

STATES OF JERSEY



Jersey

DRAFT HARASSMENT AND STALKING (JERSEY) LAW 202-

Lodged au Greffe on 13th January 2026
by the Minister for Justice and Home Affairs
Earliest date for debate: 24th February 2026

STATES GREFFE



Jersey

DRAFT HARASSMENT AND STALKING (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 Harassment and Stalking (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.R. Le Hegarat of St. Helier North**

Minister for Justice and Home Affairs

Dated: 9th January 2026

REPORT

Background

The primary aims of the new Harassment and Stalking (Jersey) Law 202- are to improve the ability of the criminal justice system to respond more effectively to perpetrators of harassment and stalking behaviours and to strengthen the protections available for victims.

To that end, the draft Harassment and Stalking (Jersey) Law 202- addresses harassment and stalking behaviours by:

- Introducing four new, more robust offences relating to harassment and stalking;
- Introducing additional measures to strengthen protections for victims of stalking, regardless of whether the perpetrator has been convicted; and
- As a consequence, repealing the Article 6 Harassment offence under the [Crime \(Public Order\) \(Jersey\) Law 2024](#).

In November 2023, the Violence Against Women and Girls (VAWG) Taskforce published a report entitled “*It’s a Hidden Problem*” *The Issue of Violence Against Women and Girls in Jersey*. The report detailed the findings of the research the Taskforce had undertaken relating to women’s experiences of violence and abuse on the Island, alongside 77 recommendations for action to address this issue.

The Chief Minister and the Minister for Home Affairs have both committed to strengthening the legal framework to better protect Islanders from harassment and stalking behaviours as part of Government’s wider commitment to implement all of the VAWG Taskforce report recommendations directed at the Government of Jersey.

The relevant recommendation is:

Recommendation 28: Stalking should be named as an offence in Jersey legislation.

The Minister for Justice and Home Affairs issued the following response to recommendation 28:

Whilst I recognise that stalking is already criminalised under the [Crime \(Disorderly Conduct and Harassment\) \(Jersey\) Law 2008](#), I accept that further legislative development in this area may support the successful prosecution of stalking behaviour and offer victims of this behaviour additional protections. For these reasons I will develop legislation to introduce an offence of stalking. I will ensure that stalking behaviours that are facilitated through the use of technology (called ‘cyberstalking’) are also criminalised under these legislative reforms. I will also consider the option of introducing stalking protection orders to offer better and more immediate protection to victims of stalking behaviour.

Both the Chief Minister and the Minister for Justice and Home Affairs have expressed a desire to enact legislation to better address harassment and stalking behaviours by the end of this term of Government.

The Draft Harassment and Stalking (Jersey) Law 202- forms part of a wider package of legislation related to implementing the recommendations of the VAWG Taskforce and strengthening the ability of the criminal justice system in Jersey to address crimes associated with violence against women and girls, namely:

- The Draft Crime (Strangulation) (Jersey) Law 202-;
- The Draft Sexual Offences (Jersey) Amendment Law 202-;
- The Draft Domestic Abuse (Jersey) Amendment Law 202-; and

- The Draft Crime (Public Order) (Jersey) Amendment Law 202-

The seriousness of stalking

Stalking can be understood as a pattern of fixated and obsessive behaviour which is repeated and persistent and commonly involves intimidation, surveillance of a person, and intrusion into, or interference in, a person's life. Stalking can consist of many types of behaviour, such as regularly sending unwanted gifts, making unwanted communication, damaging property, repeatedly following or spying on a person, and making threats. Stalking behaviours can vary and change over time, and most stalkers engage in multiple tactics that overlap and build on each other. Taken in isolation, some stalking behaviours could be dismissed as small acts, but the cumulative effect of these acts makes up a consistent pattern of behaviour that is frightening and upsetting to the person(s) targeted.

In very serious cases, victims of stalking may be caused severe alarm or distress, or fear that violence will be used against them or a person that they care about. However, it is also important to note that the absence of physical violence in a stalking case does not mean that the victim has not been harmed, as stalking often causes severe psychological distress to victims.

The advent of smart technology has also allowed forms of "cyber-stalking" to become increasingly common because it has provided perpetrators with new opportunities to carry out abuse. This is where a person uses technology to perpetrate stalking behaviours. Examples of cyber-stalking include tracking a person's location by remotely accessing their smart watch or doorbell camera, or using a smart speaker to listen in on private conversations.

A large body of research demonstrates that stalking is a precursor to physical violence and sexual violence. It is, therefore, extremely important that our criminal justice system is set up to effectively address stalking so that opportunities for early intervention and the prevention of further violence are not missed.

28% of the victim-survivors surveyed in the VAWG Taskforce research reported experiencing stalking. Many of these women described experiencing stalking or harassment from their former partner once their relationship had ended. These behaviours included frequent calls and messages, and showing up at their homes or places of work and watching them from outside. In some cases, stalking behaviours escalated to damaging their property, including vandalising their cars or breaking into their homes. The constant surveillance and fear that victim-survivors experienced as a result of being stalked was reported to have had a profound effect on their sense of safety, mental health, and their ability to move freely within the Island. 95% of respondents to the VAWG Taskforce general public survey in 2022 also agreed that stalking should be a crime.

The issue with existing legislation in Jersey

The Article 6 offence of Harassment under the Crime (Public Order) (Jersey) Law 2024 is intended to criminalise stalking alongside other forms of harassment. However, there is not a specific named offence of stalking in Jersey. The absence of a specific offence of stalking has created a number of issues relating to the ability of the criminal justice system to effectively respond to cases of stalking in Jersey. As the then Minister for Home Affairs acknowledged in 2021, whilst some behaviours may be captured under this Harassment offence, "*this legislation does not recognise the unique features of stalking*". The evidential test for the offence of harassment has proven to be particularly high, meaning that stalking behaviours often do not satisfy the elements of the offence. As a result, a number of professionals across the criminal justice system in Jersey have been calling for the introduction of a specific offence of stalking for some time.

The current legal framework is having a very real impact on criminal justice outcomes relating to stalking on the Island:

- Between 2016-2021, 192 reports of stalking were made to the States of Jersey Police. However, only two of reports resulted in convictions.

Stalking and harassment accounts for nearly half of police recorded crime in the UK which falls within the definition of VAWG. In Jersey, these offences only account for between 10-15% of police recorded VAWG. This fairly significant difference is almost certainly due to England and Wales having more specific laws for these offences.

Victims of stalking who participated in the VAWG Taskforce research described feeling that they were powerless and that the police were unable to do anything to combat the abuse they were experiencing. Some women also expressed a frustration that difficulties in securing arrests due to evidential thresholds being too high was acting to embolden perpetrators. They called for the police to be granted additional powers to manage stalkers and create protection for them that is effective and proportionate.

Under the current legislative framework, the police have very limited tools available to respond effectively to perpetrators of stalking. Unlike in England and Wales, where the police are able to apply to the Court to issue a “Stalking Protection Order” against a person who is suspected of carrying out stalking behaviours, the States of Jersey Police have not been granted the equivalent powers. Stalking Protection Orders can provide meaningful protection for victims in England and Wales by allowing for early police intervention in stalking cases and prohibiting the suspect from carrying out acts associated with stalking, such as contacting the victim.

Although the Courts in Jersey are able to issue a Restraining Order against a person that has perpetrated stalking, which can prohibit them from carrying out further acts associated with stalking against the victim, these Orders can only be issued when the perpetrator has been convicted of a relevant offence. This means that crucial opportunities for early police intervention to protect victims and prevent the behaviour from escalating are missed under the existing legislative framework.

Article 34 – Stalking of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (hereafter the ‘Istanbul Convention’) creates an obligation for states parties to take the necessary legislative measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing them to fear for their safety, is criminalised. The Government has made a commitment to pursue the extension of the Istanbul Convention from the UK to Jersey, as part of its broader commitment to implement the VAWG Taskforce recommendations. As a result, the strengthening of Jersey legislation in relation to both harassment and stalking behaviours would support efforts to comply with the obligations of the Convention.

Process of legislative development

As part of their work to develop their report, the VAWG Taskforce commissioned the Law Officers’ Department to conduct a high-level mapping of the existing legal framework in Jersey as it relates to a range of VAWG behaviours, and a high-level comparison to equivalent legislation in England, Wales, Scotland and Northern Ireland. The findings from this legislative mapping exercise were used to inform the content of the VAWG Taskforce recommendations that relate to legislative development, including the recommendation for a specific offence of stalking to be introduced. In the UK, the Protection from Harassment Act 1997 was subject to criticism for not adequately capturing stalking behaviour. In particular, it was recognised that the failure to name “stalking” within the Act meant that the law was rarely used for “classic” stalking cases. Ministers called for the introduction of specific stalking offences in order to ensure this behaviour could be appropriately addressed by the criminal justice system. The Act was consequently amended to introduce specific offences relating to stalking. Additional powers for the management of

perpetrators, and the protection of victims, were also introduced in the Stalking Protection Act 2019.

