

STATES OF JERSEY



DRAFT CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 201-

Lodged au Greffe on 6th June 2017
by the Minister for Home Affairs

STATES GREFFE



Jersey

DRAFT CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Minister for Home Affairs, the provisions of the Draft Criminal Procedure (Bail) (Jersey) Law 201- are compatible with the Convention Rights.

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

Minister for Home Affairs

Dated: 2nd June 2017

REPORT

Introduction

The Criminal Justice System may affect everyone at some point in their lives, whether as a person suspected of committing an offence, or as a victim or witness to a crime or as a member of a jury. It is widely acknowledged that the laws upon which the Jersey Criminal Justice System is based are outdated and in need of revision and modernisation.

The main area of concern is the Loi (1864) réglant la Procédure Criminelle. Written in French, this is still the principal source of authority for criminal procedure. This Law was written for a different era of criminal justice. A new Law, written in English, is being developed to ensure that criminal procedure and evidence in Jersey support a justice system that is to be expected in a modern society.

In 2011, the Criminal Justice System Board (“CJSB”) determined that wholesale reform of the law of criminal procedure and evidence was required as opposed to a piecemeal approach. Consequently, in 2012, monies were voted from the Criminal Offences Compensation Fund to be allocated to this important project. The Draft Criminal Procedure (Bail) (Jersey) Law 201- (the “draft Law”) comprises the first phase of that project.

The draft Law sets out the procedural framework for the grant of bail to a defendant who appears in court in criminal proceedings. In particular, the draft Law places a criminal court under a duty to consider bail on each occasion that a defendant appears in the proceedings and provides the defendant with the right to bail, subject to a number of exceptions set out in Schedule 1 to the draft Law. The draft Law also provides the courts with clear powers to impose appropriate bail conditions and enables those to be enforced.

In addition, the draft Law also amends Part 5 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (“PPCE”). Once these amendments have been made, Part 5 will be commenced in full and will –

- provide the police with powers to impose conditions on pre- and post-charge bail;
- place a time limit of 6 months on the length of pre-charge bail;
- amend the time limits on pre-charge police detention and for warrants of further detention.

By codifying and amending the law in relation to bail granted by the police and courts, the draft Law will enhance and protect the rights of suspects and defendants in criminal proceedings to their liberty. Further, by enabling appropriate bail conditions to be imposed and ensuring that these can be enforced, the draft Law will also help to protect victims and witnesses throughout the criminal process.

Why do we need the new legislation?

Bail legislation has been in place in the United Kingdom (the Bail Act 1976), and Guernsey (the Bail (Bailiwick of Guernsey) Law 2003) for some time, and is commonplace in other jurisdictions.

In Jersey, while there are a range of powers, both in statute and customary law, to grant bail to a person arrested for an offence or against whom criminal proceedings have been initiated, there are gaps in law and procedure that cause difficulties in

practice. For example, where a person might leave the Island or breach a bail condition, an application to the court is required before the person may be arrested.

The lack of immediate recourse can be particularly problematic in cases of domestic violence. Where a person is under investigation for an assault on a partner and is bailed pending a charging decision, there is little that can currently be done to protect the victim or prevent interference with witnesses during the ongoing investigation.

If a defendant fails to attend a court hearing to which he or she has been bailed, there are powers to issue an arrest warrant, however the failure to attend is not in itself a criminal offence.

What does the draft Law do?

The draft Law is primary legislation setting out a procedural framework for the grant of bail in criminal proceedings and police detention time limits. It will be supported by specific Regulations and Rules of Court.

Bail refers to the temporary release of a person, sometimes on condition that a sum of money is lodged, or certain conditions complied with to guarantee their return to either the Police Station or to the Court.

Bail is not a form of punishment, but by granting, or refusing bail, an element of control is applied over the way in which an individual can conduct his or her life. This limitation on the freedom of the individual occurs because the person is either a suspect or charged with an offence in criminal proceedings.

A defendant can be released on unconditional, or conditional bail. In the case of unconditional bail, the defendant is released from the custody of the Police or the Court on their word or promise to appear at a scheduled place, day and time. A risk-management approach is taken to the imposition of conditions of bail.

The purpose of imposing conditions on bail is to ensure that an individual will surrender to custody, to protect the community and to reduce the likelihood of re-offending.

If the Court decides that the defendant may not answer to bail without an incentive, a sum of money may be required to ensure release. The amount of bail set does not indicate a defendant's innocence or guilt.

The draft Law comprises 3 parts and 3 Schedules.

Part 1 sets out the interpretation of the law and provides core definitions and explanations of the expressions used throughout the draft Law.

Part 2 sets out the duties of a Court to consider bail. Article 7 of the new Law enshrines the right to bail, placing the court under a duty to consider granting a defendant bail on each occasion that he or she appears before the court. The presumption in favour of bail is subject to a number of exceptions which are set out in Schedules 1 and 2.

Among other things, these exceptions enable a Court to refuse bail to a defendant where the Court is satisfied that there are substantial grounds for believing that the defendant would:

- fail to surrender to custody;
- commit further offences whilst on bail;
- interfere with witnesses or otherwise obstruct the course of justice.

Where it is satisfied this is the case, the court will consider whether these risks can be mitigated by imposing bail conditions. If they can, then conditional bail may be

granted. If the risk is considered so great that it cannot be mitigated, bail can be refused and the defendant will remain in custody.

Surety

This draft Law also introduces the concept of ‘surety’. A surety is a person who consents to be bound to potentially pay a sum of money if the defendant does not appear at court at the specific time and date they are required to. The failure of a defendant to surrender to custody can mean that sureties may be ordered by a court to pay all or some of the amount they are bound to pay.

Appeals

When a party considers that the Magistrate’s decision to grant or refuse bail was unreasonable in all circumstances, the draft Law contains clear and comprehensive provisions to enable the defendant or prosecutor to appeal to the Royal Court.

Enforcement

The draft Law will introduce the power for a Police Officer to arrest a defendant, without a warrant for breach, or anticipated breach of bail conditions. Once arrested, the defendant must be presented to the Court within 48 hours of the arrest.

Part 3 sets out offences and penalties for agreeing to indemnify a surety and for defendants failing to surrender to custody. Penalties are specified as a term of imprisonment not exceeding 12 months and an unlimited fine.

Articles in Part 3 rely upon Schedules 2 and 3, which amend a series of miscellaneous enactments.

Police Procedures and Criminal Evidence (Jersey) Law 2003 (“PPCE”)

The draft Law delivers important amendments to the Police Procedures and Criminal Evidence (Jersey) Law 2003.

Pre-charge Bail

The Honorary Police and the States Police may continue to bail a person arrested for, but not charged with, an offence to appear at a Parish Hall Enquiry or the Police Station. Importantly, the new provisions will permit the Honorary Police and the States Police to set bail conditions according to similar criteria as the Court.

The Bailee may request that those conditions are varied by the Honorary Police or the States Police and, where such a request is refused, the defendant may apply to the Magistrate to review the decision. This appeal must be heard by the Court not later than 48 hours after the application is made. The Magistrate may overturn the decision and remand the suspect in custody or vary the conditions. In these circumstances the Magistrate’s decision is final and there is no appeal to the Royal Court.

Bail Time Limits

The new Law proposes a time-limit of 6 months for a person granted bail where the individual has not been charged with an offence. This is intended to permit the Police to conduct further detailed enquiries that require complex investigation in cases of complex fraud, or where specialist forensic examination is required. The time period can be extended upon application to the Magistrate.

Post-charge Bail

The draft Law brings into force provisions that prescribe the duty of a Centenier immediately following a charge and sets out the circumstances where bail might be refused. The provisions amend Part 5 of PPCE to enable a Centenier to grant bail with conditions. The extent of the power to do so and the right to challenge those conditions before the Magistrate’s Court is similar to that for pre-charge bail.

In addition, the Centenier has specific duties in respect of young people to ensure that they are transferred to secure accommodation pending attendance at the relevant Court.

Custody Time Limits

The new Law provides better protection for the rights of suspects held in custody while enquiries into an offence are being carried out.

The draft Law will amend the provisions in Part 5 of PPCE that set limits on the length of time for which a suspect can be held in custody without being charged. Once amended these provisions of PPCE will be brought into force.

Consultation History

Consultation has taken place within the Criminal Justice Systems Board, the Criminal Justice Working Group, the States of Jersey Police and the Law Officers' Department during the drafting of the new Law. This offered interested parties the opportunity to comment on proposed changes and identify any particular concerns with the proposals. Engagement events have been held with the Law Society of Jersey and other interested parties. There was a limited response to the proposed draft Law, however generally stakeholders were supportive of introducing the Jersey legislation.

The Education and Home Affairs Scrutiny Panel have received a briefing on the draft Law.

Timetable for implementation

The implementation of this Law will require a change in working practices and procedures for the Honorary Police, the States Police and the Courts. These changes will be facilitated through the delivery of the Criminal Justice System Transformation Programme which is being delivered as part of the Public Sector Reform agenda across the States of Jersey.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for Home Affairs, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

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

Human Rights

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

APPENDIX TO REPORT

Human Rights Notes on the Draft Criminal Procedure (Bail) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Criminal Procedure (Bail) (Jersey) Law 201- (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 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.

1. These Notes will firstly explain the relevant ECHR rights and principles that are engaged by the draft Law. It will then explain how the provisions of the draft Law ensure that they are compatible with the ECHR.

Article 5 – Right to liberty and security

2. Article 5 ECHR protects the physical liberty and security of the person. Its aim is to ensure that no one is deprived of their liberty in an arbitrary or unjustified fashion.
3. Article 5(1) of the Convention provides that:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ...”.
4. Article 5(1) ECHR permits a deprivation of liberty in a number of specific cases, where that deprivation is lawful and in accordance with a procedure prescribed by law. Six situations are set out in Article 5(1) in which the deprivation of a person’s liberty may be permissible. The European Court of Human Rights (“**ECtHR**”) has stated that the list of exceptions to the right to liberty secured in Article 5(1) is an exhaustive one, and only a narrow interpretation of those exceptions is consistent with the aim and purpose of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty.
5. The exception of primary relevance to bail is Article 5(1)(c), which permits the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.
6. The Court has held that Article 5(1)(c) of the ECHR must be read in conjunction with Article 5(3). Article 5(3) is intended to minimise the risk of a detention under Article 5(1)(c) being arbitrary. Article 5(3) provides that –

“Everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release

pending trial. Release may be conditioned by guarantees to appear for trial.”.

