

PROJET DE LOI (200-) (AMENDEMENT No. 9) REGLANT LA PROCEDURE CRIMINELLE

**Logé au Greffe le 2 juillet 2002
par le Comité de Législation**



ETATS DE JERSEY

GREFFE DES ETATS

150

2002

P.113

Prix: B

European Convention on Human Rights

The President of the Legislation Committee has made the following statement -

In the view of the Legislation Committee the provisions of the Projet de Loi (200-) (Amendement No. 9) réglant la procédure criminelle are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

As the draftsman's Explanatory Note sets out, this Law seeks as its primary purpose to enable the use of live television links in any criminal proceedings in the Royal Court if the defendant has consented. This would enable proceedings, including formal remands, to be conducted without the need for the physical presence of the defendant in court.

The background to this proposal is that the Legislation Committee's attention was recently drawn to section 57 of the Crime and Disorder Act 1998 of the United Kingdom which laid the foundations for so called video conferencing in that jurisdiction. It provides that -

“In any proceedings for an offence, a court may, after hearing representations from the parties, direct that the accused shall be treated as being present in the court for any particular hearing before the start of trial if, during that hearing -

- (a) he is held in custody in a prison or other institution; and*
- (b) whether by means of a live television link or otherwise, he is able to see and hear the court and to be seen and heard by it.”*

The use of video links in the justice system in England and Wales is not new. As far back as 1992, a pilot project investigated a video link between Norwich Prison and Great Yarmouth Magistrates' Court, although the link was not used for actual hearings. Some witness testimony is given by video link. The Criminal Justice Act 1988 contained provisions permitting overseas witnesses in murder and fraud trials and certain categories of young witnesses outside the courtroom to give evidence by video link, and most Crown Court centres now have facilities to allow witnesses to give evidence in this way. There are also a number of examples of expert witnesses in civil trials giving their evidence over a video link, with a consequent saving of the expert's time and of cost to the instructing party.

The increasing use of video links reflects experience elsewhere. In the United States, the National Law Journal reported in June 1997 that at least 29 States and many federal courts used video conferencing for arraignments, bail hearings and other proceedings. Subject to appropriate safeguards, video technology in court is likely to become more prevalent in the future. In 1998, a Home Office report of the interdepartmental working group on the treatment of vulnerable or intimidated witnesses in the criminal justice system recommended the availability of video links in Magistrates' Courts as well as extending eligibility to a much wider group of witnesses than at present.

The Jersey Legal Information Board, at the end 2000, produced two reports evaluating video link pilots at Manchester's Magistrates' Court and the Northern Ireland Prison Service/Court Service. As a result the Law Officers were asked to prepare a brief with a view to making amendments to -

- (1) the *Loi (1864) réglant la procédure criminelle* (in relation to Royal Court proceedings); and
- (2) the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949,

enabling both Courts to employ live television links or any other technical device by which an accused could see and hear the Court and by which the Court could see and hear the accused. This amending Law and the Draft Magistrate's Court (Miscellaneous Provisions) (Amendment No. 9) (Jersey) Law 200 (P.114/2002) are the result of that process. The system would only be deployed with the consent of the accused. The proposed legislation is permissive only.

The secondary purpose of the draft Law is to enable a person who has been refused exemption from jury service by the Viscount to renew his request for exemption to the Royal Court at the hearing of the Assize. At present, there is no statutory provision enabling this to be done although, in practice, the Royal Court has on occasions admitted such requests. This amendment does no more than give that procedure a formal statutory footing.

The opportunity is also taken to make a minor amendment concerning the power of the Viscount to take evidence in criminal proceedings. Provision would be made for this power also to be exercisable by the Judicial Greffier.

The draft Loi has no manpower or resource implications except insofar as it would enable the court to order (with the consent of the accused) that he or she be seen and heard before the court and see and hear the court's deliberations via a televised or other electronic link. This facility would not be deployed until the financial implications of doing so had been assessed. The draft Law would simply be the enabling provision in this respect.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 27th June 2002 the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Legislation Committee the provisions of the Projet de Loi (200-) (Amendement No. 9) réglant la procédure criminelle are compatible with the Convention Rights.

Explanatory Note

This Law amends the Loi (1864) réglant la procédure criminelle so as to enable the use of video links in criminal proceedings, to enable the Judicial Greffier to take evidence from witnesses in cases where the Viscount is already able to do so, and to enable a person refused exemption from jury service to make further request to the Royal Court.

Article 1 of the draft Law makes an amendment enabling a person refused exemption from jury service by the Viscount to make further request for exemption to the Royal Court at the hearing of the Assize.

Articles 2, 3 and 4 of the draft Law make amendments to enable the Judicial Greffier to hear testimony wherever the Viscount is already empowered to do so (that is, if the Court so permits in cases where witnesses or informants are about to leave the Island or are unable to appear in Court because of illness or disability or in cases where it is feared that before the Assize they may die or leave).