Failures to appropriately capture stalking behaviour in both UK and Jersey legislation have largely resulted from similar attempts to group a broad range of harassment and stalking behaviours together under the same set of offences. The resolution in each case has therefore required an approach which separates out offences of harassment and offences of stalking. As a result, the development of the Draft Harassment and Stalking Law 202- has been largely informed by legislative arrangements in the UK, namely the Protection from Harassment Act 1997 and the Stalking Protection Act 2019. That said, it is also important to recognise that the law has been drafted in such a way as to take proper account of the unique features of the legal system in Jersey, rather than with the aim of wholly replicating UK legislation. Legislative arrangements in other jurisdictions with comparative legal systems, such as Australia and Canada, were also considered in the process of developing this legislation.

During this process of legislative development, officers worked closely with the key stakeholders across the criminal justice system that would be involved in the operationalisation of this legislation, should it be accepted by the Assembly. In particular, the following stakeholders were actively consulted:

- States of Jersey Police
- The Criminal Division of the Law Officers' Department
- Judicial Greffe
- The Judiciary

Officers also provided the VAWG Taskforce with regular updates on the direction of legislative development throughout this process, in order to ensure that the proposed legislation suitably accomplished the functions that Taskforce members had in mind when the recommendations were made.

Purpose and function of legislative provisions

The Draft Harassment and Stalking (Jersey) Law 202- performs the following functions of:

1. Creating new offences to effectively address harassment and stalking; and
2. Introducing new mechanisms for the management of perpetrators and protection of victims.

The purpose and function of each of these legislative provisions are discussed in detail below.

1. Creating new offences to effectively address harassment and stalking

Part Two of the law is concerned with creating four new offences to address harassment and stalking behaviours. In particular, the following new offences are introduced:

- Harassment
- Aggravated harassment
- Stalking
- Aggravated stalking

The purpose of creating these new offences is to replace the existing Article 6 offence of Harassment under the Crime (Public Order) (Jersey) Law 2024 with a more robust legislative framework that better recognises the disparity of harm experienced by victims of harassment and victims of stalking. This is achieved by separating out the lesser offence of harassment from the more severe offence of stalking, and by creating aggravated offences for each of these new offences in cases where the victim fears that violence will be used or is caused severe alarm or distress on more than one occasion. Importantly, these offences have all been designed to capture both harassment and stalking behaviours that take place offline, as well as “cyberstalking” behaviours.

Under the new Harassment offence, a person commits an offence if they, on more than one occasion, engage in behaviour which causes another person to feel anxiety, alarm or distress, and a reasonable person in possession of the same information would know that the behaviour was likely to have that effect. This concept of a “reasonable person” is included to ensure that a person cannot claim a valid defence in cases where they claim they did not realise their behaviour would cause the victim distress, when any other reasonable person in the possession of the same information would have realised that. This concept is well established in law and already exists in the current Article 6 offence of Harassment under the Crime (Public Order) (Jersey) Law 2024.

Under the new Aggravated Harassment offence, a person commits an offence if their behaviour satisfies the requirements of the new Harassment offence and either, causes the victim to fear that violence will be used on more than one occasion, or causes the victim serious alarm or distress that adversely affects their ability to participate in their usual daily activities. Again, for the offence to be made out, it must also be shown that a reasonable person in possession of the same information would know that the behaviour was likely to cause one of these consequences.

The new Stalking offence provides that a person commits an offence if their behaviour satisfies the requirements of the new Harassment offence and involves stalking behaviour. The draft Law makes a clear delineation between harassment behaviours and stalking behaviours by defining stalking behaviours as harassment behaviours that also involve:

- Surveillance: monitoring or tracking a person’s movements, communications or activities;
- Intrusion: intruding into a person’s personal or digital life; or
- Interference: behaviour that disrupts, sabotages, or endangers a person’s safety, wellbeing, reputation or livelihood.

In this way, the Stalking offence builds on the Harassment offence so that stalking behaviours can be understood as a more narrowly defined subset of harassment behaviours. Making this distinction in the law between what behaviours amount to harassment versus what behaviours amount to stalking is important. This is because it ensures that the legislation is able to appropriately respond to perpetrators of each behaviour in a way that is proportionate to the seriousness of the conduct and level of harm caused.

Under the new Aggravated Stalking offence, a person commits an offence if their behaviour satisfies the requirements of the new Stalking offence and, either causes the victim to fear that violence will be used on more than one occasion or causes the victim serious alarm or distress that adversely affects their ability to participate in their usual daily activities. Just as with the harassment offence, for this offence to be made out, it must also be shown that a reasonable person in possession of the same information would know that the behaviour was likely to cause one of these consequences.

Provisions have been included to ensure that the new harassment and stalking offences do not inadvertently criminalise members of law enforcement or members of the public whose behaviour was undertaken for a genuine law enforcement purpose. For example, in the case of a police

officer undertaking surveillance of a suspect to gather evidence for a criminal investigation, or a member of the public who follows a person who is in the process of committing a crime, both individuals would be exempt from criminalisation under this provision. The typical defences relating to authorisation under enactment or customary law, or reasonable behaviour in the circumstances, have also been included to provide further safeguards for the accused.

In the Schedule of the law the Article 6 offence of Harassment under the Crime (Public Order) (Jersey) Law 2024 is repealed so that it can be replaced by the new offences outlined above.

2. Introducing stalking protection orders

Part Three of the law is concerned with outlining the arrangements for the introduction of stalking protection orders. The purpose of creating stalking protection orders is to introduce new arrangements whereby the police and the Courts have additional powers to effectively respond to perpetrators of stalking and create meaningful protection for victims.

Under these new arrangements, the Attorney General can apply to the Magistrate's Court to request that they issue a stalking protection order against a person where it is believed they have engaged in stalking behaviour towards another person, and an order is necessary for the protection of that other person from further harm. The Magistrate's Court is then able to issue a stalking protection order against a person if they are satisfied that, on the balance of probabilities, that this is the case.

To ensure that the perspectives of relevant parties are appropriately considered, the law provides that the Court must consider any statements made by the subject of the order and the person to whom the stalking behaviour was directed before the order can be issued. Measures have also been included to ensure that the Court appropriately considers how the interests and welfare of any dependants, or other relevant persons, may be impacted by the issuing of a stalking protection order. In particular, the law has been crafted to ensure that, in cases where an order restricts the suspect from entering the premises of the person who they are suspected of stalking, the Court is required to consider the opinion of any individuals that live at the property and are personally connected to either party.

If the Court decides to issue a stalking protection order against a person, the Court can impose a variety of restrictions and requirements on that person, the purpose of which is to prevent them from engaging in further stalking behaviour or causing further harm to a certain person. This includes:

- Prohibiting them from contacting or coming within a specified distance of the person they are believed to have engaged in stalking behaviour towards;
- Prohibiting them from coming within a specified distance of certain premises;
- Prohibiting them from engaging in any type of surveillance of a certain person;
- Prohibiting them from taking videos or photographs of a certain person;
- Prohibiting them from referring to a certain person on social media (both directly and indirectly);
- Requiring them to report to the police station at specified intervals;
- Requiring them to attend specified counselling or education;
- Requiring them to surrender certain devices to the police or provide the police with access to those devices; and
- Any other restriction or requirement that the Court considers necessary.

The usual limitation provisions are included to ensure that the Court avoids, as far as practicable, imposing restrictions that conflict with a person's religious beliefs or any other court order to which they are subject, or interferes with that person's work or education.

A mechanism to vary or revoke a stalking protection order has been included to provide for circumstances where either:

- The conditions of the order are no longer sufficient to protect the person for whose protection the order was made; or
- Where the conditions of the order are no longer necessary or proportionate to protect the person for whose protection the order was originally made.

The law provides that the Attorney General, the person who is subject to the order, and the person for whose protection the order was originally made, are all able to apply for the order to be varied or revoked. These same individuals and the Chief Officer of the States of Jersey Police Force all have the right to be heard on such an application.

The law also provides arrangements for an appeals process in respect of a decision of the Court to issue, vary, renew or revoke a stalking protection order, refuse an application relating to a stalking protection order, or impose certain restrictions or requirements in a stalking protection order. These arrangements align with typical provisions in legislation that allow for a person to appeal an order or other court-imposed restriction to which they are subject.