7. The first requirement introduced by Article 5(3) is to ensure “prompt and automatic judicial control of police or administrative detention ordered in accordance with the provisions of Article 5(1)(c)”. What is prompt must be assessed in each case according to its special features, but the Strasbourg jurisprudence confirms that ordinarily the period should be no longer than four days. Strasbourg Jurisprudence also confirms that the “judge or other officer” must be independent of the prosecuting authorities, must consider the circumstances militating for and against continued detention and have the power to order that the accused person be released.
8. The second pair of requirements introduced by Article 5(3), read literally, appear to give the national authorities a choice between 2 courses of action, either of which will satisfy the requirements of the ECHR: either to bring the defendant to trial “within a reasonable time” or to release the defendant pending trial. However, it has been established that Article 5(3) confers a right both to trial within a reasonable time and a right (albeit not an absolute right) to release pending trial.
9. With regard to the right to release pending trial, the approach of the ECtHR is that the persistence of reasonable suspicion that the person arrested has committed an offence is essential for the validity of the continued detention of the person concerned. However, after a certain lapse of time, it is no longer sufficient on its own. Pursuant to Article 5(3) of the ECHR, subsequent detention will be found to be justified only if it was necessary in pursuit of a legitimate purpose.
10. The ECtHR has recognised that pre-trial detention may be compatible with the defendant’s right to release under Article 5(3) ECHR where it is for the purpose of avoiding a real risk that, were the defendant released –
 - a. he or she would:
 - i. fail to attend trial;
 - ii. interfere with evidence or witnesses, or otherwise obstruct the course of justice;
 - iii. commit an offence while on bail; or
 - iv. be at risk of harm against which he or she would be inadequately protected; or
 - b. a disturbance to public order would result.
11. Although these purposes (or grounds as they are often referred to) are capable of justifying pre-trial detention, the detention of an accused person will only be justified in the public interest if the existence of concrete facts outweighing the rule of respect for individual liberty has been convincingly demonstrated.
12. Moreover, the circumstances in which some grounds can be relied upon are more restricted than in the case of other grounds. If, for example, there is good reason to suppose that the defendant would abscond if granted bail, the ECtHR is likely to accept that a remand in custody is justified. Detention on the grounds of a supposed risk to public order or a need to protect the defendant, however, will be appropriate only in exceptional circumstances.

Articles 8, 10 and 11 ECHR

13. Article 8 ECHR provides –
- “(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
 - (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*
14. Article 10 ECHR provides –
- “(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
 - (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*
15. Article 11 ECHR provides –
- “(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
 - (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”*
16. Articles 8(2), 10(2) and 11(2) ECHR provide that an interference with the corresponding ECHR right is permitted where it is in the interests of, amongst other things, the prevention of disorder or crime and the protection of the rights and freedoms of others. In principle, an interference with a person’s Article 8(1), 10(1) and 11(1) rights would be justified from an ECHR perspective so long as the interference is in accordance with law and is no more than what is necessary in a democratic society (i.e. it is proportionate).
17. Below, these Notes explain how these principles are reflected in the content of the draft Law.

Article 5 ECHR: Articles 7 and 8 of, and Schedule 1 to, the draft Law

18. The Bail Law makes provision first and foremost in relation to the grant of bail in criminal proceedings. Article 7(1) of the draft Law requires a court to consider whether to grant bail on each occasion that the defendant appears in criminal proceedings. Article 7(2) of the draft Law provides that the defendant has the right to be granted bail, subject to the exceptions to that right introduced by Article 8 of, and Schedule 1 to, the draft Law.
19. A defendant in criminal proceedings may be refused bail pursuant to the exceptions from the right to bail in Schedule 1 to the draft Law. While such a refusal would, *prima facie* amount to an interference with the right in Article 5, it would be lawful under the draft Law and should fall within the exceptions from the right in Article 5(1)(c) of the ECHR, or in in some cases the exception in Article 5(1)(a) (see paragraph 24).
20. Article 5(1)(c) ECHR must be read together with Article 5(3), whereby the pre-trial detention of the accused will only be justified if the ground for detaining the accused is one recognised by the ECtHR's case law and the public interest in detaining the person has been convincingly demonstrated.
21. For these purposes, the exceptions from the right to bail provided for in Schedule 1 to the draft Law reflect the ECtHR's case law on the purposes for which bail may be refused. Further, the requirement in paragraph 1 of Schedule 1 for the court to be satisfied that there are "substantial grounds" justifying the denial of bail should ensure that, in such cases as are covered by that paragraph, the grounds are convincingly demonstrated.
22. The same considerations do not apply to paragraphs 5 and 6 of Schedule 1, as there is a separate exception from Article 5 of the ECHR, in Article 5(1)(a), which covers the lawful detention of a person after conviction by a competent court. For present purposes, it is sufficient to note that provided the defendant had been convicted or was serving a lawful sentence of imprisonment that may itself justify the defendant's detention.
23. Accordingly, Articles 7 and 8, and the grounds for denying bail in Schedule 1 can be applied in a way which is compatible with the ECHR.

Articles 5, 8, 10 and 11 ECHR: Articles 11 to 14, 17 and 18 of the draft Law

24. Under Article 11(2) of the draft Law, a court may impose conditions on the grant of bail to a defendant. Pursuant to Article 11(2), the court may impose such conditions as appear to it to be necessary –
 - a. to secure the defendant surrenders to custody;
 - b. to secure that the defendant attends a parish hall inquiry;
 - c. to secure that the defendant does not commit an offence while on bail;
 - d. to secure that the defendant does not interfere with witnesses or otherwise obstruct the course of justice;
 - e. for the purpose of enabling inquiries or a report to be made; or
 - f. for the person's own protection or, if the person is under the age of 18, for the person's own welfare or in their own interests.

25. Pursuant to Article 12, these conditions may include a requirement to provide a security or propose a surety. The types of conditions that might be attached to the grant of bail could include various restrictions such as curfews, limits on the places a person can visit, or on people with whom they can speak or meet.
26. An example of type of bail condition that may have the potential to engage Article 5 of the ECHR is a curfew, particularly if the curfew were to amount to a form of house arrest.
27. Where a condition does not amount to an interference with the right in Article 5 of the ECHR, it may still amount to an interference with the qualified rights in ECHR Articles 8 (private and family life), 10 (freedom of expression) and 11 (freedom of association). For example, a suspect or defendant accused of domestic violence may be subject to bail conditions that prevent him from staying at or visiting the family home or making contact with friends or family members. Such conditions may amount to a serious interference with the right of the suspect or defendant.
28. A defendant would be required to comply with such conditions and failure to do so would leave the defendant liable to arrest pursuant to Articles 17 and 18 of the draft Law, even though breach of conditions is not an offence.
29. However, the imposition and enforcement of such conditions can be justified for the purposes of the ECHR. Specifically, any interference with Article 5 ECHR rights arising from the imposition of bail conditions may be justified for the purposes specific in Article 5(1)(c) ECHR.
30. Further, interference with Article 8, 10 and 11 rights may be justified on the basis that it is necessary for the prevention of disorder or crime; or to protect the rights and freedoms of others, pursuant to Articles 8(2), 10(2) and 11(2) of the ECHR. In each case, such interference as arises from the draft Law would be prescribed by law and would be subject to a number of restrictions and safeguards, which are described below, and should ensure that their exercise does not amount to a disproportionate interference with the rights suspects.
31. In assessing the proportionality of these provisions, it is important to recognise that the draft Law such conditions would be imposed by a court and may be reviewed on each occasion that the defendant appears in the criminal proceedings.
32. Further, if conditions are imposed, notice must be given to the person pursuant to Article 10(1) of the draft Law. A defendant may apply for a variation of the conditions of bail to the court pursuant to Article 9 of the draft Law and the court has the power to vary or remove conditions.
33. In view of these limits and safeguards, the provisions in the draft Law do not give rise to a significant risk of incompatibility with Articles 5, 8, 10 and 11 of the ECHR. However, it will be important for the courts to consider proportionality in relation to the imposition of bail conditions. For example, where a security is required to secure the defendant's return to court, the amount payable must be fixed by reference to that purpose and hence with regard to the defendant's assets and resources.
34. For completeness, I would add that an arrest for failure to surrender to bail or to comply with bail conditions, pursuant to Articles 17 and 18 of the draft Law, may fall within the exceptions from the right to liberty in Article 5(1)(b) or (c) of the ECHR.

Article 5 ECHR: Article 22 and paragraphs 4 and 5 of Schedule 2 to the draft Law

35. Under Part 5 of PPCE as currently in force, an officer may release an arrested person on bail, without charging the person, subject to a requirement that the person attend at a police station or the Parish Hall on a subsequent occasion. This enables a suspect to remain at liberty while an investigation is ongoing. Schedule 2 to the draft Law amends Part 5 of PPCE to empower an officer to impose such conditions on pre-charge bail as appear to the officer necessary –
- a. to secure the person surrenders to custody;
 - b. to secure that the person does not commit an offence while on bail;
 - c. to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice; or
 - d. for the person’s own protection or, if the person is under the age of 17, for the person’s own welfare or in their own interests.
36. The conditions cannot include a requirement to propose or provide a surety or security but, subject to some minor limitations, they are otherwise unrestricted provided that they are imposed for one of the statutory purposes. The types of conditions that might be attached to the grant of bail could include various restrictions such as curfews, limits on the places a person can visit, or on people with whom they can speak or meet. Under Article 44 of PPCE, as amended by the draft Law, it is clear that the police may arrest the person if they have reasonable grounds for suspecting that they have broken any of the conditions, although breach of conditions is not an offence. The police may also arrest a person for failure to surrender to police bail.
37. For the reasons discussed already in relation to the imposition of conditions on court bail, the restrictions that may be imposed under the amended provisions of PPCE may amount to a significant interference with the ECHR rights of a suspect.
38. On balance, to the extent that the imposition of conditions may interfere with the rights of the suspect, they may be justified on the basis that they pursue legitimate aims provided for in the ECHR and are subject to a number of restrictions and safeguards, which are described below. These restrictions and safeguards should ensure that their exercise does not amount to a disproportionate interference with the rights suspects.
39. Specifically, any interference with Article 5 ECHR rights arising from the imposition of bail conditions would be justified under Article 5(1)(c) as being for the purpose of bringing the person before the competent legal authority on reasonable suspicion of having committed an offence. Any interference with Article 8, 10 and 11 rights may be justified on the basis that it is necessary for the prevention of disorder or crime; or to protect the rights and freedoms of others.
40. In assessing the proportionality of these provisions, it is important to recognise that the draft Law places an automatic time limit not only on the length of pre-charge bail, and therefore also on the conditions that might be imposed on such bail.

41. Further, if conditions are imposed, notice must be given to the person. The person has the opportunity to apply for variation of the conditions to a custody officer, who has the power to vary or remove conditions. If the person wishes to, they may also apply to the Magistrate's court, which has the power to discharge the person from bail, vary or remove bail conditions or order that the person be remanded in custody.
42. In view of these limits and safeguards, and in particular in light of the opportunity to go before a court to ask for the bail conditions to be varied, the provisions in the draft Law concerning police bail do not give rise to a significant risk of incompatibility with Articles 5, 8, 10 or 11 of the ECHR. However, it will be important for the police to consider proportionality in relation to the imposition of bail conditions. The police have the power to arrest for any offence, however minor, and given that conditional police bail is available where a person has been arrested in respect of any offence, officers need to apply their new bail powers in a proportionate way.

