



Jersey

DRAFT DOMESTIC ABUSE (JERSEY) LAW 202-

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Jersey

DRAFT DOMESTIC ABUSE (JERSEY) LAW 202-

A **LAW** to create offences of domestic abuse and controlling and coercive behaviour, to provide for the making of domestic abuse protection notices and domestic abuse protection orders and to provide for a register of those who commit domestic abuse offences.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her 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 Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Interpretation

(1) In this Law –

“abusive”, in relation to behaviour, means behaviour that is –

- (a) physical or sexual abuse;
- (b) violent or threatening behaviour;
- (c) economic abuse; or
- (d) psychological abuse;

“appointed foster parent” has the meaning given in Article 1(1) of the Children (Jersey) Law 2002;

“authorised officer” means the Chief Police Officer or another officer authorised by the Chief Police Officer for that purpose;

“behaviour” includes –

- (a) doing something or saying or otherwise communicating something;
- and

- (b) intentionally failing to do something or to say or otherwise communicate something.

“controlling or coercive behaviour” is defined in Article 3;

“domestic abuse” is defined in Article 2;

“domestic abuse offence” means an offence against Article 5 or 6;

“economic abuse” –

- (a) means any behaviour that has a substantial adverse effect on a person’s ability to –
 - (i) acquire, use or maintain money or other property, or
 - (ii) obtain goods or services; and
- (b) includes (for example) –
 - (i) unreasonably denying or limiting access to financial resources, and
 - (ii) unreasonably preventing or restricting employment opportunities or access to education;

“personally connected” is defined in Article 4;

“psychological abuse” means behaviour that causes, or is intended to cause, fear, alarm or distress and includes (for example) –

- (a) intimidation or harassment;
 - (b) damage to property;
 - (c) ill-treatment of household pets or of other animals whose welfare affects significantly, or is likely to affect significantly, a person’s well-being; and
 - (d) threats of abusive behaviour.
- (2) Behaviour of a person may be behaviour towards another person despite the fact that it consists of conduct directed at another person or an animal.

2 Meaning of "domestic abuse"

- (1) Behaviour of a person (“A”) towards another person (“B”) is domestic abuse if –
- (a) A and B are both aged 16 or over and are personally connected to each other;
 - (b) the behaviour is abusive; and
 - (c) the behaviour –
 - (i) causes physical, financial or psychological harm to B, or
 - (ii) is reasonably likely to cause physical, financial or psychological harm to B.
- (2) Domestic abuse may be –
- (a) a single act (or failure to act); or
 - (b) a number of acts (or failures to act) that form part of a pattern (even if all or any of those acts, when viewed in isolation, may appear to be minor or trivial).

3 Meaning of "controlling or coercive behaviour"

- (1) A person ("A") behaves in a controlling or coercive manner towards another person ("B") if –
 - (a) A and B are both aged 16 or over and are personally connected to each other;
 - (b) one more than one occasion, A displays abusive behaviour towards B;
 - (c) the behaviour is done to coerce or control B, or with the effect of coercing or controlling B; and
 - (d) the behaviour –
 - (i) has a serious effect on B, or
 - (ii) is reasonably likely to have a serious effect on B.
- (2) However, A does not behave in a controlling or coercive manner towards B if –
 - (a) in engaging in the behaviour, A held a reasonable belief that A was acting in B's best interests; and
 - (b) the behaviour was reasonable in the circumstances.
- (3) In this Article, behaviour has a "serious effect" on B if –
 - (a) the behaviour makes B dependent upon A (for example, by isolating B from other sources of support);
 - (b) the behaviour restricts B's participation in day to day activities or otherwise controls or monitors that participation;
 - (c) the behaviour frightens, humiliates or degrades B; or
 - (d) the behaviour otherwise has an adverse effect on B's day to day activities.

4 Meaning of "personally connected"

- (1) Two people are personally connected if –
 - (a) they are, or have been, in an intimate personal relationship;
 - (b) they are both parents of the same child;
 - (c) they are members of the same family; or
 - (d) one provides to the other a service described in Schedule 1 to the Regulation of Care (Jersey) Law 2014 (which defines regulated activities for the purposes of that Law).
- (2) The following people are members of the same family as a person ("A") –
 - (a) A's parent, appointed foster parent, or a person who has been awarded parental responsibility for A by a court order ("B");
 - (b) B's parent;
 - (c) another person for whom B is a parent, appointed foster parent, or has been awarded parental responsibility; and
 - (d) a person who is married to, in a civil partnership with, or living together as spouses with a person to whom any of paragraphs (a) to (c) apply.