Due to the complex nature of stalking behaviours, and the responsibility of the Court to consider which requirements and restrictions are necessary and proportionate to impose in each instance, there may be cases where the Court is delayed in determining an application for a stalking protection order. In such cases, the law has provided that the Court may issue an interim stalking protection order. These interim orders allow for the Court to impose restrictions and requirements for the purposes of preventing further harm whilst they determine the application for the stalking protection order.

In cases where a stalking protection order, or interim stalking protection order, has been issued against a person, the police have good reason to retain information on that person that supports their ability to monitor that person's adherence to the conditions of the order and so that the person may be contacted in relation to any variation to the status of the order. As a result, the law provides that a person who has had a stalking protection order issued against them is subject to a series of notification requirements, including their name and place of residence. These notification requirements are outlined in Article 13 of the law and are aligned with the typical provisions made in relation to notification requirements in other laws, such as those outlined in Part 2 of the [Sex Offenders \(Jersey\) Law 2010](#) and in Part 4 of the [Domestic Abuse \(Jersey\) Law 2022](#).

In Article 14 the law provides that if a person who is subject to a stalking protection order, or interim stalking protection order, fails to comply with the conditions of the order without a reasonable excuse, then that person has committed an offence. It is clarified that this provision extends to cases where the person fails to comply with the conditions of the order when they are outside the jurisdiction of Jersey.

Timescales

The Draft Harassment and Stalking (Jersey) Law 202- will come into force by Commencement Order once the necessary operational preparations are complete.

Financial and staffing implications

The current capacity of the criminal justice system

The proposed introduction of this new law, which forms one component of a wider package of five pieces of legislation related to addressing crimes associated with violence against women and girls, comes at a time when the criminal justice system is already under significant pressure. Following the publication of the VAWG Taskforce report, and the subsequent inclusion of the implementation of the VAWG Taskforce's recommendations as a CSP priority, there has been a significant uptick in the reporting of VAWG-related crimes in Jersey. According to data collected by the States of Jersey Police, the number of VAWG-related reported crimes has increased by 27% in the last three years. This reporting increase is thought to be largely attributable to the high-profile nature of VAWG resulting in an increase in general awareness and public confidence.

This increase in reporting has already placed criminal justice agencies and victim support services under significant strain.

- Victim support services have expressed a need for new dedicated clinical leadership so that their service is appropriately resourced to cope with demand. This new post will be crucial to ensuring that the Sexual Assault Referral Centre in Jersey is able to operate safely and in line with national standards.
- La Moye Prison is currently experiencing intense population pressures, noted as an extreme risk on the States of Jersey Prison Service risk register. At time of reporting, the prison is at 92% overall occupancy. The Vulnerable Prisoner Unit, which accommodates most prisoners convicted of sexual offences, reached full capacity in February 2025 and a temporary expansion was put in place to increase capacity from 59 to 63. Despite increased capacity, the Unit has maintained an average occupancy rate of 95% from 1 February 2025, with just one bed available at the time of reporting.

It is important to recognise that demands on the system will only continue to rise as new legislation is brought forward.

Detailed analysis has been undertaken by the States of Jersey Police, other criminal justice partners and Treasury and Exchequer to assess the cost of increased demand further to the implementation of these laws.

This analysis, which is based on assumptions, indicates a high level range of 199-369 new crimes per year (by second year of implementation) resulting in a total revenue cost of £3 million - £7 million.

(NB this is revised from 275-300 new crimes per year included in Financial Assessment on lodging the Laws, following further analytical work).

The estimated revenue impact, for low, medium and high impact scenarios, is included below:

	2027	2028	2029	2030
Low Range	1,701	3,039	3,193	3,327
Central	2,598	5,209	5,545	5,937
Higher Range	3,495	7,255	7,855	8,426

The level of resourcing ultimately required will depend on the incidence and severity of offending that is reported, though it is expected to fall within the range identified. Ministers have agreed that funding should be linked to actual demand once the legislation is in force, with resources phased in as necessary to maintain effective service delivery across the criminal justice system.

A demand-led funding model is being developed, which will be recommended for incorporation into Budget 2027–30. This is likely to involve some funding being held in the Central Reserve and released as required to match resources to workload.

Additional costs of the Draft Harassment and Stalking (Jersey) Law 202-

The States of Jersey Police and States of Jersey Prison Service have made an initial analysis of maximum potential costs.

The following assumptions have been made –

- Police recorded stalking offences in Jersey will mirror the percentage increases observed post-introduction of stalking legislation in England and Wales.
- 78% of recorded stalking offences will not meet the criteria needed to satisfy the aggravated stalking offence.
- Between 1.4% and 5% of crimes will result in a conviction with a custodial sentence.
- Custodies will begin 2-years post introduction of legislation.
- The custodial sentence given is 5 years and prisoners will serve 3.3 years, or 67%, of their sentence.
- Total cost per prisoner place will increase in line with predicted inflation.

In England and Wales, recorded stalking offences substantially increased following the introduction of a specific offence of stalking (129,076 offences were recorded in the year ending March 2024, up from 2,885 in the year ending March 2015). Between January to November 2025, the States of Jersey Police have recorded 47 incidents of stalking. If Jersey follows similar increases after the introduction of the new legislation, then approximately 89 stalking offences could be recorded in the second year of implementation and 112 by the third year. These increases will require significant investigative resources to meet demand. If the nature of these offences in Jersey emulates UK trends, wherein the most common form of stalking in England and Wales is “cyberstalking”, then an increase in stalking offences will also create new pressures for the States of Jersey Police Digital Forensics Unit. These new demands on the States of Jersey Police Force may require the allocation of additional resources in the future.

However, the main cost implication comes from the requirement to hold offenders in prison. Initial analysis undertaken to predict the impact on the States of Jersey Prison Service indicates that, with the assumptions above, by four years after introduction the Draft Harassment and Stalking (Jersey) Law 202- the new stalking offence could generate between 1 and 4 additional custodies per year with an average incarceration period of 3.3 years, and the new aggravated stalking offence could generate 1 additional custody per year with an average incarceration period of 6.67 years. This would total an ongoing running cost of approximately £250k to £1.58 million per year. This wide range reflects the significant gap between the UK’s conviction rate of 1.4% and the higher aspirational conviction rate in Jersey of 5%.

Data protection implications

An initial Data Protection Impact Assessment was undertaken. This was reviewed by the Information and Data Security Team. It concluded that the amendments do not have a high impact on the rights and freedoms of the individuals affected and a full DPIA is not required.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

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 proposition has been re-issued to add an additional financial assessment on pages 10 and 11.

APPENDIX TO REPORT

Human Rights Notes on the Draft Harassment and Stalking (Jersey) Law 202-

These notes have been prepared in respect of the Draft Harassment and Stalking (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 would, if adopted, create the offence of harassment (Article 2) and aggravated harassment (Article 3), stalking (Article 4) and aggravated stalking (Article 5). The draft Law would make provision for defences to these offences (Article 7) and for an exception to these offences in the case of genuine law enforcement purposes (Article 6). The draft Law also makes provision for the issuing of stalking protection orders (“SPO”) by the Magistrate’s Court (the “Court”). The framework of SPO provisions would include the circumstances in which such an order could be issued (Article 8 and 13); the prohibitions and requirements the order could impose and the duration of an SPO (Article 9); renewing, varying and revoking a SPO (Articles 10 and 11); appealing against the imposition of a SPO (Article 12); and notification requirements for those subject to a SPO (Article 14).

Harassment offence

Article 2 of the draft Law would create an offence of harassment. Article 2 would make it an offence for a person to harass another person. A person (‘A’) would harass another person (‘B’) if on more than 1 occasion, A intentionally or recklessly engages in behaviour the cumulative effect of which causes B anxiety, alarm or distress; and it is behaviour which a reasonable person in possession of the same information as A would know or ought to know is likely to cause B anxiety, alarm or distress. A person guilty of the offence would be liable to imprisonment for 5 years and a fine. The existing harassment offence in Article 6 of the Crime (Public Order) (Jersey) Law 2024 (the “2024 Law”) would be deleted by the draft Law (see Article 16 of the draft Law)¹.

Article 3 of the draft Law would create the offence of aggravated harassment. A person (‘A’) commits the offence if he harasses another person (‘B’); A’s behaviour in harassing B causes B to fear, on more than 1 occasion, that violence will be used against B or another person; or B serious anxiety, alarm or distress, resulting in an adverse effect on B’s ability to carry out or participate in their usual daily activities; and a reasonable person in possession of the same information as A would know, or ought to know, that the behaviour was likely to cause 1 of the stated consequences. A person guilty of the offence would be liable to imprisonment for 10 years and a fine.