Article 5 ECHR: Article 22 and paragraphs 10 to 12 of Schedule 2 to the draft Law

43. As noted above, the first requirement introduced by Article 5(3) is to ensure prompt and automatic judicial control of police or administrative detention ordered in accordance with the provisions of Article 5(1)(c).
44. The amended provisions in Articles 40, 41 and 42 of PPCE, once brought into force, will provide assurance that this requirement will be met. Although what is 'prompt' must be assessed in each case according to its special features, the amended provisions will ensure that a person will not be detained, pre-charge, for a period longer than 4 days. The amended provisions will, in particular, ensure that a person's pre-charge detention will either be reviewed by the Magistrate's Court (which has the power to order that the accused person be released) no later than 72 hours after the person is detained, if the person has not already been released by that point.

Explanatory Note

This draft Law would provide the procedural framework for the grant of bail when a defendant appears before a court in criminal proceedings. This draft Law would also amend Part 5 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (the “PPCE Law”) concerning the procedures for the grant of bail by police officers and police detention. This draft Law is divided into 3 Parts.

Part 1: Interpretation and Application

Article 1 defines words and expressions used throughout this draft Law. In particular, “court” means the Magistrate’s Court, the Youth Court or the Royal Court.

Article 2 defines the meaning of “criminal proceedings” in relation to which bail is grantable in accordance with this Law.

Article 3 defines the meaning of “defendant” for the purposes of the proceedings in relation to which this Law applies.

Article 4 clarifies that if a provision in this draft Law requires something to occur or be done within 48 hours, that period would exclude Christmas Day, Good Friday and Sundays.

Article 5 specifies that this draft Law applies to bail grantable in criminal proceedings, (as listed under the definition “criminal proceedings” in *Article 2*). This Article also provides that bail grantable –

- (a) on appeal or under Article 24 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 further to an application for the statement of a case under Article 24 of that Law, or under the Court of Appeal (Jersey) Law 1961 is not governed by this Law;
- (b) in proceedings under the Extradition (Jersey) Law 2004 (the “Extradition Law”) and the International Criminal Court (Jersey) Law 2014 (the “ICC Law”) is not governed by this Law except in so far as is provided under Article 98A of the Extradition Law and Article 14(2) of the ICC Law.

Article 6 provides that the provisions contained in *Part 1* of this Law may be amended by Regulations.

Part 2: Bail

Article 7 places the court under a duty to consider granting a defendant bail on each occasion that defendant appears before the court pending the determination of the proceedings including whenever he or she applies for a variation of the conditions of bail (i.e. there is a general presumption in favour of granting bail). But, the presumption in favour of bail is subject to a number of exceptions which are set out in *Schedules 1* and *2* to this draft Law.

A defendant granted bail must surrender himself or herself into custody of the court at the time and place appointed for the defendant to do so. A defendant denied bail on his or her first court appearance may on the next appearance advance a further application for bail with any arguments as to fact or law regardless of whether or not those arguments were presented on the first occasion, thereafter the court is not required to hear any arguments previously advanced.

Article 8 introduces *Schedule 1* which sets out the exceptions to the right of a defendant to be granted bail.

Article 9 provides for the conduct of applications for bail or variation of conditions of bail.

Article 10 requires the court to make a record of its bail decision which must include the court's reasons where its decision is to deny a defendant bail or to grant bail subject to conditions. A copy of the record must be provided to the defendant unless he or she has legal representation. In a case where the prosecution unsuccessfully argues against the grant of bail, the court must give its reasons for granting bail and must supply a copy of the record to the prosecution if so requested.

Article 11 provides that bail should only be granted subject to conditions if the court believes it to be necessary so as to secure that the defendant –

- (a) surrenders to custody;
- (b) attends a parish hall inquiry;
- (c) does not commit further offences while on bail;
- (d) does not interfere with witnesses; or
- (e) for the purposes of enabling inquiries to be made or for the defendant's own protection.

Article 12 provides for the grant of bail subject to a condition that there is a security or a person approved by the court to stand as a surety, so as to secure the defendant's surrender to custody. The court may apply both of those conditions. If bail is granted subject to a security, the amount ordered by the court must be deposited with the Viscount before the defendant can be released from the custody of the court. The security deposit would, unless forfeited under Article 13, be repaid if the condition to provide a security is lifted, or at the conclusion of the proceedings, whichever occurs first. If a person is proposed to stand as a surety, the court may, in determining that person's suitability, have regard to that person's financial resources, character and proximity to the defendant (whether as a close association or otherwise). If the proposed surety is approved by the court, the court must fix the amount in which the surety is bound (liable) in the event the defendant fails to surrender to custody. The surety is also bound as a condition of the defendant's bail to inform a police officer as soon as he or she believes that the defendant is unlikely to surrender to custody. If the parent or guardian of a defendant under the age of 18 agrees to stand as a surety, that person may also be required to secure that the defendant complies with any other conditions of bail which the court has imposed. A parent/guardian surety cannot be required to secure that the defendant complies with his or her conditions of bail if that defendant attains the age of 18 before he or she is next required to surrender to the custody of the court. Neither can a parent/guardian surety be required to secure compliance with a condition which he or she does not agree to, nor pay a sum greater than a sum equivalent to level 1 on the standard scale (currently £200) in respect of any agreed conditions.

Article 13 provides for the forfeiture of a security in the event that the defendant, without reasonable excuse, fails to surrender to custody. The court may order forfeiture of a lesser amount than the full value of the security deposited. A forfeited security may be remitted if the defendant can show that he or she did have a reasonable excuse for failing to surrender to custody. A remitted security shall remain deposited with the Viscount until the conclusion of the proceedings or that condition of bail is lifted, whichever occurs first.

Article 14 sets out the process for establishing a surety's liability in the event that the defendant fails to surrender to custody or, if the defendant is under the age of 18, breaches any condition of bail, and for recovering the amount in which the surety is

bound. The court is required to summons the surety to appear before it to show cause as to why the surety should not be ordered to pay the amount in which he or she is bound. The court may order the surety to pay the full or part of the amount, or discharge him or her from any liability.

Article 15 sets out the prosecution's right of appeal to the Royal Court against a decision of the Magistrate to grant bail to a defendant charged with, or convicted of an offence punishable with imprisonment. An appeal may only be made on the ground that the Magistrate's decision was unreasonable. The prosecution must give oral notice of appeal at the conclusion of the proceedings and before the defendant is released from custody and must also serve written notice of the appeal on the Magistrate and the defendant within 2 hours of the conclusion of the proceedings. Upon the giving of the oral notice of appeal, the Magistrate is required to remand the defendant in custody pending the determination of the appeal which must be heard as soon as is reasonably practicable.

Article 16 sets out the defendant's right of appeal to the Royal Court against a decision of the Magistrate to deny a defendant bail in criminal proceedings. A defendant may only appeal on the ground that the Magistrate's decision was unreasonable in all the circumstances of the case.

Article 17 empowers the court to order the arrest of a defendant granted bail who fails to surrender to custody, or if it appears that the defendant has breached any condition of bail, or absents himself or herself from the court without permission. An order authorizes every police officer or the Viscount to arrest and detain the defendant and bring him or her to court within 48 hours of his or her arrest.

Article 18 empowers a police officer to arrest a defendant granted bail if the officer has reasonable grounds for believing that the defendant is not likely to surrender to custody or has substantial grounds for believing that the defendant is likely to break any condition of bail, or the officer suspects that the defendant has broken any of those conditions. A police officer may also arrest a defendant if a surety has notified an officer in writing that the defendant is unlikely to surrender to custody and the surety wishes to be relieved of his or her obligations as a surety.

Part 3: Offences and Final Provisions

Article 19 creates the offence of agreeing to indemnify a surety. An offence is committed if a person ("A") agrees with another ("B"), whether or not person B is a potential, proposed or actual surety, to indemnify person B against any liability in the event that the defendant fails to surrender to custody, and regardless of whether or not any form of compensation is part of that agreement. Both person A and B are guilty of that offence and liable to imprisonment for a term not exceeding 12 months and to a fine.

Article 20 creates the following offences of which a defendant granted bail is guilty –

- (a) if he or she fails, without reasonable excuse, to surrender to custody; or
- (b) if he or she fails, with reasonable excuse, to surrender to custody at the appointed place as soon as reasonably practicable.

The burden of proof is on the defendant to show that he or she had a reasonable excuse for his or her failure. But a failure to provide the defendant with a copy of the bail decision record does not constitute a reasonable excuse. A defendant guilty of an offence under this Article is liable to imprisonment for a term of 12 months and to a fine.

Article 21 provides Regulation making powers for the purposes amending other enactments including this Law, in consequence of the effect of the provisions of this Law. This Article also extends the powers under the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 and the Royal Court (Jersey) Law 1948, to make rules of court for the purposes of this Law.

Article 22 introduces *Schedule 2* which contains miscellaneous amendments to the PPCE Law.

Article 23 introduces *Schedule 3* which contains miscellaneous consequential amendments to other enactments.

Article 24 gives the title by which this Law may be cited and provides for it to come into force on such day or days as the States may by Act appoint.

Schedule 1

The court has the discretion to deny a defendant bail if any of the exceptions in this Schedule apply.

Paragraph 1 is the exception which would apply if the court has substantial grounds for believing that if the defendant were to be granted bail (even subject to conditions), he or she would fail to surrender to custody, commit an offence, interfere with witnesses or otherwise obstruct the course of justice.

Paragraph 2 is the exception which would apply if the court is satisfied that the defendant should be kept in custody for his or her own protection, or if the defendant is under 18, for his or her own welfare.

Paragraph 3 is the exception which would apply where the court is satisfied that owing to insufficient time since the inception of the proceedings, it has not been practicable to obtain sufficient information for the purpose of taking decisions about granting bail under this Schedule.

Paragraph 4 is the exception which would apply where the defendant's case is adjourned for the purpose of making inquiries or preparing a report and it would be impracticable to complete those inquiries or make that report without keeping the defendant in custody.

Paragraph 5 is the exception which would apply if the defendant has been convicted of an offence punishable with imprisonment and is awaiting sentence.

Paragraph 6 is the exception which would apply if the defendant is in custody serving a sentence of imprisonment.

Paragraph 7 sets out the relevant considerations which a court must have regard to when determining whether or not any of the exceptions to the grant of bail specified in *paragraph 1* of *Schedule 1* apply in respect of a defendant.

Schedule 2 contains miscellaneous amendments to the PPCE Law. In particular, various provisions contained in Part 5 of that Law dealing with the grant of police bail and detention are amended. Presently, only Articles 30(1), 31, 33, 44 and 45(1) in Part 5 of the PPCE Law are in force. It is proposed that Part 5 (as amended by this Law) would come fully into force upon the coming into force of this Law.

Paragraph 1 is the interpretation provision for *Schedule 2* and defines the expression "principal Law" to mean the PPCE Law.

Paragraph 2 would amend Article 1 of the PPCE Law and for the purposes of Article 36 of the PPCE Law (as substituted by *paragraph 7* of *Schedule 2* to this Law) in particular, would insert definitions for "child", "secure accommodation" and "young person".

