

PROJET DE LOI (200-) (AMENDEMENT No. 8) RÉGLANT LA PROCÉDURE CRIMINELLE

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ETATS DE JERSEY

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REPORT

The *Loi (1864) réglant la procédure criminelle* (“the 1864 Law”) is the principal statute dealing with trial by jury in Jersey.

Trial by jury in England and Wales, whilst influenced by early Norman custom, did not develop in parallel with Jersey law. Over centuries, the law of England and Wales governing the composition of juries, their number and those who were disqualified from jury service, differed in many respects from Jersey law which, in its turn, continued to develop from the earlier *Coûtume de Normandie*, but along different lines.

The 1864 Law was the result, not merely of Jersey customary law as it had then developed, but also of recommendations for reform which had been made prior to its enactment. It has since undergone reforms, most notably, that which reduced the membership of a jury from 24 persons to 12. The sequence of historical development and statutory amendment has resulted in certain peculiar requirements relating to the qualifications of jurors and the circumstances in which challenges may be made by the defence or prosecution to the composition of a jury, as well as the manner in which panels of persons are selected at random actually to serve as jurors by the process known in Jersey as the *tirage*.

The provisions of the 1864 Law in need of reform are as follows -

Disqualification from serving on a jury

Article 10 of the 1864 Law prohibits from jury service any person convicted of treason or “*félonie ou crime*”. Therefore, someone who has been convicted of a *délit* or a *contravention* is not disqualified. This distinction is anomalous. A *contravention* is a statutory offence. A *crime* or *délit* is a customary law offence. (The word *félonie* is defunct). Disqualification from jury service however depends upon the distinction between customary law offences and statutory offences. The distinction was understandable in the 19th Century when statutory offences were of a less serious nature. Today, however, more serious offences have been created by statute. A person may be liable to imprisonment for importing drugs or fraudulently inducing people to invest money; yet technically he/she remains qualified to serve on a jury because Article 10 does not disqualify people who have committed statutory offences.

The question of a *délit* is also relevant because it is not entirely clear which customary law offences rank as *délits* and which rank as *crimes*. *Crimes* are the more serious; *délits*, the less serious. The precise dividing line which was drawn in modern French law has not been followed in Jersey and has ceased in Guernsey to have relevance.

With increasing gravity attaching to certain statutory offences, it has become inappropriate to preserve, for the purposes of qualifying for jury service, the distinction between a *crime*, *délit* or *contravention*. The test should depend upon the scale of the punishment for the offence and not upon the technical legal categorisation of the offence.

To determine what offences ought to exclude a person from eligibility for jury service, the Committee has had regard to the laws of the United Kingdom and of France.

The Juries Act 1974 of the United Kingdom disqualified from jury service any person sentenced to a term of imprisonment of five years or more. If a person had at any time in the previous ten years served any part of a sentence of imprisonment (including a community service order) this resulted in disqualification. If during the previous five years he/she had been placed on probation, disqualification also ensued.

In France, by contrast, disqualification ensues if there has been any period of imprisonment of at least one month. If, in the previous five years, the prospective juror has been imprisoned for less than one month or fined up to a statutory amount, disqualification ensues. There is similar provision relating to persons in contempt of court or under a warrant for arrest.

In the opinion of the Committee -

- (i) anyone who has been sentenced to imprisonment for one month or more; or
- (ii) anyone who within the last ten years has been convicted of any offence and -
 - (a) sentenced to any period of imprisonment or youth detention;
 - (b) fined in excess of level 2 of the standard scale of fines; or
 - (c) placed on probation,

should be disqualified from acting as a juror, together with any person who is for the time being subject to a binding over order.

The requirement to be a British subject

The Committee can see no reason to retain the requirement in Article 10 of the 1864 Law that a juror be a British subject and seeks to repeal that formal requirement.

Challenges to juries

At present Article 35 of the 1864 Law [as amended in 1988] provides that each accused has the right to challenge peremptorily (i.e. without giving any reason) up to two jurors. Otherwise the Crown and the defence may only challenge for cause. However, 'cause' is closely defined in Article 38 and relates *only* to victims of the offence, parents and relatives of the accused or victims up to the degree of uncle and nephew. It applies also where there is another civil or criminal process between juror and accused or parents and relatives up to the degree of uncle and nephew.