A person accused of harassment and aggravated harassment (together “the harassment offences”) would have the defences provided by Article 7 of the draft Law available to them. A defence to a harassment offence is available if it could be shown that the person’s behaviour that would

¹ But note that Article 8 of the 2024 would permit a court to make a restraining order against a person convicted of an offence whether under the 2024 Law or any other enactment or customary law. This power would, therefore, apply to persons convicted of an offence of harassment or aggravated harassment under the draft Law.

constitute the offence was authorised or required under an enactment or customary law, or the person's behaviour was reasonable in the circumstances.

Article 5 ECHR – right to liberty and security

The harassment offences in the draft Law could result in an individual's arrest and/or imprisonment and therefore deprivation of their liberty. Article 5 ECHR provides that no one shall be deprived of his liberty save in one of a number of specified cases and in accordance with a procedure prescribed by law. Article 5(1)(a) ECHR provides for the deprivation of a person's liberty resulting from their lawful detention after conviction by a competent court. Article 5(1)(c) ECHR provides for the deprivation of a person's liberty resulting from their lawful arrest and detention for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence. The arrest and detention of a person accused or convicted of a harassment offence is compatible with Article 5(1)(a) and (c) ECHR, and would be in accordance with a procedure prescribed by law. It is considered that the penalties for the respective harassment offences are proportionate to the nature and severity of the offending involved. The procedural safeguards required by Article 5(2) to (4) ECHR will be assured through the ordinary procedures of the criminal justice system in Jersey law. As such, it is considered that the harassment offences and associated criminal justice measures are compatible with Article 5 ECHR.

Article 6 ECHR – right to a fair trial

The harassment offences and defences engage Article 6(2) ECHR relating to criminal proceedings. The harassment offence in Article 2 requires the prosecution to prove that the defendant harassed a person, which involves showing that the defendant intentionally or recklessly engaged in the stated behaviour. The aggravated harassment offence in Article 3 requires the prosecution to prove that the defendant has harassed another person, which as defined in Article 1 of the draft Law has the meaning given in Article 2(2), such that the prosecution must also prove, for the aggravated harassment offence, that the defendant intended or was reckless as to engaging in the criminal behaviour. The harassment offences are not, therefore, strict liability offences because the prosecution must establish the defendant had the requisite state of mind in making out the offence (note that, though not incompatible with Article 6 ECHR, strict liability offences do require further justification for ECHR purposes).

The defence provision in Article 7 raises a "reverse burden" on the defendant to prove a relevant defence is available, which would involve showing that the behaviour was authorised or required by law, or was "reasonable in the circumstances". Article 6 ECHR does not prohibit rules which transfer the burden of proof to the accused to establish a defence, provided that the overall burden of proof remains with the prosecution. It is reasonable to consider that the subject matter of the defences will be within the knowledge and ability of the accused to demonstrate: a defendant would be able to show whether or not the behaviour was authorised or was required pursuant to some legal obligation. Moreover, the circumstances surrounding the behaviour concerned would also be within the knowledge and possession of the defendant, such that the defendant could be expected to be able to prove that the behaviour was reasonable in those circumstances, where relevant. These provisions are considered to be within such reasonable limits as are permitted, are justified and are compatible with Article 6 ECHR.

Article 7 ECHR – No punishment without law

Article 7 ECHR provides that a punishment cannot be imposed other than where it is prescribed by law. The elements of the harassment offences and their penalties are clearly set out in a way that a member of the public can understand. It is considered that the public will have a good

understanding of what it means to harass a person, how that harassment is aggravated, and how a person would intentionally harass another person. The term ‘recklessly’, though not defined, is a readily understood concept in the criminal law in Jersey and is used in many other statutory criminal offences. It is relevant too that the harassment offences are not expressed to have retrospective effect. The penalty for the respective harassment offences is not considered to be arbitrary as it is proportionate to, and reflects, the seriousness of the criminal conduct involved. For these reasons the harassment offences are considered to be compatible with Article 7 ECHR.

Article 8 ECHR – the right to private life; Article 10 ECHR – freedom of expression; Article 11 ECHR – freedom of peaceful assembly

The harassment offences will criminalise behaviour which could arise in the context of interactions between people in personal relationships. The criminalising of interactions in this way has the potential to interfere with the right to private life under Article 8 ECHR. Harassment can also be committed by words, including publications, journalism, protests, etc. The criminalising of expression in this way has the potential to interfere with the right to freedom of expression under Article 10 ECHR. Behaviour which could constitute harassment could also arise in the context of public protest, which is protected by Article 10 ECHR, and by the right to freedom of peaceful assembly under Article 11 ECHR.

Articles 8, 10 and 11 ECHR are qualified rights. This means that measures which interfere with these rights will be lawful under the ECHR if they are prescribed by law and are necessary in a democratic society in the interests of a legitimate aim recognised in those provisions of the ECHR. The interference with the Article 8, 10 and 11 ECHR right by the criminalising of harassment behaviour will be prescribed by the law, i.e. Article 2 and 3 of the draft Law. The legitimate aim for the purposes of these Articles of the ECHR will be public safety, the prevention of crime, and the protection of the rights and freedoms of others.

The harassment offences address cumulative behaviour (Article 2(2)(a)) and behaviour which causes B anxiety, alarm or distress or suffer adverse effects, and is subject to penalties reflecting the increasing severity of the offence in the case of harassment and in the case of aggravated harassment. A person accused of the harassment offences would also have the defences at Article 7 of the draft Law available to them, and the criminal proceedings would be heard by the Court which is a public authority required to act compatibly with the ECHR by Article 7 of the Human Rights (Jersey) Law 2000 (the “2000 Law”). These features of the harassment offences and the wider draft Law are proportionate to the legitimate aims identified above, and it is considered that the harassment offences are accordingly compatible with Article 8, 10 and 11 ECHR.

Stalking offence

Article 4 of the draft Law would create an offence of stalking. Article 4 would make it an offence for a person (“A”) to stalk another person (“B”). A person ‘stalks’ another person if the person harasses the other person, and the harassment involves stalking behaviour in relation to the other person. ‘Harass’ is defined in Article 1(1) as having the meaning given in Article 2(2), which means that A on more than 1 occasion, intentionally or reckless engages in behaviour, the cumulative effect of which causes B anxiety, alarm or distress; and a reasonable person in possession of the same information as A would know, or ought to know, that the behaviour was likely to cause 1 of the stated consequences.

Behaviour of a person is “stalking behaviour” if it involves, inter alia, monitoring or tracking a person’s movements, communications or activities; intruding into a person’s personal or digital life, for example by unwanted contact (such as calls, messages or gifts, or loitering near or entering premises occupied or frequented by the person); or engaging in behaviour that disrupts, sabotages, or endangers a person’s safety, wellbeing, reputation or livelihood, for example by

interfering with the person's employment, education or social relationships, or publicly sharing private information or images. A person guilty of the offence would be liable to imprisonment for 5 years and a fine.

Article 5 of the draft Law would create an offence of aggravated stalking. A person would commit the offence of aggravated stalking where they stalk another person ("B") and A's behaviour in stalking B causes B to fear, on more than 1 occasion, that violence will be used against B or another person; or B serious anxiety, alarm or distress, resulting in an adverse effect on B's ability to carry out or participate in their usual daily activities; and a reasonable person in possession of the same information as A would know, or ought to know, that the behaviour was likely to cause 1 of the stated consequences. A person guilty of the offence would be liable to imprisonment for 10 years and a fine.

A person accused of the stalking or aggravated stalking (together, the "stalking offences") would have the defences provided by Article 7 of the draft Law available to them if it could be shown that the person's behaviour that would constitute the offence was authorised or required under an enactment or customary law, or the person's behaviour was reasonable in the circumstances.

Article 5 ECHR – right to liberty and security

The stalking offences could result in an individual's arrest and/or imprisonment and therefore deprivation of their liberty. Article 5 ECHR provides that no one shall be deprived of his liberty save in one of a number of specified cases and in accordance with a procedure prescribed by law. Article 5(1)(a) ECHR provides for the deprivation of a person's liberty resulting from their lawful detention after conviction by a competent court. Article 5(1)(c) ECHR provides for the deprivation of a person's liberty resulting from their lawful arrest and detention for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence. The arrest and detention of a person accused or convicted of a stalking offence is compatible with Article 5(1)(a) and (c) ECHR, and would be in accordance with a procedure prescribed by law. It is considered that the penalties for the offences are proportionate to the nature and severity of the offending. The procedural safeguards required by Article 5(2) to (4) ECHR will be assured through the ordinary procedures of the criminal justice system in Jersey law. As such, it is considered that the stalking offences and associated criminal justice measures are compatible with Article 5 ECHR.

