (iii) does not include conduct that occurs on only one occasion.

7 Prohibition on having an offensive weapon in a public place or on school premises without lawful authority or reasonable excuse

- (1) A person who has an offensive weapon in a public place or on school premises commits an offence.
- (2) It is a defence for a person charged with the offence to prove that the person had good reason or lawful authority to have the offensive weapon in a public place or on school premises.
- (3) Without limiting paragraph (2) it is a defence for a person charged with an offence under this Article to prove that the person had the offensive weapon –
- (a) for use at work;
 - (b) for religious reasons;
 - (c) as part of a national costume; or
 - (d) in the case of school premises only, for educational purposes.

- (4) A person who commits an offence under paragraph (1) is liable to imprisonment for a term of 5 years and to a fine and the court may make an order for the forfeiture or disposal of the weapon concerned.
- (5) In this Article –
- “offensive weapon” means an article –
- (a) that is made or adapted to cause injury to a person, or intended by the person who has it, for that use by that person or anyone else; or
- (b) that has a blade or is sharply pointed, other than a folding pocketknife with a blade that has a cutting edge of no more than 3 inches;
- “public place” includes a highway, premises or other place to which, at the material time, the public or a section of the public have or are permitted to have access, whether on payment or otherwise;
- “school premises” means land consisting of an institution providing full or part-time education but does not mean land occupied solely as a dwelling by a person employed at the school.

PART 3

MISCELLANEOUS

8 Restraining orders

- (1) A person presenting or prosecuting a case against a person convicted of an offence (whether under this Law, any other enactment or customary law) may apply to the court to make a restraining order against the convicted person.
- (2) The court may, in addition to any other order or penalty that it may make or impose, make a restraining order against the person to whom the application relates if paragraph (3) is met.
- (3) The court must be satisfied on the balance of probabilities that it is appropriate to make a restraining order for the purpose of protecting the victim of the offence, or any other person named in the order, from conduct by the person against whom the order is made, that would, if carried out –
- (a) amount to harassment of the victim or other person named in the order; or
- (b) be likely to cause the victim or that other person to be in fear of being subjected to violence.
- (4) A restraining order prohibits the person against whom it is made from engaging in conduct of the kind specified in the order.
- (5) A restraining order may prohibit the driving of a motor vehicle by the person or another person other than in circumstances specified in the order, if a motor vehicle was used by the person in committing an offence under Article 6(1).
- (6) A restraining order must specify the period for which it is to remain in force or provide for it to remain in force indefinitely.

9 Breach of restraining order

- (1) A person against whom an order is made under Article 8 who breaches the order commits an offence.

- (2) A person who commits an offence under paragraph (1) is liable to imprisonment for a term of 5 years and to a fine.

10 Amendment or revocation of restraining order

- (1) An order under Article 8 may be amended or revoked by the court that made the order either of its own motion or on the application of –
 - (a) the Attorney General; or
 - (b) the person against whom the order was made.
- (2) The court to which an application is made under paragraph (1) may amend or revoke the order if (and to the extent that) the court is satisfied that it is appropriate to do so.

11 Power to impose fines summarily

- (1) If a person is charged with an offence set out in paragraph (2) and accepts the decision of a Centenier having jurisdiction in the matter, that Centenier may impose summarily a fine of level 1 on the standard scale.
- (2) The offences are –
 - (a) an offence under Article 5 (threatening, abusive or disorderly conduct);
 - (b) an offence of being in an intoxicated condition at an aerodrome contrary to Regulation 13 of the [Aerodromes \(Jersey\) Regulations 1965](#); or
 - (c) the customary law offences of being drunk and disorderly, committing a breach of the peace or common assault.
- (3) A Centenier who has imposed a fine under this Article –
 - (a) must give a receipt for it; and
 - (b) must, as soon as reasonably practicable, inform the Chief Officer of the States of Jersey Police Force of the details of the fine.
- (4) A fine imposed under this Article is to be paid –
 - (a) as to one half, to the Consolidated Fund continued under Article 3(1) of the [Public Finances \(Jersey\) Law 2019](#); and
 - (b) as to the other half, to the parish in which the Centenier who imposed it had jurisdiction.
- (5) The States may by Regulations amend paragraph (2) to vary the offences set out in that paragraph.

12 Offences by bodies corporate etc.

- (1) In this Article –

“relevant offence” means an offence under this Law that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;

“relevant person” means –

 - (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
 - (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –

- (i) a general partner, or
 - (ii) a limited partner who is participating in the management of the partnership;
- (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
 - (i) a director, manager, secretary or other similar officer of the body corporate, and
 - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member's functions of management; and
- (d) a person purporting to act in any capacity described in sub-paragraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.
- (2) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) Paragraph (4) applies if a relevant offence –
 - (a) is an offence that may be committed by neglect; and
 - (b) is proved to be attributable to any neglect on the part of a relevant person.
- (4) The relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

13 Repeals and minor amendments

- (1) The following Laws are repealed –
 - (a) the [Loi \(1797\) sur les rassemblements tumultueux](#);
 - (b) the [Crime \(Disorderly Conduct and Harassment\) \(Jersey\) Law 2008](#).
- (2) In Schedule 3 to the [Road Traffic \(Jersey\) Law 1956](#) the items and entries relating to Article 4(1) and 25 are deleted.
- (3) After Article 28 (penalties) of the [Misuse of Drugs \(Jersey\) Law 1978](#), there is inserted –

“28A Power to impose fines summarily

- (1) If a person is charged with an offence under Article 8(1) (restrictions on possession of controlled drugs) in relation to the possession of a Class B drug or a Class C drug and accepts the decision of a Centenier having jurisdiction in the matter, that Centenier may impose a fine of level 1 on the standard scale.
- (2) A Centenier who has imposed a fine under this Article –
 - (a) must give a receipt for it; and
 - (b) must, as soon as reasonably practicable, inform the Chief Officer of the States of Jersey Police Force of the details of the fine.
- (3) A fine imposed under this Article is to be paid –
 - (a) as to one half, to the Consolidated Fund continued under Article 3(1) of the [Public Finances \(Jersey\) Law 2019](#); and

- (b) as to the other half, to the parish in which the Centenier who imposed it had jurisdiction.”.
- (4) In the [Firearms \(Jersey\) Law 2000](#) –
- (a) in Article 1(1) the definition “school premises” is deleted;
 - (b) in the heading to Part 5 for “UNLAWFUL, PROHIBITED AND OFFENSIVE WEAPONS” there is substituted “UNLAWFUL AND PROHIBITED WEAPONS”;
 - (c) Article 43 is deleted.

14 Abolition of customary law offence

The customary law offence of affray is abolished.

15 Citation and commencement

This Law may be cited as the Crime (Public Order) (Jersey) Law 202- and comes into force 7 days after it is registered.