The scope for challenges for cause is thus very limited and does not encompass, for example, a close friend or relative of prosecuting or defence lawyers or a friend of a prosecution witness or of the accused or other instances where it would be wrong on the face of it for a person to serve on the jury. It may be argued that the Royal Court has inherent jurisdiction to prevent a person from being empanelled as a juror, but this position is doubtful because the 1864 Law sets out clearly the cases in which challenges for cause may be made. Furthermore the recent Jersey Court of Appeal case of *Jones -v- Attorney General* [12th April 2000] indicates limitations upon the inherent jurisdiction of the Royal Court.

The Committee therefore proposes that the Law be amended to give the Royal Court discretion to decide what does or does not amount to proper cause to disqualify a person from serving on a jury.

The Royal Court would also be empowered of its own motion to discharge a juror on any of the grounds upon which a challenge for cause could be made.

The tirage

A further matter addressed in the draft Law is the *tirage* (i.e. the procedure whereby the names of persons are drawn at random for jury service). The procedure for the *tirage* laid down in the 1864 Law has not kept pace with the actual method by which lists of eligible persons are furnished to the Viscount and the Judicial Greffier and by which a jury is selected at random. This draft Law would empower the Superior Number of the Royal Court to make Rules of Court for this purpose.

Appointed dates for Assize trials

At present, the 1864 Law lays down fixed dates for Criminal Assizes. This is in contrast to the procedure for fixing the hearing date for an Inferior Number trial upon indictment (*Nombre Inférieur sans Enquête*). Whilst in practice the Court would still keep certain weeks free for criminal trials, the Court under the proposed reforms would be free to fix a date of an Assize trial upon indictment in the same way that it fixes a hearing date for an Inferior Number trial upon indictment. This would not affect the ability of the prosecution or the defence to make submissions as to fixing the date for an Assize trial and it would always be open to the defence or prosecution to apply for an adjournment.

The draft Law would therefore also repeal the existing statutory right to insist upon an adjournment irrespective of the merits.

Technical procedures in constituting and empanelling juries

The Draftsman's Explanatory Note sets out the technical amendments to the 1864 Law designed to make it accord with existing practice and draws attention to the reforms relating to the deposition of lists of persons eligible for jury service and the forwarding of those lists for the purposes of the *tirage*. It is unnecessary in this report to elaborate upon the technical detail which is clear from the Explanatory Note.

Dispersal of jury after retiring to consider its verdict

The 1864 Law enables the dispersal of a jury before it retires to consider its verdict. However once the jury has retired to consider its verdict, it may not under any circumstances disperse. Therefore, hotel accommodation (if necessary) must be found for the jury overnight. Such a constraint was removed many years ago in England and Wales and has ceased to apply in many other jurisdictions.

This draft Law would confer a discretion on the Court to permit a jury to disperse not only before, but after, it had retired to consider its verdict, subject to the constraint upon communications regarding the criminal proceedings concerned. Such discretion would not be exercised as a matter of course; there might be cases in which it would continue to be appropriate for a jury to remain confined.

Discharge of jurors during the trial

Article 56 of the 1864 Law [as substituted in 1982] limits the discretion of the Royal Court to continue with an Assize trial where a juror is discharged to cases of illness or 'indisposition'. This affords less scope for the Court to continue with a trial than (for example) in England and Wales where the trial may continue before a Crown Court after a juror has been discharged because of a risk of bias.

The case of *Jones -v- Attorney General* [12th April 2000] in the Jersey Court of Appeal drew attention to the need for a wider discretion in the Royal Court. Accordingly, Article 56 would be amended to enable a trial to continue where the Royal Court had discharged a juror for reasons not confined to illness or indisposition. There would also be a consequential amendment to Article 46 of the 1864 Law to provide that if a jury were reduced to 10 members, a conviction would be possible if 9 members agreed. If it were reduced to 11, a conviction by agreement of 10 jurors would still be possible (as at present).

Disclosure of addresses of prosecution witnesses

Article 60 of the 1864 Law presently requires the prosecution to notify the accused not only of the name of any prosecution witness but also of his or her address if they have not been heard before the Magistrate or have not given statements in committal proceedings (including the recently enacted procedure of 'paper committals').