Article 6 ECHR – right to a fair trial

The stalking offences and defences engage Article 6(2) ECHR relating to criminal proceedings. The stalking offence in Article 4 requires the prosecution to prove, as an element of the offence, that the defendant harassed a person, which involves showing that the defendant intentionally or recklessly engaged in the stated behaviour. The aggravated stalking offence in Article 5 requires the prosecution to prove that the defendant has stalked another person which, by way of the definition of 'stalks' and then 'harass' in Article 1 of the draft Law links to Article 2(2), requires that the prosecution must also prove, for the aggravated stalking offence, that the defendant intended or was reckless as to engaging in the criminal behaviour. The stalking offences are not, therefore, strict liability offences because the prosecution must establish the defendant had the requisite state of mind in making out the offence.

The defence provision in Article 7 raises a "reverse burden" on the defendant to prove a relevant defence is available, which would involve showing that the behaviour was authorised or required by law, or was "reasonable in the circumstances". Article 6 ECHR does not prohibit rules which transfer the burden of proof to the accused to establish a defence, provided that the overall burden of proof remains with the prosecution. It is reasonable to consider that the subject matter of the defences will be within the knowledge and ability of the accused to demonstrate: a defendant would be able to show whether or not the behaviour was authorised or was required pursuant to

some legal obligation. Moreover, the circumstances surrounding the behaviour concerned would also be within the knowledge and possession of the defendant, such that the defendant could be expected to be able to prove that the behaviour was reasonable in those circumstances, where relevant. These provisions are considered to be within such reasonable limits as are permitted, are justified and are compatible with Article 6 ECHR.

Article 7 ECHR – No punishment without law

Article 7 ECHR provides that a punishment cannot be imposed other than where it is prescribed by law. The elements of the stalking offences, and the maximum penalty for the offences, are clearly set out in a way that a member of the public can understand. The concept of ‘stalking’ is adequately defined in Article 4, as is the aggravated offence in Article 5, such that it is considered that the public will have a good understanding of what it means to stalk another person and how the offence is aggravated. The term ‘recklessly’, as a component of the stalking offences, though not defined, is a readily understood concept in the criminal law in Jersey and is used in many other statutory criminal offences. The stalking offences have no retrospective effect. The penalty for the respective stalking offences is not considered to be arbitrary as it is proportionate to, and reflects, the seriousness of the criminal conduct involved. Articles 4 and 5 of the draft Law are therefore considered to be compatible with Article 7 ECHR.

Article 8 ECHR – the right to private life; Article 10 ECHR – freedom of expression; Article 11 ECHR – freedom of peaceful assembly

The stalking offences will criminalise behaviour which could arise in the context of interactions between people in personal relationships. The criminalising of interactions in this way has the potential to interfere with the right to private life under Article 8 ECHR. Harassment in a stalking context can also be committed by words and the criminalising of expression in this way has the potential to interfere with the right to freedom of expression under Article 10 ECHR. Behaviour which could constitute harassment in a stalking context could also arise in the context of public protest, which is protected by Article 10 ECHR, and by the right to freedom of peaceful assembly under Article 11 ECHR.

Articles 8, 10 and 11 ECHR are qualified rights. This means that measures which interfere with these rights will be lawful under the ECHR if they are prescribed by law and are necessary in a democratic society in the interests of a legitimate aim recognised in those provisions of the ECHR. The interference with the Article 8, 10 and 11 ECHR right by the criminalising of stalking behaviour will be prescribed by the law, i.e. Article 4 and 5 of the draft Law. The legitimate aim for the purposes of these Articles of the ECHR will be public safety, the prevention of crime, and the protection of the rights and freedoms of others.

The stalking offence addresses cumulative behaviour (Article 2(2)(a) and 4(2)(a)) and that behaviour which causes B fear, or anxiety, alarm or distress, and is subject to penalties reflecting the increasing severity of the offence in the case of stalking and in the case of aggravated stalking. A person accused of the stalking offences would also have the defences at Article 7 of the draft Law available to them, and the criminal proceedings would be heard by the Court which is a public authority required to act compatibly with the ECHR by Article 7 of the 2000 Law. These features of the stalking offences make the offences proportionate to the legitimate aims identified above.

Stalking Protection Orders

Part 3 of the draft Law (Articles 8 – 15) contains provisions relating to SPOs. The draft Law would permit the Court, on the application of the police, to issue a SPO against a person aged 16 or older if, on the balance of probabilities, it is satisfied that a person (“A”) has engaged in stalking

behaviour towards another person (“B”) and it is necessary and proportionate to issue the SPO to protect B from the risk of harm caused by further stalking behaviour by A (Article 8(2)). An SPO could be issued regardless of whether A has been charged with or convicted of an offence (Article 8(2)). For the purposes of a determination as to whether to issue an SPO it would be irrelevant whether the behaviour alleged to be stalking behaviour occurred before or after the commencement of the draft Law (Article 8(3)(a)). Before issuing a SPO the draft Law would require the Court to consider, inter alia, any statements made by A on the matter (Article 8(4)(a)), and to give A notice of the hearing for the determination of the SPO (Article 8(5)).

The draft Law would also provide the Court with a power to issue, if appropriate, an interim SPO where an SPO had been applied for but the application had not determined (Article 13). An interim SPO could impose any prohibition or requirement that could be imposed by way of an SPO (Article 10(3)). Failure to comply with an SPO would be a criminal offence, penalised by imprisonment for 5 years and a fine (Article 15(1)).

The draft Law would provide (Article 9) that an SPO could, inter alia, prohibit the person the order is issued against (“A”) from contacting the person for whose protection it is made (“B”); prohibit A from coming within a specified distance of B; prohibit A from coming within a specified distance of specified premises; prohibit A from referring to B on social media, either directly or indirectly; require A to report to the police station at specified intervals; require A to attend specified counselling or education; require A to surrender devices to the police or provide the police with access to those devices; and impose any other prohibition or requirement on A that the court considers necessary to protect B from the risk of harm caused by further stalking behaviour by A. An SPO would be permitted to be in force for a period of up to 10 years (Article 9(3)).

The Court would be permitted to vary or revoke an SPO, including on the application of A or B, if it considers it appropriate to do so where the terms of the SPO are no longer sufficient to protect B from the risk of harm caused by stalking behaviour by A; or the terms of the SPO are no longer necessary or proportionate to protect B from the risk of harm caused by stalking behaviour by A (Article 11(1) and (4)). The draft Law would provide a statutory right of appeal to the Royal Court against the imposition of a SPO, and the Royal Court would have the power to uphold, overturn or vary the decision appropriate (Article 12).

The draft Law would also impose notification requirements on a person subject to an SPO (Article 14). The requirements would include notifying an authorised officer of each name the person uses, place of residence and online identifiers (where relevant), and where there is any change in this information.

Article 5 ECHR – Right to liberty and security

Article 5 ECHR provides that no person shall be deprived of his liberty save in specified cases and in accordance with a procedure prescribed by law. It is considered that imposing prohibitions and requirements on a person by way of an SPO is not an unlawful interference with their right to liberty. The ECtHR has held² that Article 5 ECHR is not concerned with mere restrictions on liberty of movement and that to determine whether someone has been 'deprived of his liberty' within the meaning of Article 5 ECHR is a matter of degree not substance. Account must be taken of a wide range of factors including the type, duration, effect and manner of implementation. Restrictions imposed on a person's liberty by a SPO, such as a prohibition on coming within a distance of B or specified premises, or requiring A to report to a police station or attend specified counselling or education (Article 9(1)), are likely to amount to 'mere restrictions.'

Moreover, the Court may only impose an SPO if it is satisfied it is necessary and proportionate to issue the order having regard to the risk posed to B (Article 8(2)(b)(ii)). This provision, and the

² *Guzzardi v Italy* App.No. 7367/76.

discretion for the Court to tailor the requirements or prohibitions contained in an SPO, would enable the Court to act in a way which is compatible with Article 5 ECHR as it would be permitted only to impose an SPO which is proportionate to the case.

Article 5 ECHR is engaged by the criminal offence provided for failing to comply with an SPO, which can result in the arrest of an individual, or detention for a period of up to 5 years (Article 15(1)). The detention of a person consequent on conviction for breaching an SPO would be in accordance with a procedure prescribed by law and would fall within the permissible grounds in Article 5 ECHR, namely the lawful detention of a person after conviction (Article 5(1)(a) ECHR), the lawful arrest or detention of a person for non-compliance with the lawful order of a court (Article 5(1)(b) ECHR); and the lawful arrest or detention of a person effected for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence (Article 5(1)(c) ECHR). These provisions of the draft Law are, therefore, considered to be compatible with Article 5 ECHR.

Article 6 ECHR – right to a fair trial

The draft Law would permit the Court to impose a SPO if satisfied, on the balance of probabilities, that A had engaged in stalking behaviour towards B (regardless of whether A had been charged with or convicted of an offence) (Article 8(2)(b)(i) and (3)(b)). The standard of proof applied is the civil law standard – ‘on the balance of probabilities – rather than the criminal law standard, and a SPO can be imposed on a person who has been acquitted of criminal offences.