Article 5 of the draft Law inserts a new *Article 72A* under which an accused in detention may be treated as being present in criminal proceedings before the Court through the use of live television links (or other devices). This can only occur at the direction of the Court and if the accused consents and can see and hear the Court and is able to be seen and heard by it.

Article 6 is the usual Article of citation and commencement.

[TRANSLATION]

**LAW (200-) (AMENDMENT No. 9) GOVERNING
CRIMINAL PROCEDURE**

A LAW to amend further the Law (1864) governing criminal procedure, sanctioned by Order of Her Most Excellent Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

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

ARTICLE 1

In Article 32A of the Law (1864) governing criminal procedure, as amended (hereinafter referred to as “the principal Law”) -

- (a) in paragraph (2) for the words “exemption granted by him” there shall be substituted the words “decision taken by him under this Article”;
- (b) after the said paragraph there shall be inserted the following paragraph -

“(2A) Any person who has made a request in writing in accordance with paragraph (1) and is aggrieved by a refusal of the Viscount to grant him an exemption under the said paragraph may renew the request to the Court, which shall rule thereon forthwith.”.

ARTICLE 2

In Articles 42, 66, 67, 68 and 70 of the principal Law, for the words “the Viscount” wherever appearing there shall be substituted the words “the Viscount or the Judicial Greffier”.

ARTICLE 3

In Article 69 of the principal Law, for the words “The Viscount” there shall be substituted the words “The Viscount (or, if the witness or informant has been summoned to appear before the Judicial Greffier, the Judicial Greffier)”.

ARTICLE 4

In Article 69 of the principal Law, for the words “of the Viscount.” there shall be substituted the words “of the Viscount or of the Judicial Greffier, as the case requires.”.

ARTICLE 5

After Article 72 of the principal Law there shall be inserted the following Article -

“ARTICLE 72A

Notwithstanding the foregoing provisions of this Law, the Court may, in any criminal proceedings, with the consent of the accused, direct that the accused shall be treated as being present at the proceedings if, during the

proceedings, he is in prison or otherwise in detention and, either by way of a live television link or by another means, he is able to see and hear the Court and he is able also to be seen and heard by the Court.”.

ARTICLE 6

This Law may be cited as the “Law (200-) (Amendment No. 9) governing criminal procedure” and shall come into force on the seventh day following its registration.

**LOI (200-) (AMENDEMENT No. 9) REGLANT
LA PROCEDURE CRIMINELLE**

LOI pour modifier en plus la Loi (1864) réglant la procédure criminelle, confirmée par Ordre de Sa Majesté en Conseil en date du

(Enregistré le jour de 200-)

AUX ETATS DE L'ILE DE JERSEY

L'An 200-, le jour de

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

ARTICLE 1

Dans l'Article 32A de la Loi (1864) réglant la procédure criminelle, telle que ladite Loi a été modifiée^[1] (ci-après désignée "la Loi principale") -

- (a) dans l'alinéa (2) aux mots "exemption par lui accordée" seront substitués les mots "décision par lui prise en vertu de cet Article";
- (b) après ledit alinéa sera inséré l'alinéa suivant -

“(2A) Toute personne ayant adressée une demande par écrit conformément à l'alinéa (1) qui se sent lésée par un refus du Vicomte de lui accorder une exemption en vertu dudit alinéa pourra adresser de nouveau la demande à la Cour, qui en statuera séance tenante.”.

ARTICLE 2

Dans les Articles 42, 66, 67, 68 et 70 de la Loi principale,^[2] aux mots "le Vicomte" (dans chaque cas où ils paraissent) seront substitués les mots "le Vicomte ou le Greffier Judiciaire”.

ARTICLE 3

Dans l'Article 69 de la Loi principale,^[3] aux mots "Le Vicomte" seront substitués les mots "Le Vicomte (ou, si le témoin ou informateur a été cité à comparaître devant le Greffier Judiciaire, le Greffier Judiciaire)”.

ARTICLE 4

Dans l'Article 69 de la Loi principale,³ aux mots "du Vicomte." seront substitués les mots "du Vicomte ou du Greffier Judiciaire, selon le cas.”.

ARTICLE 5

Après l'Article 72 de la Loi principale^[4] sera inséré l'Article suivant -

“ARTICLE 72A

Par exception aux dispositions antérieures de la présente Loi, la Cour pourra, dans tout procès criminel, avec le consentement de l'accusé, ordonner que l'accusé sera censé être présent au procès si, durant le procès, il est en prison ou autrement en détention et, soit par une méthode télévisée en direct, soit par un autre moyen, il peut voir et

entendre la Cour et il peut également être vu et entendu par la Cour.”.

ARTICLE 6

La présente Loi pourra être citée sous le titre de “Loi (200-) (Amendement No. 9) réglant la procédure criminelle” et entrera en vigueur le septième jour après son enregistrement.

[1] Tomes I-III, page 292, Volume 1988-1989, page 232 and Volume 2001, page 32.

[2] Tomes I-III, pages 294, 300 and 301, Volume 1996-1997, page 679 and Volume 1998, page 714.

[3] Tomes I-III, page 301.

[4] Tomes I-III, page 302.