In England and Wales, it is generally a matter for the discretion of the prosecution and/or the Court as to whether the address of a prosecution witness (in advance of the trial) should or should not be disclosed to the defence. Of course the defence must know in advance the identity of any witness for the prosecution, but the 1864 Law makes it an absolute requirement to furnish the address of a prosecution witness who has not given evidence or made a statement at the committal stage. The possibility of intimidation of witnesses cannot be ignored and the draft Law would amend the 1864 Law in order to remove the absolute requirement that the address of such prosecution witnesses be furnished. Instead, this would become a matter in the first instance for the discretion of the prosecution. If defence counsel for any reason required the address of a prosecution witness whose address had not been disclosed, it would be open to them to apply to the Court for disclosure.

Amendments to the Loi (1912) sur la procédure devant la Cour Royale

These amendments are consequential upon the amendments to the 1864 Law and it is unnecessary to expand upon the Draftsman's Explanatory Note in relation to Article 20 of the draft Law.

Conclusion

The main intention of the draft Law is to modernise Jersey's principal statute regarding criminal procedure at Assizes before the Royal Court.

The Committee believes that, for the most part, the amendments consist not so much of reform as of implementing a long overdue process of amending the 1864 Law (and the accompanying Law of 1912) to reflect current practice and to afford the Royal Court the flexibility in procedural matters connected with Criminal Assizes which is enjoyed by equivalent Courts in other jurisdictions such as England and Wales.

Explanatory Note

This draft Law makes miscellaneous amendments to the *Loi* (1864) *réglant la procédure criminelle*, as amended (‘the principal Law’) and certain amendments to the *Loi* (1912) *sur la procédure devant la Cour Royale*.

Article 1 repeals Articles 2, 3, 4 and 5 of the principal Law which require there to be fixed dates for Criminal Assizes. In place of the existing provisions, two new *Articles* provide -

- (i) that the Court should convene, from time to time as necessary, one or more Criminal Assizes;
- (ii) that each Assize should continue for as long as necessary to dispose of the proceedings in hand.

Article 2 of the draft Law amends Article 10 of the principal Law, which presently disqualifies from jury service -

- (i) any person who is not a British subject;
- (ii) any person who has a curator or an attorney without whom he cannot transact;
- (iii) any person suffering from mental disability;
- (iv) any person convicted of treason, felony or “*crime*”;
- (v) any person accused of “*crime*”.

by repealing the requirement for British nationality and substituting for (iv) and (v) above the following categories of persons who are disqualified from jury service -

- (iv) any person having been, in the Island or elsewhere, sentenced to at least one month’s imprisonment;
- (v) any person having been in the last ten years convicted of a *crime*, *délit* or *contravention* and -
 - (a) sentenced to imprisonment (including youth detention), or
 - (b) sentenced to a fine above level 2 (£500) on the standard scale, or
 - (c) placed on probation,or sentenced to an equivalent penalty outside the Island;
- (vi) any person who is for the time being subject to a binding over order;
- (vii) any person who is, in the Island or elsewhere, charged with an offence or is in contempt of court or any person who is liable to arrest.

Article 3 of the draft Law inserts a new *Article 10A* in the principal Law to make it clear that a judgment of the court following an Assize trial is not liable to be set aside by reason of a technical failure to comply with statutory requirements concerning summoning or empanelling of jurors or by reason of the incapacity of a person to serve as a juror.

Article 4 of the draft Law amends Article 12 of the principal Law which presently provides (in translation) that -

“In the first three weeks of the month of December, the Court, composed of the Bailiff and at least five Jurats, shall revise the lists deposited at the [Judicial] Greffe by the Connétables, and make additions or deletions therefrom as it shall think fit.

The Judicial Greffier shall draw up a *tableau général* of the names inscribed on the lists of the 12 Parishes, thus revised, shall inscribe a serial number to each name, and shall register the whole in a Book kept for this purpose.

Any person inscribed on the said *tableau* shall be required to serve, if that person is called, on the Jury”.

The amendment has the effect that -

- (i) instead of the lists being deposited with the Greffe, they are forwarded to the Viscount;
- (ii) in the second paragraph, the reference to the Judicial Greffier becomes a reference to the Viscount and the reference to a registration in a book becomes a reference to the forwarding of a copy of the *tableau général* to the Judicial Greffier.

Article 5 of the draft Law inserts a new *Article 19A* in the principal Law to clarify that provisions relating to paper committals in *Article 19* apply to *contraventions* as they do to *crimes* or *délits*.