Paragraph 3 would insert a new interpretation provision, *Article 29A* of the PPCE Law for the purposes of Part 5 of that Law. The effect of that provision would be to introduce a definition for the expression “prescribed” for the purposes of rules of court as referred to in new *Article 48A* of the PPCE Law (as inserted by *paragraph 14*); and to clarify the meaning of the expressions “release with bail” and “release on bail” which appear in various provisions in Part 5 of the PPCE Law. *Article 29A(b)* of the PPCE Law clarifies that release with or on bail means the release of a person on unconditional bail, or on bail subject to such requirement or conditions as may be imposed under *Article 30* or new *31B* of the PPCE Law.

Paragraph 4 would substitute *Article 30* of the PPCE Law which deals with the grant of bail by police officers in respect of a person who is arrested for, but not charged with an offence. A police officer, i.e. a Centenier or a States of Jersey police officer may grant bail subject to a requirement that the person bailed attends a parish hall inquiry (“PHI”) or returns to a police station. If the person is no longer required to attend a PHI or return to a police station, a police officer must notify the person in writing that he or she is released from bail and from any requirement to so attend. A police officer would also be able to release an arrested person on bail subject to such conditions of bail as a court would have imposed under *Article 11* of this draft Law. When imposing or varying conditions of bail the police officer must provide the person bailed with a written record of the conditions together with reasons. The person bailed may request the police officer to vary the terms of his or her bail conditions and if that request is refused, the person may apply to the Magistrate to review the police officer’s decision to grant bail subject to conditions, or refusal to vary any such conditions. The Magistrate may on consideration of such an application remove any condition, impose different including more onerous conditions or deny the person bail. A copy of the written record of the Magistrate’s decision and reasons must be provided to the person bailed.

Paragraph 5 would insert into the PPCE Law new *Articles 31A* and *31B*.

New *Article 31A* would apply to a police officer who, under *Article 30(1)* (as substituted by *paragraph 4* of *Schedule 2* to this Law) or *31* of the PPCE Law releases on bail a person who has been arrested for, but not charged with an offence. This *Article* provides that such a person cannot be kept on police bail for a continuous period of more than 6 months. Before the expiry of the continuous bail period, the police officer may apply to the Magistrate for authorization to extend that period by such further period as the Magistrate may specify. The police officer may subsequently apply to extend that further period. The Magistrate may, when authorizing the grant of bail for an extended period, issue directions as to the conditions which may, must, or must not be attached to the grant of bail.

New *Article 31B* would, in respect of a person who has been charged with an offence, provide a Centenier with similar powers to impose conditions of bail as a court would have under *Article 11* of this draft Law. *Article 31B(3) to (11)* are analogous with *Article 30(5) to (12)* of the PPCE Law (as substituted by *paragraph 4* of *Schedule 2* to this Law).

Paragraph 6 would make a minor consequential amendment to *Article 35* of the PPCE Law as a result of the new interpretation provision inserted by *Article 29A* of the PPCE Law (as inserted by *paragraph 3* of *Schedule 2* to this Law).

Paragraph 7 would substitute *Article 36* of the PPCE Law dealing with the duties of Centeniers after a person has been charged. Most of the existing provisions of this *Article* are re-enacted except that the provisions relating to the police detention of juveniles have been replaced with provisions which reflect the provisions of the

Criminal Justice (Young Offenders) (Jersey) Law 2014 concerning the detention of children and young persons in secure accommodation.

Paragraph 8 would make a minor amendment to Article 37 of the PPCE Law (responsibilities of custody officers in relation to persons detained) consequential upon the amendment of Article 36 of that Law relating to the detention of a child or young person.

Paragraph 9 would amend Article 38 of the PPCE Law as a consequence of the substituted provisions of Article 36.

Paragraph 10 would amend Article 40 of the PPCE Law to provide for the authorization of continued detention for a period not exceeding 48 hours from the time of arrest. The period is increased from 36 hours so as to avoid periods where the Magistrate's Court is unable to sit outside normal business hours.

Paragraph 11 would insert a new *Article 40A* which declares that nothing in the provisions of Articles 41 and 42 (applications by the police for warrants of further or extended detention), shall be taken to require the Magistrate to sit on a Sunday.

Paragraph 12 would amend Article 41 of the PPCE to amend the maximum authorized period of continued detention from 36 hours to 48 hours and to require a police officer of at least the rank of superintendent to authorize an application for a warrant for further detention where it is not practicable for the court to sit at the expiry of a period of 48 hours after a person was arrested. In addition, a custody officer must notify the Attorney General where a person has been detained for longer than 48 hours after arrest.

Paragraph 13 would amend Article 43 of the PPCE Law (detention after charge) so as to fix a 48 hour time limit within which a person who has been charged must be brought before the Magistrate's court. The 48 hour period would commence from the time of charge and Christmas Day, Good Friday and Sundays are disregarded for purpose of calculating that period.

Paragraph 14 would substitute Article 44 of the PPCE Law so as to enable a police officer to arrest a person who breaches any condition of his or her bail (i.e. not just where a person bailed fails to attend a PHI or police station, which is the current effect of Article 44).

Paragraph 15 would insert a new *Article 48A* into the PPCE Law so as to extend the powers to make rules of court under the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 for the purpose of prescribing any forms required for the purposes of Part 5 of the PPCE Law.

Paragraph 16 would make a minor amendment to Article 108 of the PPCE Law (not presently in force) which deals with the extended remand of suspected drug offenders in the custody of customs officials. The age of a person who is so remanded in custody by the Magistrate, is amended from age 17 to age 18.

Schedule 3 sets out miscellaneous amendments to various enactments consequential upon the enactment of this Law.

Paragraph 1 would amend Articles 20 and 24 of the Loi (1864) réglant la procédure criminelle so that the power to grant bail under those provisions is exercised in accordance with this Law.

Paragraph 2 would amend Articles 4 to 7 of the Criminal Justice (Jersey) Law 1957 so that that procedures concerning the payment of a security and the forfeiture of any amount bound by a surety are consistent with the provisions of *Articles 12 and 14* of this Law.

Paragraph 3 would amend certain bail provisions contained in Part 6 of the Extradition Law so that when bail is being considered under that Law, only certain specified provisions under this Law (some with modifications) relating mainly to the grant of bail subject to a security or surety would also apply. As provided under *Article 5*, this Law would not otherwise apply in relation to bail grantable in proceedings under the Extradition Law.

Paragraph 4 would amend Rule 50 of the Prison (Jersey) Rules 2007 so as to bring it into line with the provisions of *Article 12* of this Law concerning the provision of a security or surety.

Paragraph 5 would amend Article 14 of the ICC Law 2014 so that when bail is being considered under that Law, only certain specified provisions under this Law (some with modifications) would also apply. As provided under *Article 5*, this Law would not otherwise apply in relation to bail grantable in proceedings under the ICC Law.

Paragraph 6 would amend the Connétables (Miscellaneous Provisions – Consequential Amendments) (Jersey) Regulations 2014 so as to remove some un-commenced amendments to the PPCE Law which will have been overtaken by amendments to that Law made under *Schedule 2* to this Law.



Jersey

DRAFT CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT CRIMINAL PROCEDURE (BAIL) (JERSEY) LAW 201-

A **LAW** to make provision for, or in connection with the granting of bail by a court in criminal proceedings; to amend the Police Procedures and Criminal Evidence (Jersey) Law 2003 in relation to police bail and detention; and for connected purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

PART 1

INTERPRETATION AND APPLICATION

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“1949 Law” means Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949¹;

“criminal proceedings” shall be construed in accordance with Article 2;

“court” means –

- (a) the Magistrate’s Court and, where the context so indicates, the Magistrate;
- (b) the Royal Court; and
- (c) the Youth Court;

“defendant” shall be construed in accordance with Article 3;

“offence” means any *crime*, *délit* or *contravention*, and any other act or omission involving breach of a duty to which by law a sanction is attached, and includes any alleged offence;

“Mental Health Law” means the Mental Health (Jersey) Law 2016²;

“police officer” includes an officer of the Impôts within the meaning of the Customs and Excise (Jersey) Law 1999³;

“prescribed” means prescribed by rules of court referred to in Article 21(4);

“prosecutor” means –

- (a) a Centenier;
- (b) a Crown Advocate appointed under Article 1 of the Crown Advocates (Jersey) Law 1987⁴; or
- (c) a person approved by the Attorney General, under Article 14 of the 1949 Law, to undertake prosecutions on his or her behalf, and

the expression “prosecution” shall be construed accordingly;

“security” shall be construed in accordance with Article 12(1)(a);

“surrender to custody” means, in relation to a defendant granted bail, surrendering himself or herself into the custody of the court (according to the requirements of the grant of bail) at the time and place appointed for the defendant to do so;

“surety” means a person who, under Article 12(4), is approved by the court to secure a defendant’s surrender to custody;

“vary” means, in relation to bail, imposing further conditions after bail is granted, varying existing conditions or lifting any or all existing conditions.

(2) References in this Law to –

- (a) the “grant of bail” shall be construed as bail –
 - (i) subject to Article 5, grantable under any enactment,
 - (ii) taken to be grantable in the proceedings referred to in Article 2(d), or
 - (iii) grantable under any rule of customary law;
- (b) a defendant having previously been granted bail includes bail granted before the coming into force of this Law.

2 Meaning of “criminal proceedings”

For the purposes of this Law, “criminal proceedings” in relation to a defendant means –

- (a) proceedings before a court in respect of an offence;
- (b) proceedings under Part 8 or 9 of the Mental Health Law;
- (c) proceedings under Article 4(2)(a) of the Criminal Justice (Suspension of Prison Sentences) (Jersey) Law 2003⁵; or
- (d) proceedings in relation to a person who, having been convicted of an offence –
 - (i) is awaiting sentence,

- (ii) is to be committed to the Royal Court under Article 1 of the Criminal Justice (Probation Orders) (Jersey) Law 1986⁶, or
- (iii) appears or is brought before a court, or is to be committed to the Royal Court, under Article 7 or 8 of the Criminal Justice (Community Service Orders) (Jersey) Law 2001⁷.

3 Meaning of “defendant”

For the purposes of this Law, “defendant” means a person –

- (a) charged with an offence;
- (b) convicted of an offence and awaiting sentence;
- (c) in relation to whom a finding is made under Article 59 or 72 of the Mental Health Law;
- (d) who is the subject of proceedings referred to in paragraphs (c) and (d) of the definition “criminal proceedings”;
- (e) summoned by a Centenier to appear before the Magistrate’s Court in respect of an offence, pursuant to Article 9 of the 1949 Law; or
- (f) against whom criminal proceedings are directly initiated in the Royal Court by the Attorney General.

4 References to period of 48 hours

- (1) This Article applies where any provision of this Law requires something to be done or to occur within 48 hours.
- (2) In determining when the period of 48 hours expires, there shall be disregarded Christmas Day, Good Friday and any Sunday.