The criminal limb of Article 6 ECHR provides procedural safeguards for those who are subject to a criminal charge. Case-law³ establishes that there are three criteria to consider when determining whether there was a “criminal charge” and therefore, the application of the criminal standard of proof is required. The applicable criteria are the domestic classification of the proceedings, the nature of the offence, and the nature and severity of the penalty.

English case-law considering the Article 6 ECHR compatibility of civil orders has held⁴ that, in the case of a civil order which allowed the imposition of requirements and prohibitions on an individual without that person being subject to a conviction, the proceedings for the imposition of the civil order were not criminal in nature. As such, the proceedings did not attract the criminal standard of proof to be met, and the purpose of the civil order was deemed to be preventative, for the protection of others, rather than a punitive measure. Furthermore, English case-law on this topic⁵ has held that the civil standard of proof on the balance of probabilities applied to proceedings regarding civil orders, and that the application of that standard was compatible with Article 6 ECHR.

A SPO issued under the draft Law would be a civil order. Its purpose would be preventative and for the protection of B from stalking behaviour, rather than a punitive measure in nature. A SPO would not, therefore, amount to the determination of a criminal charge and, accordingly, the use of the civil standard of proof in its determination is appropriate. Moreover, the imposition of a SPO by the Court would ensure the participation of A in those proceedings, and there would exist a right for A to apply to vary or revoke the SPO, and to appeal to the Royal Court against its imposition and seek a discharge of the order. It is considered, therefore, that the civil proceedings for the issue of a SPO, and the broader associated aspects of the SPO regime in the draft Law, is compatible with fair trial requirements under Article 6 ECHR.

³ *Engels v Netherlands* 1979-80 (1 EHRR 647).

⁴ *Chief Constable of Lancashire v Wilson and others* [2015] EWHC 2763 (QB).

⁵ *Jones v Birmingham City Council and another* [2023] UKSC 27.

Article 8 ECHR – right to private life

The prohibitions and requirements that could be imposed under a SPO or an interim SPO will likely interfere with the right to private life in Article 8 ECHR. An interference with the right to private life will be lawful if the interference is in accordance with the law and is necessary and proportionate to a legitimate aim identified in Article 8(2) ECHR.

The imposition of a SPO would be done for the purpose of protecting B from acts of stalking behaviour and preventing the commission of potential criminal conduct by A (Article 8(2)(b)). These purposes align with the legitimate aim of public safety, preventing crime and protecting the rights and freedoms of others. The SPO would be imposed if it is necessary and proportionate for the protection of B (Article 8(2)(b)(ii)), which reflects the principles of necessity and proportionality required in Article 8 ECHR. Moreover, the Court would be required to consider other matters, such as the views of A and B (Article 8(4)), which will operate to further ensure proportionality in the scope of SPOs imposed. The Court is also a public authority required by Article 7 of the 2000 Law to act in a way that is compatible with the ECHR. For these reasons it is considered that the imposition of an SPO under the draft Law would in principle be compatible with Article 8 ECHR.

Article 9 ECHR – freedom of thought, conscience and religion

The prohibitions and restrictions that could be imposed under a SPO could also limit a person's freedom of religion by restricting access to locations or areas, or associations with people (Article 9), otherwise pursued by a person for religious purposes. The right to freedom of religion under Article 9 ECHR may be subject to limitations as are prescribed by law and as are necessary in a democratic society in the interests of a legitimate aim in Article 9(2) ECHR. For similar reasons to that stated above in the case of Article 8 ECHR, it is considered that the imposition of SPOs under the draft Law would, in principle, be compatible with Article 9 ECHR. It is noted too that the Court must, in imposing an SPO, so far as practicable, avoid conflict with A's religious beliefs, which is a safeguard in the draft Law which should, in practice, contribute to ensuring that Article 9 ECHR compliant measures are imposed.

Article 10 ECHR – freedom of expression

A SPO imposed under the draft Law could prohibit A from contacting B or referring to B on social media (Article 9) in way that could interfere with A's right to freedom of expression under Article 10 ECHR. This right may however be subject to restrictions as are prescribed by law and are necessary in a democratic society in the interests if a legitimate aim. For similar reasons as stated above in relation to Article 8 ECHR, it is considered that the imposition of SPOs under the draft Law would, in principle, be compatible with Article 10 ECHR.

Article 11 ECHR – freedom of peaceful assembly

A SPO imposed under the draft Law could prohibit A from coming within a specified distance of specified premises, or of B, or from contacting B (Article 9) in way that could interfere with A's right to freedom of assembly under Article 11 ECHR. This right may however be subject to restrictions as are prescribed by law and are necessary in a democratic society in the interests if a legitimate aim. For similar reasons as stated above in relation to Article 8 ECHR, it is considered that the imposition of SPOs under the draft Law would, in principle, be compatible with Article 11 ECHR.

Article 1 of the First Protocol ECHR (“A1P1”) – right to property

A SPO imposed under the draft Law could prohibit A from coming within a specified distance of specified premises, which could exclude A from their home where they have stalked a partner, and could require A to surrender devices to the police (Article 9). These measures would likely interfere with A’s right to property in A1P1 as they would either deprive a person of their property, or at least control their use of property. Measures of this nature are unlawful under A1P1 except where they are in the public interest and are subject to conditions provided for in law. The deprivation of A’s property by measures imposed in a SPO would be in accordance with the law, and the prevention of crime and the protection of others from stalking behaviour would be in the public interest. The draft Law would ensure that the Court could only impose these measures in a proportionate and necessary manner (Article 8(2)(b)(ii)), and the Court would be required as a public authority to exercise the SPO in a manner compatible with the ECHR.

It is relevant also to compatibility with each of Articles 8, 9, 10, 11 and A1P1 ECHR that the measures imposed by a SPO could be challenged by A by an application to vary or revoke the SPO (Article 11) or by an appeal to the Royal Court (Article 12), by which A could seek to have the measure constituting an interference with the ECHR right removed. This operates as an additional safeguard against the imposition of disproportionate prohibitions or restrictions under a SPO.

Notification requirements

Article 14 of the draft Law would require a person subject to a SPO or interim SPO to comply with certain notification requirements. These include notifying an authorised officer of the person’s name, place of residence and online identifiers (where relevant), and informing the authorised officer of changes in this information. A person who fails to comply with the notification requirements would be liable to a criminal offence and imprisonment if convicted (Article 14(7)).

Article 8 ECHR – right to private life

Given their connection to a person’s personal data and private life, notification requirements engage Article 8 ECHR. Such an interference is justified under Article 8 ECHR if imposed in accordance with the law and in pursuit of a legitimate aim. The interference must also be necessary in a democratic society and proportionate to the legitimate aim pursued.

In the present case the notification requirements would be imposed in accordance with the draft Law and would apply where an SPO has been imposed, i.e. where the Court has determined there is a need to protect B from A’s stalking behaviour. As such, the notification requirements would apply in cases which align with the legitimate aim of preventing crime and protecting public safety and the rights and freedoms of others. Further, because the notification requirements would apply in a case in which a SPO has been imposed, there is a clear and rational connection between the offence itself and the objectives of the notification requirements so that the imposition of notification requirements in these circumstances would be a proportionate means of achieving a legitimate aim, i.e. the necessity to protect B and others from stalking behaviour.

It is relevant also in this regard that the extent of the notification requirements does not go beyond limited personal data – name, address and online identifiers – which are proportionate to the purpose of the notification requirements, i.e. protecting others from stalking behaviour. A person who is subject to a SPO, and so becomes subject to the notification requirements, can appeal against the SPO and seek its discharge (Articles 11 and 12), and in turn remove the requirement in law for compliance with the notification requirements. For these reasons, the notification requirements in Article 14 of the draft Law are considered to be compatible with Article 8 ECHR.

EXPLANATORY NOTE

This Law, if adopted, would:

- create criminal offences of harassment, aggravated harassment, stalking and aggravated stalking; and
- allow the courts to issue stalking protection orders. These are orders against a person who the court believes has engaged in stalking behaviour towards another person. These orders are issued for the protection of the other person and can prohibit a person from taking, or require the person to take, certain actions. Failure to comply with a stalking protection order will be a criminal offence.

Part 1 contains *Article 1*, which is an interpretation provision that defines terms used in the Law.

Part 2 contains *Articles 2 to 7*, which provide for the new offences.

Article 2 contains the offence of harassment, which is currently in the Crime (Public Order) (Jersey) Law 2024. A person harasses another person if, on more than 1 occasion, the person engages in behaviour that causes the other person anxiety, alarm or distress. No offence is committed unless a reasonable person would know, or ought to know, that the behaviour was likely to cause the other person anxiety, alarm or distress. The penalty for the offence is 5 years' imprisonment and an unlimited fine.