Article 6 of the draft Law amends *Article 23* of the principal Law in relation to the production of the Indictment. At present the Law provides that this will be both produced and read by the Judicial Greffier. Under the amendment, while the Indictment will continue to be read by the Judicial Greffier it will be produced by the Attorney General.

Article 7 of the draft Law repeals the fourth and fifth paragraphs of *Article 24* of the principal Law consequentially upon the removal (by the amendment in *Article 1* of the draft Law) of fixed dates for the holding of Criminal Assizes.

Article 8 of the draft Law amends *Article 28* of the principal Law which presently requires the Bailiff and two Jurats to preside at the *tirage*. Reference is made instead to two Jurats in the presence of the Viscount. Thus the *tirage* would be validly conducted by two Jurats in the presence of the Viscount, without the need for the Court itself to sit as the Inferior Number for that purpose alone.

Article 9 of the draft Law replaces *Article 29* of the principal Law which makes detailed provision as to the procedure at the *tirage*. *Article 29* has not been amended in substance since it was enacted in 1864. In order that the detailed provisions for the conduct of the *tirage* may accurately reflect existing practice, *Article 29* is substituted by a provision (in translation) that -

“The drawing of jurors for each Assize shall take place in the manner prescribed by Rules of Court which shall make provision necessary to ensure -

- (a) that the names of members of the jury are drawn at random; and
- (b) that there will be a sufficient number of persons warned to serve on the jury”.

Article 10 of the draft Law repeals *Article 30* of the principal Law consequentially upon the earlier amendment of *Article 28* which effectively removes the distinction, for the limited purposes of these Articles, between ordinary and extraordinary Assizes.

Article 11 of the draft Law amends *Article 31* of the principal Law which presently provides (in translation) that -

“When the list of jury members for an Assize has been completed, it shall be signed by the President of the Court, and sent to the Viscount, who shall summons the members of the Assize to appear on the day and the hour indicated for the commencement of the Assize and the three succeeding days of the hearing”.

The amendment to *Article 31* -

- (a) substitutes for the reference to the President of the Court a reference to one of the Jurats and deletes the provision which presently requires the list of jury members to be forwarded to the Viscount; and
- (b) deletes the existing reference to jury members being summoned for the three succeeding days of the hearing. Instead reference is made to such other days as the Court may determine.

Article 12 of the draft Law would amend *Article 32A(1)* of the principal Law which empowers the Viscount, on a written request made by any person summoned to appear for jury service, to exempt him from such service on certain statutory grounds. The amendment empowers the Viscount to grant such exemption, not only upon written request being made, but also of his own motion, if the statutory grounds are satisfied.

Article 13 of the draft Law amends *Article 33* of the principal Law consequentially upon the amendment made to *Article 32* i.e. that the list of jury members to be summoned be signed by one of the Jurats present at the *tirage* rather than by the Bailiff.

Article 14 of the draft Law repeals *Article 34* of the principal Law, which by virtue of the proposed abolition of fixed dates for Criminal Assizes (*Article 1* above) could no longer be required.

Article 15 of the draft Law substitutes Article 38 of the principal Law so that challenges for cause are not restricted to the existing grounds, but instead are in the discretion of the Court. The substituted Article 38 would read (in translation) as follows -

- “(1) Special challenges for cause shall not be allowed other than for legitimate cause, that is to say, either by reason of risk of material prejudice or by reason of manifest unsuitability or, otherwise, in order to do justice.
- (2) The Court of its own motion may at any time discharge a member of the jury on one or more of the grounds referred to in paragraph (1) of this Article”.

Article 16 of the draft Law amends Article 46 of the principal Law consequentially upon the amendment made to Article 56 (*Article 18* below) by providing that if the number of members of a jury is reduced to ten, it will require the agreement of nine to find the accused guilty.

Article 17 of the draft Law amends Article 55 of the principal Law, the final paragraph of which presently provides (in translation) that -

“..... in any criminal proceedings, the Court if it thinks proper, may allow jurors, at any time before they have retired to consider their verdict, to leave the *garde* of the Viscount and to disperse, and in that case the prohibition on communications shall apply solely to communications regarding the criminal proceedings”.

The wording of this paragraph is such that a jury is permitted to disperse only *before* it has retired to consider its verdict. The amendment enables a jury to disperse either before or after it has retired to consider its verdict.