5 Application

- (1) Subject to paragraphs (2) and (3), this Law applies to bail grantable in, or in connection with criminal proceedings.
- (2) This Law does not apply to –
 - (a) bail grantable under Article 24 of the 1949 Law; or
 - (b) bail grantable under the Court of Appeal (Jersey) Law 1961⁸.
- (3) Except as provided in Article 98A of the Extradition (Jersey) Law 2004⁹, and Article 14(2) of the International Criminal Court (Jersey) Law 2014¹⁰, this Law does not apply to bail grantable in, or in connection with proceedings under those Laws.

6 Power to amend Part 1 by Regulations

The States may by Regulations –

- (a) amend this Part; and

- (b) make such supplementary, incidental, consequential, transitional, transitory or savings provision as appears to the States to be necessary or expedient for the purposes of that amendment.

PART 2

BAIL

7 Duty of court to consider bail and defendant's general right to bail

- (1) On each occasion upon which a defendant appears before the court in criminal proceedings, it shall be the duty of the court to consider whether the defendant should be granted bail pending the determination of those proceedings, including any occasion where the defendant applies to the court for a variation of his or her conditions of bail.
- (2) Except as provided in Schedule 1, a defendant has the right to be granted bail whenever he or she is brought before the court in the course of, or in connection with criminal proceedings.
- (3) A defendant granted bail is under a duty to surrender to custody, and must not absent himself or herself from the court without the court's permission.
- (4) If the court denies the defendant bail on the first occasion he or she appears before it, the defendant may, on the next occasion he or she appears before that court, or any other court in the proceedings, support an application for bail with any argument as to fact or law that the defendant wishes to put forward.
- (5) On any subsequent occasion that the defendant applies for bail, the court need not hear arguments as to fact or law which that court, or any other court, has heard previously.

8 Exceptions to right to bail

Schedule 1 sets out the exceptions to the right to be granted bail.

9 Application for bail or variation of conditions of bail

- (1) Any application for bail or for a variation of the conditions of bail may be conducted in open court, and any application for a variation of the conditions of bail may be conducted without a hearing if the defendant, the prosecution and any surety so agree.
- (2) If the court grants bail subject to conditions, it may subsequently vary any such conditions –
 - (a) of its own motion;
 - (b) on the application of the defendant or the prosecution; or
 - (c) on the application of a surety.

- (3) An application for bail or for a variation of the conditions of bail may be made orally or in such form as may be prescribed or, in the absence of a prescribed form, in such written form as the court requires.

10 Decisions and reasons

- (1) Where the court –
 - (a) grants a defendant bail;
 - (b) denies a defendant bail;
 - (c) imposes, or varies any of the conditions of bail; or
 - (d) appoints a time or place or a different time or place for a defendant to surrender to custody,

the court shall make a record of the decision in such form as may be prescribed or, in the absence of a prescribed form, in such written form as the court determines.

- (2) Subject to paragraph (6), the court shall provide the defendant with a copy of the record of the decision as soon as practicable after the record is made.
- (3) Where paragraph (1)(b) or (c) applies, the record of the decision shall include the reasons for denying bail or imposing or varying any condition of bail.
- (4) In a case where the court grants a defendant bail after hearing representations from the prosecutor in favour of denying bail, then the court shall also give reasons for granting bail.
- (5) Where paragraph (4) applies –
 - (a) the record of the decision shall include the reasons for granting bail; and
 - (b) if requested to do so by the prosecutor, the court shall provide the prosecutor with a copy of the record of the decision as soon as practicable after the record is made.
- (6) The court need not provide a copy of the record of the decision to the defendant where he or she has legal representation unless that defendant's legal representative requests the court to do so.

11 The grant of bail subject to conditions

- (1) Except as provided under paragraph (2), the court shall not impose conditions on the grant of bail to a defendant.
- (2) A defendant may be required to comply, before he or she is released on bail or later, with such conditions as appear to the court to be necessary –
 - (a) to secure that the defendant surrenders to custody;
 - (b) to secure that the defendant attends a parish hall inquiry;
 - (c) to secure that the defendant does not commit an offence while on bail;

- (d) to secure that the defendant does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or herself, or any other person;
- (e) for the purpose of enabling inquiries or a report to be made; or
- (f) for the defendant's own protection or, if the defendant is under the age of 18, for the defendant's own welfare or in the defendant's own interests.

12 The grant of bail subject to a security or surety

- (1) Before a defendant is released on bail the court may, as a condition of bail, require the defendant to do either or both of the following –
 - (a) provide a security for the defendant's surrender to custody which shall be –
 - (i) of such an amount as the court may order, and
 - (ii) deposited with the Viscount before the defendant is released from the custody of the court;
 - (b) propose a person who agrees to stand as surety to secure the defendant's surrender to custody.
- (2) The security referred to in paragraph (1)(a) may be provided by the defendant or on his or her behalf.
- (3) In considering the suitability of a proposed surety, the court may have regard (amongst other things) to the surety's –
 - (a) financial resources;
 - (b) character and any previous convictions; and
 - (c) proximity (whether as an associated person, in place of residence or otherwise) to the defendant.
- (4) If the court is satisfied as to the suitability of the proposed surety, it shall approve that person to stand as the defendant's surety.
- (5) Upon approving the surety, the court shall fix the amount in which the surety is to be bound and Article 14 shall apply in respect of that surety if the defendant fails to surrender to custody.
- (6) Where bail is granted subject to a surety, it is also a condition of that bail that if the surety believes at any time that the defendant is unlikely to surrender to custody –
 - (a) the surety must inform a police officer forthwith; and
 - (b) the surety must as soon as practicable deliver to a police officer a statement in writing by the surety confirming the information.
- (7) If a parent or guardian of a defendant under the age of 18 agrees to stand as surety for the defendant, for the purposes of this Article, the parent or guardian may be required to secure that the defendant complies with any other conditions imposed on him or her under Article 11.
- (8) However –
 - (a) a requirement cannot be imposed on a parent or guardian under paragraph (7) where it appears that the defendant will attain the age

- of 18 before the time appointed for the defendant to surrender to custody;
- (b) the parent or guardian –
 - (i) cannot be required to secure compliance with any condition to which his or her agreement does not extend, and
 - (ii) cannot in respect of those conditions to which his or her agreement does extend, be bound in a sum greater than a sum equivalent to level 1 on the standard scale.
- (9) Article 14 also applies in respect of a surety who, under paragraph (7), is required to secure that the defendant complies with any other conditions imposed on him or her under Article 11 and the defendant fails to comply with any such conditions.
- (10) If, at any time, the court orders a reduction in the amount of security previously ordered to be deposited under paragraph (1)(a), the Viscount shall, as soon as is reasonably practicable, repay the excess amount of security to the defendant or the person who provided it on the defendant's behalf.
- (11) The amount of security deposited with the Viscount under paragraph (1)(a) shall, unless ordered as forfeited under Article 13, be repaid to the defendant or the person who provided it on the defendant's behalf –
- (a) when the condition of bail to provide a security is lifted; or
 - (b) at the conclusion of the proceedings,
- whichever occurs first.

13 Forfeiture of security

- (1) Where a defendant has provided a security under Article 12(1)(a), or a security is provided on his or her behalf under Article 12(2) and the court is satisfied that the defendant has failed to surrender to custody then, unless it appears that the defendant had a reasonable excuse for that failure, the court may order the forfeiture of the security.
- (2) If the court orders the forfeiture of a security under paragraph (1), the court may order that the forfeiture extends to such amount less than the full value of the security as it thinks fit.
- (3) An order under paragraph (1) shall, unless previously revoked, take effect at the end of 21 days beginning with the day on which it is made.
- (4) An application may be made to the court to show that the defendant had a reasonable excuse for his or her failure to surrender to custody.
- (5) An application under paragraph (4) shall be made in the prescribed form, and may be made –
- (a) by or on behalf of the defendant; or
 - (b) by the person who provided the security.

- (6) If, on application under paragraph (4), the court is satisfied that the defendant did, after all, have a reasonable excuse for his or her failure to surrender to custody, the court may order –
 - (a) remission of the full value of the forfeited security; or
 - (b) that the forfeiture extends to such amount less than the full value of the security as it thinks fit.
- (7) An application under paragraph (4) may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that the prosecutor was given reasonable notice of the applicant's intention to make it.
- (8) A security which is forfeited under paragraph (1) shall be administered by the Viscount as if it were a fine imposed by the court.
- (9) Where an order is made under paragraph (6), any money which would have fallen to be repaid to the defendant or other person who provided the security, shall remain deposited with the Viscount to be repaid to the defendant or other person, in accordance with Article 12(11).

14 Surety's liability where defendant fails to surrender to custody or breaches conditions

- (1) This paragraph applies where –
 - (a) a defendant is granted bail subject to a surety and that defendant fails to surrender to custody; or
 - (b) in a case in respect of which Article 12(9) applies, a defendant fails to comply with any other conditions imposed on him or her.
- (2) Where paragraph (1)(a) applies, the court shall summons the surety to appear before the court at the time, and on the date specified in the summons to show cause as to why he or she should not be required to pay the amount in which he or she is bound.
- (3) Where paragraph (1)(b) applies, the court may, if it is satisfied that the surety has failed to secure the defendant's compliance with his or her conditions of bail, summons the surety to appear before the court at the time, and on the date specified in the summons to show cause as to why he or she should not be required to pay the amount in which he or she is bound.
- (4) The court may proceed in the absence of any surety if it is satisfied that he or she has been served with the summons.
- (5) The form, content and service of a summons under this Article shall be prescribed.
- (6) The court may order that the whole or part only of the amount in which the surety is bound shall be forfeited, or may discharge the surety from any liability to pay that amount.
- (7) Payment of any amount ordered to be forfeited under this Article, including any costs awarded against the defendant, shall be paid to the Viscount and that amount –
 - (a) shall be administered as if it were a fine imposed by the court; and

- (b) if required, shall be recoverable in such manner as shall be prescribed.

15 Right of prosecutor to appeal against Magistrate's decision to grant bail

- (1) This Article applies where the Magistrate, having heard representations from the prosecutor that bail should not be granted to a defendant who is charged with or convicted of an offence punishable with imprisonment, grants bail to the defendant.
- (2) The prosecutor may, subject to paragraph (3) and in accordance with paragraph (4), appeal to the Royal Court against the granting of bail.
- (3) An appeal under this Article may only be made on the ground that the Magistrate's decision was unreasonable in all the circumstances of the case.
- (4) The prosecutor must –
 - (a) give oral notice of appeal to the Magistrate at the conclusion of the proceedings in which bail has been granted, and before the defendant is released from custody; and
 - (b) serve written notice of appeal on the Magistrate and on the defendant, within 2 hours of the conclusion of the proceedings.
- (5) Upon oral notice of appeal being given, the Magistrate shall remand the defendant in custody until the appeal is determined or otherwise disposed of.
- (6) The appeal shall be deemed to have been disposed of if the prosecutor fails to serve either or both of the notices required by paragraph (4)(b), within the time required by that provision.
- (7) The hearing of an appeal under this Article shall commence as soon as is reasonably practicable after oral notice is given under paragraph (4)(a).
- (8) The Royal Court, when hearing an appeal under this Article, may remand the defendant in custody or grant bail subject to such conditions as it thinks fit.
- (9) In the case of a defendant under the age of 18, the reference in paragraph (1) to an offence punishable with imprisonment is to be read as a reference to an offence which would be so punishable in the case of a defendant aged 18 or over.
- (10) There shall be no right of appeal against a decision of the Royal Court under this Article.