PART 2

OFFENCES FOR DOMESTIC ABUSE AND CONTROLLING AND COERCIVE BEHAVIOUR

5 Domestic abuse - offence

- (1) A person who intentionally or recklessly engages in behaviour that is domestic abuse commits an offence and is liable to [penalty to come].
- (2) A person has a defence to an offence under this Article if the person's behaviour was reasonable in the circumstances.

6 Controlling and coercive behaviour - offence

- (1) A person ("A") who intentionally or recklessly behaves in a controlling or coercive manner towards another person ("B") commits an offence and is liable to [penalty to come].
- (2) However, A does not commit an offence under this Article if –
 - (a) A is B's parent, appointed foster parent, or a person who has been awarded parental responsibility for B by a court order; and
 - (b) B is aged 16 or 17.

7 Aggravating factor – involvement of child

- (1) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of a domestic abuse offence, a court must treat the presence of any of the following as aggravating factors –
 - (a) in committing the offence, the person directed abuse at a child;
 - (b) in committing the offence, the person made use of a child in directing abuse at another person;
 - (c) a child saw or heard the behaviour constituting the offence or was present when the offence was committed.
- (2) This Article does not limit the matters to which a court may have regard when determining the sentence to be imposed on, or other way of dealing with, a person convicted of a domestic violence offence.

PART 3

DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS

8 Domestic abuse protection notices

- (1) A police officer of the rank superintendent or higher may issue a domestic abuse protection notice to a person ("A") if the officer has reasonable grounds to believe that –
 - (a) A has committed a domestic abuse offence towards another person ("B"); and

- (b) it is necessary to give the notice to protect B from the risk of further domestic abuse offences carried out by A.
- (2) The officer may issue a domestic abuse protection notice to A regardless of whether B wishes the notice to be issued.
- (3) A domestic abuse protection notice must not be given to a person who is under the age of 18.
- (4) Before issuing a domestic abuse protection notice, the officer must consider the welfare of any person under the age of 18 whose interests the officer considers relevant to the giving of the notice (whether or not that person and A are personally connected).
- (5) A domestic abuse protection notice must be in writing and must state –
 - (a) the grounds on which the notice has been given;
 - (b) that failure to comply with the notice is an offence;
 - (c) the period for which the notice is in force, which must not be more than 48 hours, not counting time that falls on a Saturday or a day that is not a business day (as defined in Article 1(1) of the Public Holidays and Bank Holidays (Jersey) Law 1951);
 - (d) that the police may apply to the Magistrate’s Court for a domestic abuse protection order while the notice is in force.
- (6) A domestic abuse protection notice may –
 - (a) prohibit A from contacting B;
 - (b) prohibit A from coming within a specified distance of B; and
 - (c) if A and B live at the same premises –
 - (i) require A to leave the premises,
 - (ii) prohibit A from entering the premises, and
 - (iii) prohibit A from evicting or excluding B from the premises.
- (7) A police officer must –
 - (a) personally serve the domestic abuse protection notice on A; and
 - (b) on serving the notice on A, ask A for an address at which A may be given the notice of the hearing of the application for the domestic abuse protection order.

9 Notification requirements for person who is served with protection notice

- (1) A person who is served with a domestic abuse protection notice (“A”) must tell the police officer who serves the notice –
 - (a) A’s full name; and
 - (b) if known at the time, the address at which A will be residing while the notice is in force.
- (2) If, at the time a notice is served, A does not know the address at which A will be residing while the notice is in force, A must notify an authorised officer of the address as soon as is practicable but, in any event, no later than 48 hours after the notice is served.

- (3) While a notice is in force, A must notify an authorised officer if the address at which A is residing changes.
- (4) A person who is required to provide information under this Article commits an offence and is liable to [penalty to come] if the person –
 - (a) fails to provide the information within the required timeframe; or
 - (b) provides false information.

10 Failure to comply with domestic abuse protection notice

A person who fails to comply with a domestic abuse protection notice commits an offence and is liable to [penalty to come].

11 Domestic abuse protection orders - procedure

- (1) The Magistrate’s Court may issue a domestic abuse protection order against a person (“A”) –
 - (a) on the application of the police, made within the period in which a domestic abuse protection notice is in force against A;
 - (b) on the application of a person towards whom A has committed a domestic abuse offence (regardless of whether A has been charged with or convicted of the offence); or
 - (c) in the course of dealing with A on any matter before the court, if the court considers it is appropriate to do so.
- (2) If the Magistrate’s Court receives an application to issue a domestic abuse order against A, A must be given notice of the hearing of the application, which is deemed to have been given –
 - (a) if a domestic abuse protection notice is in force, if notice of the hearing has been left at the address given by A under Article 9; or
 - (b) if no domestic abuse protection notice is in force or if A did not give an address, if the court is satisfied that reasonable efforts have been made to give A the notice.