Article 18 of the draft Law repeals and replaces Article 56 of the principal Law with new provisions which will enable a trial to continue where the Royal Court has discharged a juror for reasons not confined to illness or indisposition. There is, however, an overriding requirement that the number of jurors must not be reduced below ten.

Article 19 of the draft Law amends Article 60 of the principal Law which requires the prosecution to notify the accused in advance not only of the names of prosecution witnesses, but also of their address (*‘leur domicile’*) if they have not been heard before the Magistrate or have not given statements forming part of a paper committal. *Article 16* would repeal the words *“avec leur domicile”*, thus leaving it to the discretion of the prosecution (or if need be the Court) whether or not to disclose the address of a prosecution witness.

Article 20 of the draft Law would amend Article 4 of the *Loi (1912) sur la procédure devant la Cour Royale*, as amended. That Article presently requires the Connétable to deposit with the Judicial Greffe a statement (*état nominatif*) of the inhabitants of his/her Parish eligible for jury service. The amendment -

- (a) reflects the fact that the Connétable now forwards the *état nominatif* not to the Judicial Greffier but to the Viscount;
- (b) removes the existing requirement for the *état nominatif* to be in alphabetical order;
- (c) deletes, consequentially, the reference in Article 4 to British subjects.

Article 21 deals with citation and commencement.

TRANSLATION

**LAW (2000) (AMENDMENT No. 8) GOVERNING
CRIMINAL PROCEDURE**

A LAW to amend further both the Law (1864) governing criminal procedure and the Law (1912) on procedure before the Royal Court, sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 2000)

STATES OF JERSEY

The _____ day of _____ 2000

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

ARTICLE 1

For Articles 2, 3, 4 and 5 of the Law (1864) governing criminal procedure, as amended (hereinafter referred to as “the principal Law”), there shall be substituted the following Articles -

“ARTICLE 2.

The Court shall convene from time to time, when necessary to do so, one or more Criminal Assizes.

ARTICLE 3.

Each Assize shall continue for as long as shall be necessary to conclude the proceedings.”.

ARTICLE 2

In Article 10 of the principal Law -

- (a) paragraph numbered 1 shall be deleted;
- (b) for paragraphs numbered 4 and 5 there shall be substituted the following paragraphs -
 - “4. any person having been, in the Island or elsewhere, sentenced to imprisonment for not less than one month;
 - 5. any person having, within the preceding ten years, been convicted of a *crime, délit* or *contravention* and -
 - (a) sentenced to imprisonment (including a sentence by virtue of Article 4 of the Criminal Justice (Young Offenders) (Jersey) Law 1994); or
 - (b) ordered to pay a fine exceeding level 2 on the standard scale; or
 - (c) been subject to an order of the Court with a condition imposed under Article 3 of the Law (1937) on the attenuation of sentences and release under supervision,

or sentenced in like manner outside the Island;

6. any person bound over by virtue of an order under Article 2 of the said Law of 1937 and who remains subject thereto;
7. anyone who, in the Island or elsewhere, is awaiting trial for a criminal offence or who is in contempt of court and anyone who is liable to arrest.”.

ARTICLE 3

After Article 10 of the principal Law there shall be inserted the following Article -

“ARTICLE 10A.

No judgment after verdict shall be liable to be set aside by reason of a failure to satisfy the requirements of this Law regarding the summoning or empanelling of jurors or of the incapacity of a person to serve as a juror.”.

ARTICLE 4

In Article 12 of the principal Law -

- (a) in the first paragraph, for the words “deposited at the Greffe” there shall be substituted the words “forwarded to the Viscount”;
- (b) in the second paragraph -
 - (i) for the words “Greffier of the Court” there shall be substituted the word “Viscount”;
 - (ii) for the words “shall register the whole in a Book, kept for the purpose” there shall be substituted the words “shall forward a copy thereof to the Judicial Greffier”.

ARTICLE 5

After Article 19 of the principal Law there shall be inserted the following Article -

“ARTICLE 19A.

For the avoidance of doubt, the provisions of Article 19 apply equally in the case of a charge of a statutory offence as in the case of a charge of a *crime* or a *délit*.”.

ARTICLE 6

For the second paragraph of Article 23 of the principal Law there shall be substituted the following paragraph -

“The Attorney General shall produce the Indictment, and the Judicial Greffier shall read it to the Court.”.

ARTICLE 7

The fifth and sixth paragraphs of Article 24 of the principal Law are repealed.