16 Right of defendant to appeal against Magistrate's decision to deny bail

- (1) If the Magistrate denies a defendant bail in criminal proceedings, the defendant may appeal to the Royal Court against that decision.
- (2) An appeal under this Article may only be made on the ground that the Magistrate's decision was unreasonable in all the circumstances of the case.

- (3) There shall be no right of appeal against a decision of the Royal Court under this Article.

17 Court order for arrest

- (1) The court may order the arrest of a defendant granted bail –
 - (a) if the defendant fails to surrender to custody at the time appointed for him or her to do so; or
 - (b) if it appears to the court that the defendant has broken any of the conditions of his or her bail.
- (2) The court may order the arrest of a defendant granted bail if the defendant, having surrendered to custody, absents himself or herself from that court –
 - (a) before the court is ready to commence or resume the hearing of the proceedings in the defendant's case; and
 - (b) without, or otherwise than in accordance with any, permission given to the defendant by or on behalf of the court.
- (3) An order under paragraph (1) or (2) authorizes every police officer or the Viscount to arrest and detain the defendant to whom the order relates and to bring the defendant before the court.
- (4) A defendant arrested and detained under this Article shall be brought before the court within 48 hours of his or her arrest.

18 Police power of arrest

- (1) A police officer may arrest a defendant granted bail –
 - (a) if the officer has reasonable grounds for believing that the defendant is not likely to surrender to custody;
 - (b) if the officer has substantial grounds for believing that the defendant is likely to break any of the conditions of his or her bail or has reasonable grounds for suspecting that the defendant has broken any of those conditions; or
 - (c) where a defendant was granted bail subject to a surety, if that surety notifies a police officer, in writing, that the defendant is unlikely to surrender to custody and, for that reason, the surety wishes to be relieved of his or her obligations as a surety.
- (2) A defendant arrested under this Article shall be brought before the court within 48 hours of his or her arrest.

PART 3

OFFENCES AND FINAL PROVISIONS

19 Offence of agreeing to indemnify a surety

- (1) If a person agrees with another to indemnify that other against any liability which that other may incur as a surety to secure the surrender to

custody of a defendant, he or she and that other person shall be guilty of an offence.

- (2) An offence under this Article is committed whether the agreement is made before or after the person to be indemnified becomes a surety and whether or not he or she becomes a surety and whether the agreement contemplates compensation in money or in money's worth.
- (3) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 12 months and to a fine.

20 Offence of failing to surrender to custody

- (1) A defendant granted bail who, without reasonable excuse, fails to surrender to custody shall be guilty of an offence.
- (2) A defendant granted bail who, with reasonable excuse, fails to surrender to custody shall be guilty of an offence if he or she fails to surrender to custody, as soon as is reasonably practicable.
- (3) It shall be for the defendant to prove that he or she had a reasonable excuse for his or her failure to surrender to custody.
- (4) The fact that a defendant has not been given a copy of the record of the decision to grant him or her bail, shall not constitute a reasonable excuse for his or her failure to surrender to custody.
- (5) A defendant guilty of an offence under paragraph (1) or (2) shall be liable to imprisonment for a term not exceeding 12 months and to a fine.
- (6) In any proceedings for an offence under paragraph (1) or (2), a document purporting to be a certified copy of the part of the decision to grant the defendant bail which relates to the time and place appointed for the defendant to surrender to custody shall be evidence of the time and place appointed for the defendant's surrender to custody.
- (7) Rules of court referred to in Article 21(4) shall specify how and by whom copies may be certified for the purposes of paragraph (6).

21 Regulations and rules of court

- (1) The States may, by Regulations make such transitional provision as appears to the States to be necessary or expedient for the purposes of bringing this Law into force.
- (2) The States may, by Regulations amend any enactment including this Law for the purpose of making such transitional, transitory, consequential, incidental, supplementary or saving provision as they consider necessary or expedient in respect of any provision made by or under this Law.
- (3) The power to make Regulations under paragraph (1) includes the power to make any supplementary, incidental, consequential, transitory or saving provision which appear to the States to be necessary or expedient for the purposes of the Regulations.

- (4) The powers to make rules of court under Article 29 of the 1949 Law and Article 13 of the Royal Court (Jersey) Law 1948¹¹ include the power to make rules for the purposes of this Law.

22 Police Procedures and Criminal Evidence (Jersey) Law 2003 amended

Schedule 2 has effect to amend the Police Procedures and Criminal Evidence (Jersey) Law 2003¹².

23 Miscellaneous enactments amended

Schedule 3 has effect to amend enactments consequentially upon the enactment of this Law.

24 Citation and commencement

This Law may be cited as the Criminal Procedure (Bail) (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

SCHEDULE 1

(Article 8)

EXCEPTIONS TO GENERAL RIGHT TO BAIL*Exceptions to right to bail***1 Defendant presents substantial risk**

A defendant's right to be granted bail may be denied if the court is satisfied that there are substantial grounds for believing that the defendant, if granted bail (whether subject to conditions or not) would –

- (a) fail to surrender to custody;
- (b) commit an offence whilst on bail;
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the defendant or any other person.

2 Defendant's own protection or welfare

A defendant's right to be granted bail may be denied if the court is satisfied that the defendant should be kept in custody for his or her own protection or, if the defendant is under the age of 18, for his or her own welfare.

3 To facilitate the obtaining of information

A defendant's right to be granted bail may be denied where the court is satisfied that it has not been practicable to obtain sufficient information for the purposes of taking decisions required under this Schedule for want of time since the institution of proceedings against the defendant.

4 Defendant's case adjourned for inquiries

A defendant's right to be granted bail may be denied where the defendant's case is adjourned for inquiries or a report and it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

5 Defendant convicted of offence punishable with imprisonment

A defendant's right to be granted bail may be denied if a defendant has been convicted of an offence punishable with imprisonment and is awaiting sentence.

6 Defendant serving sentence of imprisonment

A defendant's right to be granted bail may be denied if the defendant is in custody serving a sentence of imprisonment.

*Reasons for denying right to bail***7 Relevant considerations under paragraph 1**

In determining for the purposes of paragraph 1 whether the court is satisfied that there are substantial grounds for believing that a defendant, if granted bail (whether subject to conditions or not), would do anything specified under that paragraph, the court shall have regard to such of the following considerations as appear to it to be relevant –

- (a) the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it);
- (b) the character, antecedents, associations and community ties of the defendant;
- (c) the defendant's record as respects fulfilment of his or her obligations under previous grants of bail;
- (d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of the defendant having committed the offence or having defaulted;
- (e) the risk that the defendant may engage in conduct that would, or would be likely to, cause physical or mental harm to any person other than the defendant,

as well as any other considerations which also appear to the court to be relevant.

SCHEDULE 2

(Article 22)

**POLICE PROCEDURES AND CRIMINAL EVIDENCE (JERSEY) LAW 2003
AMENDED****1 Interpretation**

In this Schedule, “principal Law” means the Police Procedures and Criminal Evidence (Jersey) Law 2003¹³.

2 Article 1 amended

In Article 1(1) of the principal Law –

- (a) in paragraphs (a) and (b) of the definition “appropriate consent” for the words “17 years” there are substituted the words “18 years”;
- (b) after the definition “Chief Officer” there is inserted the following definition –
 - “ ‘child’ means a person who has attained the age of 10 years and has not attained the age of 15 years;”;
- (c) after the definition “offensive weapon” there is inserted the following definition –
 - “ ‘officer of the Force’ means a member of the States of Jersey Police Force;”;
- (d) the definition “police officer” is deleted;
- (e) after the definition “relevant time” there is inserted the following definition –
 - “ ‘secure accommodation’ has the same meaning as in Article 1(1) of the Children (Jersey) Law 2002¹⁴;”;
- (f) after the definition “vessel” there is inserted the following definition –
 - “ ‘young person’ means a person who has attained the age of 15 years and has not attained the age of 18 years;”.

3 Article 29A inserted

Immediately before Article 30 of the principal Law there is inserted the following Article –

“29A Interpretation of Part 5

In this Part –

- (a) any reference to the release of a person on, or with bail, means the release of that person on bail either unconditionally or with such

requirement or conditions as may be imposed in accordance with Article 30 or 31B;

- (b) ‘prescribed’ means prescribed by rules of court referred to in Article 48A.”.

4 Article 30 substituted

For Article 30 of the principal Law there is substituted the following Article –

“30 Police grant of bail subject to conditions where person arrested for but not charged with an offence

- (1) This Article applies where, under this Part, a Centenier or an officer of the Force (as the case may be) releases on bail a person arrested for, but not charged with an offence.
- (2) The Centenier or officer of the Force may grant the person bail subject to a requirement for the person to attend a parish hall inquiry or return to a police station, on a day and at a time notified to the person.
- (3) If before the day and time notified under paragraph (2) the person is no longer required to attend a parish hall inquiry or return to a police station, a police officer shall notify the person in writing that he or she is released from bail and from any requirement to attend a parish hall inquiry or return to a police station.
- (4) Where it appears to the Centenier or an officer of the Force that it is necessary to do so –
 - (a) for the purpose of preventing the person from failing to attend a parish hall inquiry or returning to a police station (as the case may be);
 - (b) for the purpose of preventing the person from committing an offence while on bail;
 - (c) for the purpose of preventing the person from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or herself, or any other person; or
 - (d) for the protection of the person’s or, if he or she is under the age of 18, for that person’s own welfare or in his or her own interests,

the Centenier or officer of Force may impose such conditions of bail as appear to him or her to be necessary for that purpose.

- (5) A person granted bail subject to any conditions imposed under paragraph (4) may request a Centenier or an officer of the Force to vary the conditions of bail and, in doing so, that Centenier or officer of the Force may remove those conditions or impose different, including more onerous conditions.
- (6) A request made under paragraph (5) shall be determined not later than 96 hours after it is received, and in default of any

determination within that period, the person granted bail may apply to the Magistrate to vary his or her conditions of bail.

- (7) Where a Centenier or an officer of the Force, pursuant to paragraph (4), imposes conditions of bail or, pursuant to paragraph (5), varies any condition of bail, he or she shall give the person granted bail a copy of the record of those conditions setting out the reasons for imposing or varying such conditions.
- (8) Where a Centenier or an officer of the Force imposes conditions of bail under paragraph (4) or, upon a request under paragraph (5), refuses to vary the conditions of bail, the person granted bail may apply to the Magistrate to review the Centenier's or officer of the Force's decision.
- (9) An application under paragraph (6) or (8) shall be made in the prescribed form, and shall be heard not later than the first sitting of the Magistrate's Court after the application is made.
- (10) Where paragraph (6) or (8) applies the Magistrate may –
 - (a) remove any condition of bail or impose different conditions, including more onerous conditions; or
 - (b) overturn the Centenier's or officer of Force's decision to grant bail and remand the person into custody.
- (11) The Magistrate shall provide the person granted bail with a copy of the record of his or her decision in the prescribed form, or in the absence of such a form, in such written form as the Magistrate determines, which shall include the reasons for denying bail or imposing or varying any condition of bail, as soon as practicable after the record is made.
- (12) There shall be no right of appeal against a decision of the Magistrate under this Article.”.