Article 3 creates the offence of aggravated harassment. This offence is committed if a person harasses another person and the harassment causes fear of violence or serious anxiety, alarm or distress. No offence is committed unless a reasonable person would know, or ought to know, that the behaviour was likely to cause fear of violence or serious anxiety, alarm or distress. The penalty for the offence is 10 years' imprisonment and an unlimited fine.

Article 4 creates the offence of stalking. Stalking is harassment that involves stalking behaviour. Stalking behaviour is behaviour that involves monitoring or tracking a person's movements, communications or activities; intruding into a person's personal or digital life; or disrupting, sabotaging or endangering a person's safety, well-being, reputation or livelihood. The penalty for the offence is 5 years' imprisonment and an unlimited fine.

Article 5 creates the offence of aggravated stalking. This offence is committed if a person stalks another person and the stalking causes fear of violence or serious anxiety, alarm or distress. No offence is committed unless a reasonable person would know, or ought to know, that the behaviour was likely to cause fear of violence or serious anxiety, alarm or distress. The penalty for the offence is 10 years' imprisonment and an unlimited fine.

Article 6 contains an exception to the offences in *Articles 2 to 5*. No offence is committed if the behaviour that would constitute the offence was undertaken for a genuine law enforcement purpose.

Article 7 contains defences to the offences in *Articles 2 to 5*. A person has a defence if the person's behaviour was authorised or required under an enactment or customary law, or if the person's behaviour was reasonable in the circumstances.

Part 3 contains *Articles 8 to 15*, which provide for stalking protection orders.

Article 8 allows the Magistrate's Court to issue a stalking protection order against a person ("A") on application by the Attorney General. In order to issue the order, the court must be satisfied that, on the balance of probabilities, A has engaged in stalking behaviour towards another person ("B") and that it is necessary and proportionate to issue the order to protect B from the risk of harm from further stalking behaviour by A. The court can issue a stalking protection order against A even if A has not been convicted of an offence, or if the stalking behaviour that A engaged in happened outside of Jersey or before the commencement of this Law.

Article 9 provides for what a stalking protection order may do, and for how long it may be in force. A stalking protection order may contain a wide variety of prohibitions (such as prohibiting A from contacting or coming within a specified distance of B) or requirements (such as requiring A to attend counselling or to surrender their devices to the police). A stalking protection order must state the period for which the order is in force, which must not exceed 10 years.

Article 10 allows the Magistrate's Court to renew a stalking protection order against a person on application by the Attorney General.

Article 11 allows the Magistrate's Court to vary or revoke a stalking protection order if the terms of the order are no longer sufficient to protect B, or if the terms of the order are no longer necessary or proportionate.

Article 12 provides a right of appeal to the Royal Court against a decision of the Magistrate's Court related to a stalking protection order.

Article 13 allows the Magistrate's Court to issue an interim stalking protection order against a person if a stalking protection order has been applied for but the application has not yet been determined. An interim stalking protection order can impose any prohibition or requirement that the court considers appropriate.

Article 14 requires a person who is issued with an interim stalking protection order or a stalking protection order to notify the police of each name the person uses and the person's place of residence. The person may also be required to notify the police of each online identifier (such as a social media account) that the person uses. Failure to comply with the notification requirements is an offence with a penalty of 12 months' imprisonment and an unlimited fine.

Article 15 provides that failure to comply with an interim stalking protection order or a stalking protection order is an offence with a penalty of 5 years' imprisonment and an unlimited fine.

Part 4 contains *Articles 16 and 17*.

Article 16 contains amendments to the Police Procedures and Criminal Evidence (Jersey) Law 2003 (to make stalking and aggravated stalking serious offences under that Law) and to the Crime (Public Order) (Jersey) Law 2024 (to delete the offence of harassment from that Law, as that offence is replaced by the offence of harassment in this Law).

Article 17 gives the title of this Law and provides that it will come into force on a day to be specified by Order by the Minister for Justice and Home Affairs.



Jersey

DRAFT HARASSMENT AND STALKING (JERSEY) LAW 202-

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Jersey

DRAFT HARASSMENT AND STALKING (JERSEY) LAW 202-

A LAW to create offences of aggravated harassment, stalking and aggravated stalking, to consolidate the new offences with the existing offence of harassment and to provide for stalking protection orders.

<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

INTERPRETATION

1 Interpretation

In this Law –

- “harass” has the meaning given in Article 2(2);
- “interim stalking protection order” means an order issued under Article 13;
- “stalk” has the meaning given in Article 4(2);
- “stalking behaviour” has the meaning given in Article 4(3);
- “stalking protection order” means an order issued under Article 8.

PART 2

OFFENCES

2 Harassment

- (1) A person who harasses another person commits an offence and is liable to imprisonment for 5 years and to a fine.
- (2) A person (“A”) harasses another person (“B”) if –
 - (a) A, on more than 1 occasion, intentionally or recklessly engages in behaviour, the cumulative effect of which causes B anxiety, alarm or distress; and
 - (b) a reasonable person in possession of the same information as A would know, or ought to know, that the behaviour was likely to cause B anxiety, alarm or distress.

3 Aggravated harassment

A person (“A”) commits an offence and is liable to imprisonment for 10 years and to a fine if –

- (a) A harasses another person (“B”);
- (b) A’s behaviour in harassing B causes –
 - (i) B to fear, on more than 1 occasion, that violence will be used against B or another person; or
 - (ii) B serious anxiety, alarm or distress, resulting in an adverse effect on B’s ability to carry out or participate in their usual daily activities; and
- (c) a reasonable person in possession of the same information as A would know, or ought to know, that the behaviour was likely to cause 1 of the consequences described in sub-paragraph (b).

4 Stalking

- (1) A person (“A”) who stalks another person (“B”) commits an offence and is liable to imprisonment for 5 years and to a fine.
- (2) A stalks B if –
 - (a) A harasses B; and
 - (b) the harassment involves stalking behaviour in relation to B.
- (3) Behaviour of A is “stalking behaviour” in relation to B if it involves –
 - (a) monitoring or tracking B’s movements, communications or activities, for example by –
 - (i) openly or covertly following or watching B;
 - (ii) gathering personal information about B; or
 - (iii) installing or using tracking or monitoring devices (such as spyware or GPS trackers);
 - (b) intruding into B’s personal or digital life, for example by –
 - (i) unwanted contact (such as calls, messages or gifts, or loitering near or entering premises occupied or frequented by B);

- (ii) impersonating B; or
 - (iii) accessing B's social media or online financial accounts; or
- (c) disrupting, sabotaging or endangering B's safety, well-being, reputation or livelihood, for example by –
 - (i) interfering with B's employment, education or social relationships;
 - (ii) publicly sharing private information or images; or
 - (iii) humiliating, or attempting to humiliate, B.
- (4) Stalking behaviour may be "in relation to" B despite the fact that it consists of behaviour that makes use of another person or is directed at an animal or property.
- (5) If a person who is habitually resident in Jersey stalks another person while in a jurisdiction outside of Jersey –
 - (a) the person commits an offence under paragraph (1); and
 - (b) the person may be proceeded against in Jersey in respect of the offence.

5 Aggravated stalking

A person ("A") commits an offence and is liable to imprisonment for 10 years and to a fine if –

- (a) A stalks another person ("B");
- (b) A's behaviour in stalking B causes –
 - (i) B to fear, on more than 1 occasion, that violence will be used against B or another person; or
 - (ii) B serious anxiety, alarm or distress, resulting in an adverse effect on B's ability to carry out or participate in their usual daily activities; and
- (c) a reasonable person in possession of the same information as A would know, or ought to know, that the behaviour was likely to cause 1 of the consequences described in sub-paragraph (b).

6 Exception for law enforcement

A person does not commit an offence under Article 2, 3, 4 or 5 if the behaviour that would constitute the offence was undertaken by the person for a genuine law enforcement purpose.

7 Defences

A person has a defence to an offence under Article 2, 3, 4 or 5 if –

- (a) the person's behaviour that would constitute the offence was authorised or required under an enactment or customary law; or
- (b) the person's behaviour was reasonable in the circumstances.