ARTICLE 8

In Article 28 of the principal Law, for the words “Ordinary, the Court shall convene” there shall be substituted the words “, two Jurats together with the Viscount, shall convene”.

ARTICLE 9

For Article 29 of the principal Law there shall be substituted the following Article -

“ARTICLE 29.

(1) The drawing (*'tirage'*) of jurors for each Assize shall take place in the manner prescribed by Rules of Court which shall make provision necessary to ensure -

- (a) that the names of members of the jury are drawn at random; and
- (b) that there will be a sufficient number of persons warned to serve on the jury.

(2) Persons who have served at an Assize shall be exempt from serving on any other Assize of that year.”.

ARTICLE 10

Article 30 of the principal Law is repealed

ARTICLE 11

In Article 31 of the principal Law -

- (a) for the words “it shall be signed by the President of the Court, and forwarded to the Viscount, who” there shall be substituted the words “in accordance with Rules of Court made pursuant to Article 29 of this Law, it shall be signed by one of the jurats and the Viscount”;
- (b) for the words “the three following days of the hearing” there shall be substituted the words “on such other days as the Court may determine”.

ARTICLE 12

In paragraph (1) of Article 32A of the principal Law, after the word “Viscount,” there shall be inserted the words “either of his own motion, or”.

ARTICLE 13

In Article 33 of the principal Law, for the words “by the President of the Court” there shall be substituted the words “in accordance with the provisions of Article 31”.

ARTICLE 14

Article 34 of the principal Law is repealed.

ARTICLE 15

For Article 38 of the principal Law there shall be substituted the following Article -

“ARTICLE 38.

(1) Special challenges shall not be admitted by the Court other than for legitimate cause, that is to say, either by reason of risk of material prejudice or by reason of manifest unsuitability or, otherwise, in the interests of justice;

(2) The Court of its own motion may at any time discharge a juror on one or more of the grounds referred to in paragraph (1) of this Article.”.

ARTICLE 16

At the end of Article 46 of the principal Law -

- (a) for the full stop there shall be substituted a colon;
- (b) there shall be added the following proviso -

“Provided that if pursuant to Article 56 of this Law the number of members of a jury is reduced to ten, it will require the agreement of nine to find the accused guilty.”.

ARTICLE 17

In the last paragraph of Article 55 of the principal Law, for the words “before they” there shall be substituted the words “either before or after they”.

ARTICLE 18

For Article 56 of the principal Law there shall be substituted the following Article -

“ARTICLE 56

If during the trial a member of the jury dies or is stricken with illness or indisposition preventing him from continuing as a juror, or is discharged by the Court for any other legitimate cause, but the number of jurors is not reduced below ten, the jury shall be deemed to be duly constituted, and the proceedings shall continue and a Verdict may be rendered accordingly.”.

ARTICLE 19

In Article 60 of the principal Law, the words “, with their domicile,” shall be deleted.

ARTICLE 20

In Article 4 of the Law (1912) on procedure before the Royal Court, as amended -

- (a) for the words “shall deposit at the Greffe of the Royal Court,” there shall be substituted the words “shall forward to the Viscount”;
- (b) the words “and alphabetically” and the words “, being British subjects,” shall be deleted.

ARTICLE 21

This Law may be cited as the Law (2000) (Amendment No. 8) governing criminal procedure and shall come into force on such day as the States may by Act appoint and such Act may fix different dates in respect of different provisions thereof.

**LOI (2000) (AMENDEMENT No. 8) REGLANT
LA PROCEDURE CRIMINELLE**

LOI pour modifier en plus tant la Loi (1864) réglant la procédure criminelle que la Loi (1912) sur la procédure devant la Cour Royale, confirmée par Ordre de Sa Majesté en Conseil en date du

(Enregistré le 2000)

AUX ETATS DE L'ILE DE JERSEY

L'An 2000, le _____ jour de

LES ETATS, moyennant la sanction de Sa Très Excellente Majesté en Conseil, ont adopté la Loi suivante -

ARTICLE 1

Aux Articles 2, 3, 4 et 5 de la Loi (1864) réglant la procédure criminelle, telle que ladite Loi a été modifiée^[1] (ci-après désignée "la Loi principale"), seront substitués les Articles suivants -

"ARTICLE 2.