5 Articles 31A and 31B inserted

After Article 31 of the principal Law there are inserted the following Articles –

“31A Limit on duration of bail of person arrested for but not charged with offence

- (1) This Article applies where a Centenier or an officer of the Force (as the case may be), under Article 30(1) or 31, releases on bail a person arrested for, but not charged with an offence.
- (2) Except as authorized under paragraph (4), a Centenier or an officer of the Force cannot keep the person on such bail for the offence for a continuous period of more than 6 months.
- (3) The continuous period of 6 months includes any further period of bail for the offence that is granted –
 - (a) on the person's return to a parish hall or police station (as the case may be) to answer to bail for the offence; or

- (b) following the person's arrest under Article 44.
- (4) On an application made by a Centenier or an officer of the Force before the expiry of the continuous period of 6 months, the Magistrate may authorize bail to be granted by a Centenier or an officer of the Force in connection with the offence for a further period, specified by the Magistrate, that would cause the continuous period to exceed 6 months.
- (5) On an application made by a Centenier or an officer of the Force before the expiry of the further period specified by the Magistrate under paragraph (4), the Magistrate may authorize bail to be granted by a Centenier or an officer of the Force in connection with the offence for such further period as the Magistrate may specify.
- (6) If the Magistrate gives an authorization under paragraph (4) or (5), the Magistrate may direct the Centenier or officer of the Force as to the conditions that must, may or must not be attached to the grant of bail, and the Centenier or officer granting bail must have regard to those directions.
- (7) There shall be no right of appeal against a decision of the Magistrate under this Article.

31B Grant of bail by Centenier where person is charged with an offence

- (1) This Article applies where a Centenier releases on bail a person charged with an offence (the 'person charged').
- (2) Where it appears to the Centenier that it is necessary to do so –
 - (a) for the purpose of preventing the person charged from failing to surrender to the custody of the Magistrate's Court or Youth Court (as the case may be);
 - (b) for the purpose of preventing the person charged from committing an offence while on bail;
 - (c) for the purpose of preventing the person charged from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or herself, or any other person; or
 - (d) for the protection of the person charged or, if he or she is under the age of 18, for that person's own welfare or in his or her own interests,the Centenier may impose such conditions of bail as appear to him or her to be necessary for that purpose.
- (3) A person charged who has been granted bail subject to conditions, may request a Centenier to vary the conditions of bail and, in doing so, that Centenier may remove those conditions or impose different, including more onerous conditions.
- (4) A request made under paragraph (3) shall be determined not later than 96 hours after it is received, and in default of any determination within that period, the person charged may apply to the Magistrate to vary his or her conditions of bail.

- (5) Where a Centenier, pursuant to paragraph (2), imposes conditions of bail or, pursuant to paragraph (3), varies any condition of bail, he or she shall give the person charged a copy of the record of those conditions setting out the reasons for imposing or varying such conditions.
- (6) Where the record referred to in paragraph (5) is prescribed, the record shall be made in that form.
- (7) Where a Centenier imposes conditions of bail under paragraph (2) or, upon a request under paragraph (3), refuses to vary the conditions of bail, the person charged may apply to the Magistrate to review the Centenier's decision.
- (8) An application under paragraph (4) or (7) shall be made in the prescribed form and shall be heard not later than the first sitting of the Magistrate's Court after the application is made.
- (9) Where paragraph (4) or (7) applies the Magistrate may –
 - (a) remove any condition of bail or impose different, including more onerous conditions; or
 - (b) overturn the Centenier's decision to grant bail and remand the person into custody.
- (10) The Magistrate shall provide the person charged with a copy of the record of his or her decision in the prescribed form, or in the absence of such a form, in such written form as the Magistrate determines, including the reasons for denying bail or imposing or varying any condition of bail, as soon as practicable after the record is made.
- (11) There shall be no right of appeal against a decision of the Magistrate under this Article.”.

6 Article 35 amended

In Article 35(7)(b) of the principal Law the words “, to return to the police station” are deleted.

7 Article 36 substituted

For Article 36 of the principal Law there is substituted the following Article –

“36 Duties of Centenier after charge

- (1) This Article applies to a person in police detention and for the purposes of this Article only, the expression ‘police detention’ includes a person who attends voluntarily at, or accompanies a police officer to a police station, but who is not arrested at the station.
- (2) Where a Centenier charges a person in police detention with an offence, the Centenier shall order the person's release from police detention, either on bail or without bail, unless –

- (a) the person's name or address cannot be ascertained or the Centenier has reasonable grounds for doubting whether a name or address given by the person as his or her name or address is that person's real name or address;
 - (b) the Centenier has reasonable grounds for believing that the person will, if granted bail, fail to surrender to the custody of the Magistrate's Court or Youth Court (as the case may be) at the time and place appointed for the person to do so;
 - (c) the Centenier has reasonable grounds for believing that the detention of the person is necessary to prevent him or her from committing an offence;
 - (d) in the case of a person of full age, the Centenier has reasonable grounds for believing that the detention of the person is necessary to enable a sample to be taken from him under Article 59;
 - (e) the Centenier has reasonable grounds for believing that the detention of the person is necessary to prevent him or her from interfering with the administration of justice or with the investigation of offences or of a particular offence; or
 - (f) the Centenier has reasonable grounds for believing that the detention of the person is necessary for his or her own protection.
- (3) If the Centenier does not order the release of a person charged with an offence ('person charged') from police detention under paragraph (2), the Centenier shall authorize the keeping of that person in police detention but may not authorize that he or she be kept in police detention by virtue of sub-paragraph (d) after the end of the period of 6 hours beginning from the time at which that person was charged with the offence.
- (4) If, under paragraph (3), the Centenier authorizes that a person charged be kept in police detention, the Centenier shall, as soon as practicable, make a written record of the grounds for the detention.
- (5) Subject to paragraph (6), the written record shall be made in the presence of the person charged who shall at that time be informed by the Centenier of the grounds for his or her detention.
- (6) Paragraph (5) shall not apply where the person charged is, at the time when the written record is made –
- (a) incapable of understanding what is said to him or her;
 - (b) violent or likely to become violent; or
 - (c) in urgent need of medical attention.
- (7) Subject to paragraph (8), where a Centenier authorizes that a child or young person charged with an offence is to be kept in police detention under paragraph (3), the Centenier shall, pending the child's or young person's attendance before the Youth Court or the Magistrate's Court, as the case may be, secure that he or she is transferred to secure accommodation as soon as is practicable.
- (8) If –

- (a) having regard to all of the circumstances, in the Centenier's opinion it is impracticable to transfer the child or young person to secure accommodation; or
- (b) there is no secure accommodation available pending the child's or young person's attendance before the Youth Court,

the Centenier shall authorize the child's or young person's continued police detention and shall, upon that child's or young person's attendance at the Youth Court, produce a certificate stating the grounds for that detention.

- (9) For the purpose of securing the child's or young person's transfer to secure accommodation under paragraph (7), it shall be lawful for any person acting on behalf of the Minister for Health and Social Services to effect the transfer of that child or young person to secure accommodation, and to detain him or her for the purpose of effecting that transfer."

8 Article 37 amended

In Article 37(4) of the principal Law, for the words "If a juvenile is moved to publicly provided accommodation under Article 36(6)", there are substituted the words "If a child or young person is transferred to secure accommodation under Article 36(7)".

9 Article 38 amended

In Article 38 of the principal Law –

- (a) in paragraph (1), for sub-paragraph (a) there is substituted the following sub-paragraph –

“(a) in the case of a person who has been charged with an offence (regardless of whether or not he or she was arrested before being charged), by the Centenier who preferred the charge or, if that Centenier is not immediately available, another Centenier;”;

- (b) for paragraph (11) there is substituted the following paragraph –

“(11) Where the person whose detention is under review has been charged before the time of the review, Article 36(1) to (8) shall have effect in relation to him or her.”.

10 Article 40 amended

In Article 40(1), (2) and (9) of the principal Law, where the words “36 hours” appear, there are substituted the words “48 hours”.

11 Article 40A inserted

After Article 40 of the principal Law there is inserted the following Article –

“40A Applications under Article 41 or 42

In relation to any application made under Article 41 or 42, nothing in those Articles shall be taken to require the Magistrate to sit on a Sunday.”.

12 Article 41 amended

In Article 41 of the principal Law –

- (a) for paragraph (6) there are substituted the following paragraphs –
- “(6) An application for a warrant of further detention may be made at any time before the expiry of 48 hours after the relevant time.
- (6A) This paragraph applies in a case where it is a Sunday or a day where it is not otherwise practicable for the court to sit at the expiry of 48 hours after the relevant time.
- (6B) Where paragraph (6A) applies –
- (a) subject to paragraph (8), an application for a warrant of further detention may be made as soon as practicable after the expiry of 48 hours after the relevant time but before the expiry of 72 hours after the relevant time;
- (b) an officer of the Force of at least the rank of superintendent must, before the expiry of 48 hours after the relevant time, provide the custody officer with written authorization to make an application under sub-paragraph (a); and
- (c) the court must sit during the 24 hours following the expiry of the 48 hours after the relevant time.”;
- (b) in paragraph (7) –
- (i) for the words “In a case to which paragraph (6)(b) applies” there are substituted the words “Where an application for a warrant of further detention is made under paragraph (6B)”;
- (ii) for sub-paragraph (b) there is substituted the following sub-paragraph –
- “(b) the custody officer shall –
- (i) make a note in that person’s custody record of the fact that he or she was kept in police detention for more than 48 hours after the relevant time, and of the reason why he or she was so kept, and
- (ii) as soon as possible after the expiry of the 48 hours after the relevant time, notify the Attorney General of the fact that the person has been kept in police detention for more than 48 hours after the relevant time.”;
- (c) in paragraphs (8) and (9)(b), for the words “36 hours” there are substituted the words “48 hours”;
- (d) for paragraph (13) there is substituted the following paragraph –

“(13) The period shall not be longer than 48 hours or end later than 96 hours after the relevant time.”.

13 Article 43 amended

In Article 43 of the principal Law –

- (a) in paragraph (1) for the words “Article 36(6)” there are substituted the words “Article 36(7)”;
- (b) in paragraph (2) for the words “not later than the first sitting after he is charged with the offence” there are substituted the words “within the period of 48 hours commencing with the time when he or she was charged with the offence”;
- (c) after paragraph (2) there is inserted the following paragraph –

“(2A) In calculating the period of time specified in paragraph (2), there shall be disregarded Christmas Day, Good Friday and any Sunday.”;
- (d) in paragraph (3) for the words “on the next day” there are substituted the words “within the period of time specified in paragraph (2)”;
- (e) in paragraph (4) for the words “not later than the day next following the relevant day” there are substituted the words “within the period of time specified in paragraph (2)”;
- (f) paragraphs (5) and (7) are deleted.