PART 3

STALKING PROTECTION ORDERS

8 Issuing stalking protection order

- (1) The Attorney General may apply to the Magistrate's Court for the Court to issue a stalking protection order against a person ("A") aged 16 or older if the Attorney General has reasonable grounds to believe that –
 - (a) A has engaged in stalking behaviour towards another person ("B"); and
 - (b) the order is necessary to protect B from the risk of harm from further stalking behaviour by A.
- (2) The Magistrate's Court may issue a stalking protection order against A if –
 - (a) the Court receives an application for the order from the Attorney General; and
 - (b) the Court is satisfied that –
 - (i) on the balance of probabilities, A has engaged in stalking behaviour towards B (regardless of whether A has been charged with or convicted of an offence); and
 - (ii) it is necessary and proportionate to issue the order to protect B from the risk of harm from further stalking behaviour by A.
- (3) For the purpose of assessing whether A has engaged in stalking behaviour, it is irrelevant –
 - (a) whether the behaviour alleged to be stalking behaviour occurred –
 - (i) in Jersey or elsewhere; or
 - (ii) before or after the commencement of this Law; or
 - (b) whether A has been convicted of an offence in relation to the behaviour.
- (4) Before issuing a stalking protection order, the Court must –
 - (a) consider any statements made by A or B on the matter;
 - (b) 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); and
 - (c) if the order will limit or prevent A from entering the premises where B lives, take reasonable steps to discover and consider the opinion of any other person who lives at the premises and is personally connected to A or B.
- (5) Once a hearing is set to hear the application, a police officer must give A notice of the hearing, and notice is deemed to have been given if the Magistrate's Court is satisfied that reasonable efforts have been made to give A the notice.
- (6) In paragraph (4), "personally connected" has the meaning given in Article 2 of the [Domestic Abuse \(Jersey\) Law 2022](#).

9 Content and duration of stalking protection order

- (1) A stalking 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) prohibit A from engaging in surveillance of B by any means;
 - (e) prohibit A from taking videos or photographs of B;
 - (f) prohibit A from referring to B on social media, either directly or indirectly;
 - (g) require A to report to a police station at specified intervals;
 - (h) require A to attend specified counselling or education;
 - (i) require A to surrender devices to a police officer or provide a police officer with access to those devices; and
 - (j) impose any other prohibition or requirement on A that the Magistrate's Court considers necessary to protect B from the risk of harm caused by further stalking behaviour by A.
- (2) In imposing prohibitions or requirements on A in an order, the Magistrate's 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 stalking protection order must state the period for which the order is in force, which must not exceed 10 years.

10 Renewal of stalking protection order

- (1) The Magistrate's Court may renew a stalking protection order against a person if –
- (a) the Court receives an application by the Attorney General during the period that a stalking protection order is in force against the person; and
 - (b) the Court is satisfied that the grounds for issuing the order continue to be met.
- (2) Once a hearing is set to hear the application, a police officer must give A notice of the hearing, and notice is deemed to have been given if the Magistrate's Court is satisfied that reasonable efforts have been made to give A the notice.
- (3) An order to renew a stalking protection order must state the period for which the order is renewed, which must not exceed 10 years.
- (4) There is no limit on how many times the Court may renew a stalking protection order.

11 Varying or revoking stalking protection order

- (1) This Article applies if –
- (a) the Magistrate's Court issues a stalking protection order against a person ("A") for the protection of another person ("B"); and
 - (b) either –
 - (i) the terms of the order are no longer sufficient to protect B from the risk of harm caused by stalking behaviour by A; or

- (ii) the terms of the order are no longer necessary or proportionate to protect B from the risk of harm caused by stalking behaviour by A.
- (2) The following people may apply to the Magistrate's Court for the order to be varied or revoked –
 - (a) A;
 - (b) B;
 - (c) the Attorney General.
- (3) The following people have a right to be heard on an application –
 - (a) A;
 - (b) B;
 - (c) the Attorney General; and
 - (d) the Chief Officer of the States of Jersey Police Force.
- (4) The Magistrate's Court may vary or revoke the stalking protection order if the Court is satisfied that it is appropriate to do so.
- (5) A stalking protection order that is the subject of an application –
 - (a) may be stayed (in part or in full) by the Magistrate's Court until the application to vary or revoke the order is determined; but
 - (b) otherwise continues to have effect until that application is determined.

12 Appeal against stalking protection order

- (1) This Article applies in respect of a decision of the Magistrate's Court to –
 - (a) issue, vary, renew or revoke a stalking protection order;
 - (b) refuse an application to issue, vary, renew or revoke a stalking protection order; or
 - (c) impose certain prohibitions or requirements in a stalking protection order.
- (2) The following people may appeal against the decision on the grounds that the decision is based on an error of law or fact –
 - (a) the person against whom the order is (or would be) issued;
 - (b) the person for whose protection the order is (or would be) issued;
 - (c) the Attorney General.
- (3) An appeal must be made to the Royal Court within 14 days after the decision is made.
- (4) The following people have the right to be heard on an appeal –
 - (a) the person against whom the order is (or would be) issued;
 - (b) the person for whose protection the order is (or would be) issued;
 - (c) the Chief Officer of the States of Jersey Police Force; and
 - (d) the Attorney General.
- (5) The Royal Court may uphold, overturn or vary the decision as the Court thinks appropriate.
- (6) A decision that is the subject of an appeal –
 - (a) may be stayed (in part or in full) by the Royal Court until the application to vary, renew or revoke is determined; but
 - (b) otherwise continues to have effect until that application is determined.

13 Issuing interim stalking protection order

- (1) This Article applies if a stalking protection order has been applied for against a person, but the application has not yet been determined.
- (2) The Magistrate's Court may, if it considers it appropriate to do so, issue an interim stalking protection order against the person.
- (3) An interim stalking protection order may impose any prohibition or requirement on the person that the Court considers appropriate, including anything contained in Article 9(1).
- (4) An interim stalking protection order remains in force until –
 - (a) the application for the stalking protection order is determined or withdrawn;
 - (b) the end of a fixed period stated in the interim stalking protection order; or
 - (c) it is revoked by the Court.

14 Notification requirements

- (1) If a court makes an interim stalking protection order or a stalking protection order against a person, the person must notify an authorised officer of –
 - (a) each name the person uses;
 - (b) the person's place of residence; and
 - (c) if included in the order, each online identifier the person uses.
- (2) The person must make the notification –
 - (a) as soon as practicable after the court makes the order; and
 - (b) while the order is in force –
 - (i) every year on the anniversary of the day on which the order was made; and
 - (ii) whenever the information required to be notified changes, in accordance with paragraphs (3) to (5).
- (3) If the person uses a name that has not been notified, the person must notify an authorised officer of the name within 24 hours after the person's first use of the name.
- (4) If the person's place of residence changes, the person 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 24 hours after the change.
- (5) If the person is required to notify an authorised officer of their online identifiers, the person must notify an authorised officer of a new online identifier within 24 hours after the person's first use of the identifier.
- (6) The notification requirements under this Article do not apply to a person to the extent that the person is already required to provide the information to the police in accordance with –
 - (a) notification requirements under Part 2 of the [Sex Offenders \(Jersey\) Law 2010](#); or

- (b) notification requirements under Part 4 of the [Domestic Abuse \(Jersey\) Law 2022](#).
- (7) A person who, without reasonable excuse, fails to comply with this Article commits an offence and is liable to imprisonment for a term of 12 months and to a fine.
- (8) The States may, by Regulations, amend this Law to add to, remove, or vary the matters that must be notified and the time by which the notification must occur.
- (9) In this Article –
 - “authorised officer” means the Chief Officer of the States of Jersey Police Force or another police officer authorised by the Chief Officer of the States of Jersey Police Force for that purpose;
 - “online identifier” means an account, handle, profile or other means by which the person communicates or interacts in digital or electronic form.

15 Failure to comply with stalking protection order

- (1) A person who, without reasonable excuse, fails to comply with an interim stalking protection order or a stalking protection order commits an offence and is liable to imprisonment for a term of 5 years and to a fine.
- (2) If a person who is habitually resident in Jersey fails, without reasonable excuse, to comply with an interim stalking protection order or a stalking protection order while in a jurisdiction outside of Jersey –
 - (a) the person commits an offence under paragraph (1); and
 - (b) the person may be proceeded against in Jersey in respect of the offence.

PART 4

CLOSING PROVISIONS

16 Amendments to other enactments

- (1) In the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#), in Schedule 1, Part 1, after paragraph 10 there is inserted –
 - 11. Stalking and aggravated stalking under Articles 4 and 5 of the Harassment and Stalking (Jersey) Law 202-.
- (2) Article 6 of the [Crime \(Public Order\) \(Jersey\) Law 2024](#) is deleted.
- (3) In Article 8(5) of the [Crime \(Public Order\) \(Jersey\) Law 2024](#), for “in committing an offence under Article 6(1)” there is substituted “in committing an offence under Article 2 to 5 of the Harassment and Stalking (Jersey) Law 202-”.

17 Citation and commencement

This Law may be cited as the Harassment and Stalking (Jersey) Law 202- and comes into force on a day to be specified by the Minister for Justice and Home Affairs by Order.