La Cour sera tenu de convoquer de temps en temps, lorsqu'il le sera nécessaire, une ou plusieurs Assises Criminelles.

ARTICLE 3.

Chaque Assise durera aussi longtemps que sera nécessaire pour conclure le procès."

ARTICLE 2

Dans l'Article 10 de la Loi principale^[2] -

- (a) est supprimé l'alinéa numéroté 1;
- (b) aux alinéas numérotés 4 et 5 seront substitués les alinéas suivants -

"4. toute personne ayant été, dans l'Ile ou ailleurs, condamnée à un mois au moins d'emprisonnement;

5. toute personne ayant été, pendant les dix années précédentes, convaincue de crime, délit ou contravention et -

(a) condamnée à un emprisonnement (y inclus une condamnation en vertu de l'Article 4 de la Loi dite "Criminal Justice (Young Offenders) (Jersey) Law 1994"); ou

(b) condamnée à une amende au delà du niveau 2 du tarif uniforme; ou

(c) assujettie à un ordre de la Cour sous une condition imposée en vertu de l'Article 3 de la Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée,

ou condamnée à une peine équivalente hors de l'Ile;

6. toute personne dont la mise en liberté provisoire a été prononcée en vertu de l'Article 2 de ladite

Loi de 1937 et qui reste assujettie à l'engagement y relatif;

7. ceux qui sont, dans l'Île ou ailleurs, en état d'accusation ou de contumace et ceux qui sont sous mandat d'arrêt.”.

ARTICLE 3

Après l'Article 10 de la Loi principale^[3] sera inséré l'Article suivant -

“ARTICLE 10A.

Aucun jugement après le verdict ne sera susceptible d'annulation en raison d'une manque de satisfaire aux exigences de la présente Loi en ce qui concerne l'assignation ou la formation des membres de l'enquête ou de l'incapacité d'une personne à servir comme membre de l'enquête.”.

ARTICLE 4

Dans l'Article 12 de la Loi principale^[4] -

- (a) dans le premier alinéa, aux mots “déposées au Greffe” seront substitués les mots “remises au Vicomte”;
- (b) dans le deuxième alinéa -
 - (i) aux mots “Greffier de la Cour” sera substitué le mot “Vicomte”;
 - (ii) aux mots “enregistrera le tout dans un Livre, tenu à cet effet” seront substitués les mots “en remettra une copie au Greffier Judiciaire”.

ARTICLE 5

Après l'Article 19 de la Loi principale^[5] sera inséré l'Article suivant -

“ARTICLE 19A.

Pour éviter le doute, les dispositions de l'Article 19 s'appliquent tant dans le cas d'une accusation de contravention que dans le cas d'une accusation de crime ou de délit.”.

ARTICLE 6

Au deuxième alinéa de l'Article 23 de la Loi principale^[6] sera substitué l'alinéa suivant -

“La Partie Publique produira l'Acte d'accusation, et le Greffier Judiciaire en donnera lecture.”.

ARTICLE 7

Sont abrogés les cinquième et sixième alinéas de l'Article 24 de la Loi principale^[7].

ARTICLE 8

Dans l'Article 28 de la Loi principale,^[8] aux mots “Ordinaire, la Cour s'assemblera” seront substitués les mots “, deux Jurés-Justiciers, assistés du Vicomte, s'assembleront”.

ARTICLE 9

A l'Article 29 de la Loi principale,^[9] sera substitué l'Article suivant -

“ARTICLE 29.

(1) Le tirage des membres de l'enquête de chaque Assise aura lieu dans la forme prescrite par des Règles de la Cour ('Rules of the Court') qui contiendront des dispositions nécessaires afin d'assurer -

- (a) que les noms des membres de l'enquête seront tirés par hasard; et
- (b) qu'il y aura un nombre suffisant de personnes citées pour servir dans l'enquête.

(2) Les personnes qui auront assistées à une Assise seront dispensées de servir dans aucune autre Assise de l'année."

ARTICLE 10

Est abrogé l'Article 30 de la Loi principale.^[10]

ARTICLE 11

Dans l'Article 31 de la Loi principale¹⁰ -

- (a) aux mots "elle sera signée par le Président de la Cour, et remise au Vicomte, qui" seront substitués les mots "suivant des Règles de la Cour établies en vertu de l'Article 29 de la présente Loi, elle sera signée par un des Jurés-Justiciers et par le Vicomte";
- (b) aux mots "les trois jours d'audience suivants" seront substitués les mots "à tels autres jours que la Cour pourra déterminer".