14 Article 44 substituted

For Article 44 of the principal Law there is substituted the following Article –

“44 Power of arrest for breach of bail

- (1) This Article applies to a person granted bail under this Part.
- (2) A police officer may arrest the person if the person does not comply with a requirement, or breaches any condition of bail imposed in accordance with Article 30 or 31B.
- (3) A person arrested under paragraph (2) shall be taken to a designated police station as soon as practicable after arrest.”.

15 Article 48A inserted

After Article 48 of the principal Law there is inserted the following Article –

“48A Rules of court for purposes of Part 5

The power to make rules of court under Article 29 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949¹⁵ includes the power to make rules for the purposes of this Part.”.

16 Article 108 amended

In Article 108 of the principal Law, for the words “aged 17” there are substituted the words “aged 18”.

SCHEDULE 3

(Article 23)

ENACTMENTS CONSEQUENTIALLY AMENDED**1 Loi (1864) réglant la procédure criminelle amended**In the Loi (1864) réglant la procédure criminelle¹⁶ –

- (a) for Article 20 there is substituted the following Article –

“20

En tout état de la cause, même lors du renvoi à la Cour Royale, le Juge pourra admettre le prévenu en liberté provisoire conformément à la Loi dite Criminal Procedure (Bail) (Jersey) Law 201-¹⁷.”;

- (b) in Article 24, for the words “s’il y a lieu, être admis à caution, la Cour fixant le montant du cautionnement” there are substituted the words “être admis en liberté provisoire conformément à la Loi dite Criminal Procedure (Bail) (Jersey) Law 201-
- ¹⁷
- ”.

2 Criminal Justice (Jersey) Law 1957 amendedIn the Criminal Justice (Jersey) Law 1957¹⁸ –

- (a) in Article 4 –

(i) in the heading, for the word “recognizances” there is substituted the word “sureties”,

(ii) in paragraph (1), for the words “, or a recognizance (*caution*) is forfeited before, any court” there are substituted the words “any court, or an amount is forfeited by a surety”,

(iii) in paragraph (1)(a), for the words “due under the recognizance” there are substituted the words “forfeited by a surety”,

(iv) for paragraph (1)(d), there is substituted the following sub-paragraph –

“(d) in the case of a surety, discharging the amount forfeited or reducing the amount so forfeited.”,

(v) in paragraph (2), for the words “before which the recognizance is” there are substituted the words “which orders the amount”,

(vi) in paragraph (3), for the words “a sum due under a recognizance” there are substituted the words “an amount forfeited”,

(vii) for paragraph (4), there is substituted the following paragraph –

“(4) The power conferred by this Article to discharge an amount forfeited by a surety or reduce such an amount shall be in addition to any other powers relating to the discharge, cancellation, mitigation or reduction of any such amount.”;

- (b) in Article 5 –
 - (i) in the heading, for the word “recognizances” there is substituted the word “sureties”,
 - (ii) in paragraphs (1) and (2), in each place where the words “due under the recognizance” occur there are substituted the words “forfeited by a surety”;
- (c) in Article 6 –
 - (i) for the heading and paragraphs (1) and (2), there are substituted the following heading and paragraphs –

“6 Payment of fines, forfeited sureties or securities

- (1) Subject to paragraph (2), this paragraph applies where a person is imprisoned or otherwise detained and –
 - (a) is in default of the payment of –
 - (i) a fine ordered by the court,
 - (ii) the amount forfeited by a surety, or
 - (b) is ordered to pay a security under Article 12(1)(a) of the Bail Law.
- (1A) Where paragraph (1) applies –
 - (a) on payment to the Viscount or the governor of the prison of any fine or amount mentioned in paragraph(1)(a);
 - (b) where the Viscount has otherwise succeeded in recovering the full amount of, or an amount equivalent to a defaulted payment mentioned in paragraph 1(a); or
 - (c) on depositing with the Viscount the security mentioned in paragraph (1)(b),

such person shall be released unless the person is in custody for some other cause.
- (2) Except between the hours of 8 a.m. and 9 p.m., nothing in paragraph (1) shall oblige the governor of the prison –
 - (a) to accept payment of any fine or amount mentioned in paragraph (1)(a) and to release any person so detained in default of such payment; or
 - (b) to release any person detained pending the deposit of the security mentioned in paragraph (1)(b).”;
- (ii) in paragraph (3) –
 - (A) for the words “the payment of a fine or the amount due under a recognizance” there are substituted the words “a payment mentioned in paragraph (1)(a)”,
 - (B) for the words “due under the recognizance” there are substituted the words “forfeited by the surety”,
- (iii) in paragraph (5), for the words “paragraph (1)” there are substituted the words “paragraph (1A)”;

- (d) in Article 7, for paragraph (1) there are substituted the following paragraphs –

“(1) In this Law –

‘Bail Law’ means the Criminal Procedure (Bail) (Jersey) Law 201-¹⁹;

‘Borstal institution’ has the meaning given in section 43 of the Prison Act 1952 (c.52) of the United Kingdom before the amendment of that section by the Criminal Justice Act 1988 (c.33) of the United Kingdom;

‘surety’ has the meaning given in Article 1(1) of the Bail Law; and

‘youth detention’ has the meaning given in Article 1(1) of the Criminal Justice (Young Offenders) (Jersey) Law 2014²⁰.

- (1A) References in this Law to ‘amount forfeited by a surety’ mean the amount ordered as forfeited by a surety under Article 14(6) of the Bail Law.”.

3 Extradition (Jersey) Law 2004 amended

In the Extradition (Jersey) Law 2004²¹ –

- (a) Article 98(2) to (4) is deleted;
- (b) After Article 98 there is inserted the following Article –

“98A Application of the Criminal Procedure (Bail) (Jersey) Law 201-

- (1) Articles 12 to 14, and 19 and 20 of the Criminal Procedure (Bail) (Jersey) Law 201-²² (the ‘Bail Law’) shall, subject to the modifications set out in paragraph (2), apply for the purposes of this Part as if a person whose extradition is requested were a defendant within the meaning of the Bail Law.
- (2) In Article 12(7) and (9) of the Bail Law, for the words ‘Article 11’ there are substituted the words ‘Article 98(1) of the Extradition (Jersey) Law 2004²³’.”;
- (c) in Article 101(2) and 102(3), for the words “as soon as is reasonably practicable” there are substituted the words “within 48 hours of his or her arrest”;
- (d) after Article 102 there is inserted the following Article –

“102A References to period of 48 hours

In determining for the purposes of Article 101(2) and 102(3) when the period of 48 hours expires, there shall be disregarded Christmas Day, Good Friday and any Sunday.”.

4 Prison (Jersey) Rules 2007 amended

In Rule 50(1) of the Prison (Jersey) Rules 2007²⁴, for sub-paragraph (b), there is substituted the following sub-paragraph –

- “(b) providing a security or proposing a surety as a condition of the prisoner’s bail in accordance with Article 12 of the Criminal Procedure (Bail) (Jersey) Law 201-²⁵.”.

5 International Criminal Court (Jersey) Law 2014 amended

In Article 14 of the International Criminal Court (Jersey) Law 2014²⁶, for paragraphs (2) to (4), there are substituted the following paragraphs –

“(2) Articles 9, 11(2), 12(1) to (6), (10) and (11), 13 and 14, and Articles 17 to 20 of the Criminal Procedure (Bail) (Jersey) Law 201-²⁷ (the ‘Bail Law’) shall, subject to the modifications set out in sub-paragraphs (a) and (b), apply for the purposes of this Article as if a person to whom this Part applies were a defendant within the meaning of the Bail Law –

- (a) in Articles 9, 11(2), 12 to 14 and Articles 17 and 18 of the Bail Law, any reference to ‘court’ shall be construed as a reference to the ‘Magistrate’;
- (b) For Article 12(1) of the Bail Law there is substituted the following paragraph –

‘(1) Subject to Article 15(c) of the International Criminal Court (Jersey) Law 2014²⁸, before a defendant is granted bail the Magistrate may, as a condition of bail, require the defendant to do either or both of the following –

- (a) provide a security for that defendant’s surrender to custody which shall be –
 - (i) of such an amount as the Magistrate may order, and
 - (ii) deposited with the Viscount before the defendant is released from the custody of the Magistrate;
- (b) propose a person who agrees to stand as surety to secure the defendant’s surrender to custody.’.

(3) A person granted bail under this Law is under a duty to surrender to the custody of the Magistrate, and must not absent himself or herself from the Magistrate’s Court without the Magistrate’s permission.

(4) If the Magistrate denies the person bail on the first occasion he or she appears before the Magistrate, the person may, on the next occasion he or she appears before the Magistrate, support an application for bail with any argument as to fact or law that the person wishes to put forward (whether or not he or she has advanced that argument on the first occasion).

(5) On any subsequent occasion that the person applies for bail, the Magistrate need not hear arguments as to fact or law which he or she has heard previously.

(6) Where the Magistrate –

- (a) grants or denies a person bail;
- (b) appoints a time or place or a different time or place for a person to surrender to custody; or
- (c) imposes, or varies any of the conditions of bail,

the Magistrate shall make a record of the decision in accordance with Article 10(1) of the Bail Law and, shall cause the person to be given a copy of the record of the decision and reasons for denying bail or imposing or varying conditions of that bail, as soon as practicable after the record is made.”.

6 Connétables (Miscellaneous Provisions – Consequential Amendments) (Jersey) Regulations 2014 amended

In the Connétables (Miscellaneous Provisions – Consequential Amendments) (Jersey) Regulations 2014²⁹ –

- (a) Regulation 29(i) to (l) is deleted;
- (b) in Regulation 38(2), in both places where the words “to (l)” occur there are substituted the words “and (h)”.

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- 1 *chapter 07.595*
 - 2 *L.29/2016*
 - 3 *chapter 24.660*
 - 4 *chapter 07.280*
 - 5 *chapter 08.370*
 - 6 *chapter 08.340*
 - 7 *chapter 08.180*
 - 8 *chapter 07.245*
 - 9 *chapter 17.325*
 - 10 *chapter 17.520*
 - 11 *chapter 07.770*
 - 12 *chapter 23.750*
 - 13 *chapter 23.750*
 - 14 *chapter 12.200*
 - 15 *chapter 07.595*
 - 16 *chapter 08.740*
 - 17 *P.52/2017*
 - 18 *chapter 08.320*
 - 19 *P.52/2017*
 - 20 *chapter 08.380*
 - 21 *chapter 17.325*
 - 22 *P.52/2017*
 - 23 *chapter 17.325*
 - 24 *chapter 23.775.30*
 - 25 *P.52/2017*
 - 26 *chapter 17.520*
 - 27 *P.52/2017*
 - 28 *chapter 17.520*
 - 29 *R&O.81/2014*