12 Domestic abuse protection orders – making the order

- (1) The Magistrate’s Court may issue a domestic abuse protection order against a person (“A”) if the court is satisfied that –
 - (a) on the balance of probabilities, A has committed a domestic abuse offence towards another person (“B”); and
 - (b) it is necessary to give the notice to protect B from the risk of further domestic abuse offences carried out by A.
- (2) Before issuing a domestic abuse protection order, the court must consider the welfare of any person under the age of 18 whose interests the court considers relevant to the giving of the order (whether or not that person and A are personally connected).

13 Domestic abuse protection orders – contents and duration

- (1) A domestic abuse protection order may –
 - (a) prohibit the person the order is issued against (“A”) from contacting the person for whose protection it is made (“B”);
 - (b) prohibit A from coming within a specified distance of B;
 - (c) prohibit A from coming within a specified distance of specified premises;
 - (d) if A and B live at the same premises –
 - (i) require A to leave the premises,
 - (ii) prohibit A from entering the premises, and
 - (iii) prohibit A from evicting or excluding B from the premises;
 - (e) require A to attend specified counselling or education; and
 - (f) impose any other requirement on A that the court considers necessary to protect B from the risk of further domestic abuse offences carried out by A.
- (2) In imposing requirements on A in a domestic abuse protection order, the court must, so far as practicable, avoid –
 - (a) conflict with A’s religious beliefs;
 - (b) interference with A’s work or with A’s attendance at an educational establishment; and
 - (c) conflict with the requirements of any other court order or injunction to which A is subject.
- (3) A court that issues a domestic abuse protection order must specify the period during which it has effect and, if that period is longer than 12 months, must review the order every 12 months.

14 Amendment or revocation of domestic abuse protection order

- (1) A domestic abuse protection order may be amended or revoked by the court that made the order, on the application of –
 - (a) the Attorney General; or
 - (b) the person against whom the order was made.
- (2) The court may amend or revoke the order if the court is satisfied that it is appropriate to do so.

15 Failure to comply with domestic abuse protection order

A person who fails to comply with a domestic abuse protection order commits an offence and is liable to [penalty to come].

PART 4

DOMESTIC ABUSE REGISTER AND DISCLOSURE OF INFORMATION

16 Police to maintain a domestic abuse register

The Chief Police Officer must maintain a register of information gathered under this Part.

17 Requirement to notify police of details

- (1) A person who is convicted of a domestic abuse offence (“A”) must notify an authorised officer of –
 - (a) each name that the person uses;
 - (b) the person’s home address;
 - (c) the name and address of any person with whom the person is in an intimate personal relationship.
- (2) A must make the notification –
 - (a) on the day of the conviction;
 - (b) every year on the anniversary of that day; and
 - (c) whenever the information required to be notified changes, in accordance with paragraphs (3) to (5).
- (3) If A uses a name that has not been notified, A must notify an authorised officer of the name within 24 hours after A’s first use of the name.
- (4) If A’s home address changes, A must notify an authorised officer of the new address –
 - (a) if the person has prior knowledge of the change, at least 24 hours before the change, if this is possible; or
 - (b) in any other case, as soon as reasonably practicable but, in any event, within the 24 hours after the change.
- (5) If A enters into or ends an intimate personal relationship, A must notify an authorised officer of the change within [timeframe to come].
- (6) A person who fails to comply with this Article commits an offence and is liable to [penalty to come].

18 Police may disclose information

- (1) A police officer may disclose information held on the register about a person (“A”) –
 - (a) to a person who applies for the information to be disclosed; or
 - (b) to a person who the police officer considers is at a credible risk of violence or harm by A, if the disclosure is proportionate and reasonable in the circumstances.
- (2) A police officer must comply with any relevant guidance issued by the Chief Police Officer in –

- (a) disclosing information under this Article; or
 - (b) deciding whether to disclose information under this Article.
- (3) The Minister may disclose information held on the register to a law enforcement authority in another country, either proactively or on request.
- (4) Nothing in this Article –
- (a) prevents a person from disclosing information that the person is otherwise by law permitted or authorised to disclose; or
 - (b) authorises an action that contravenes the Data Protection (Jersey) Law 2018.

PART 5

CITATION AND COMMENCEMENT

19 Citation and commencement

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