ARTICLE 12

Dans l'alinéa (1) de l'Article 32A de Loi principale,^[11] après le mot "Vicomte," seront insérés les mots "ou de sa propre initiative, ou".

ARTICLE 13

Dans l'Article 33 de la Loi principale,¹¹ aux mots "par le Président de la Cour" seront substitués les mots "suivant les dispositions de l'Article 31".

ARTICLE 14

Est abrogé l'Article 34 de la Loi principale.^[12]

ARTICLE 15

A l'Article 38 de la Loi principale¹² sera substitué l'Article suivant -

"ARTICLE 38.

(1) Les récusations spéciales ne seront admises par la Cour que pour cause légitime, c'est à dire, soit à raison de risque de préjudice sensible soit à raison d'inconvenance manifeste ou, autrement, afin de rendre la justice.

(2) La Cour de sa propre initiative pourra en tout temps décharger un membre de l'enquête sur un ou plusieurs des moyens précités à l'alinéa (1) de cet Article."

ARTICLE 16

A la fin de l'Article 46 de la Loi principale^[13] -

- (a) au point sera substitué un deux-points;
- (b) sera ajoutée la clause conditionnelle suivante -

“Pourvu que si en vertu de l’Article 56 de la présente Loi le nombre des membres de l’enquête est réduit à dix il faudra le concours de neuf pour déclarer l’accusé coupable.”.

ARTICLE 17

Dans le dernier alinéa de l’Article 55 de la Loi principale,^[14] aux mots “avant qu’ils ne” seront substitués les mots “soit avant soit après qu’ils”.

ARTICLE 18

A l’Article 56 de la Loi principale^[15] sera substitué l’Article suivant -

ARTICLE 56

Si durant les débats un membre de l’enquête meurt ou est atteint d’une maladie ou d’une indisposition qui l’empêche de continuer ses fonctions, ou est déchargé par la Cour pour aucune autre cause légitime, mais le nombre des membres de l’enquête n’est pas réduit au dessous de dix, l’enquête sera censée être dûment constituée, et le procès continuera et un Verdict pourra être rendu à l’avenant.”.

ARTICLE 19

Dans l’Article 60 de la Loi principale,^[16] sont supprimés les mots “, avec leur domicile,”.

ARTICLE 20

Dans l’Article 4 de la Loi (1912) sur la procédure devant la Cour Royale, telle que ladite Loi a été modifiée^[17] -

- (a) aux mots “déposera au Greffe de la Cour Royale,” seront substitués les mots “remettra au Vicomte”;
- (b) sont supprimés les mots “et alphabétique” et les mots “, étant sujets Britanniques,”.

ARTICLE 21

La présente Loi pourra être citée sous le titre de “Loi (2000) (Amendement No. 8) réglant la procédure criminelle” et entrera en vigueur à un jour que les Etats par Acte pourront déterminer et tel Acte pourra fixer des jours différents à l’égard des différentes dispositions d’icelle.

[1] Tomes I-III, pages 282 and 283 and Volume 1982-1983, pages 3 and 4.

[2] Tomes I-III, page 285.

[3] Tomes I-III, page 285.

[4] Tomes I-III, page 285 and Volume 1996-1997, page 678.

[5] Tomes I-III, page 288, Volume 1996-1997, page 168 and Volume 1998, page 713.

[6] Tomes I-III, page 289 and R & O 5643.

[7] Tomes I-III, page 289, Volume 1982-1983, page 4, Volume 1996-1997, page 678 and Volume 1998, page 714.

[8] Tomes I-III, page 290 and Volume 1982-1983, page 5.

[9] Tomes I-III, page 291 and Volume 1988-1989, page 232.

[10] Tomes I-III, page 291.

[11] Tomes I-III, page 292 and Volume 1988-1989, page 232.

[12] Tomes I-III, page 293.

[13] Tomes I-III, page 295 and Volume 1988-1989, page 232.

[14] Tomes I-III, page 297, Volume 1973-1974, page 195 and Volume 1988-1989, page 233.

[15] Tomes I-III, page 297 and Volume 1982-1983, page 5.

[16] Tomes I-III, page 298, Volume 1996-1997, page 679 and Volume 1998, page 714.

[17] Tomes IV-VI, page 290.