

STATES OF JERSEY



DRAFT CRIMINAL PROCEDURE (MISCELLANEOUS AMENDMENTS) (JERSEY) LAW 201-

Lodged au Greffe on 21st April 2015
by the Chief Minister

STATES GREFFE



Jersey

**DRAFT CRIMINAL PROCEDURE
(MISCELLANEOUS AMENDMENTS) (JERSEY)
LAW 201-**

European Convention on Human Rights

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

In the view of the Chief Minister, the provisions of the Draft Criminal Procedure (Miscellaneous Amendments) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 20th April 2015

REPORT

A: *The main purpose of the draft Law*

1. This *Projet de Loi* seeks to amend –
 - the *Loi* (1864) *réglant la procédure criminelle* (“the 1864 Law”); and
 - the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 (“the 1949 Law”),

to clarify the ability of both the Royal Court and the Magistrate’s Court to hear evidence by video links.

2. Attention has been given to this matter by the Criminal Justice Board chaired by the Bailiff; and the Legislation Advisory Panel has taken forward this short draft Law in consultation with the Magistrate, and has recommended the same to the Chief Minister for lodging *au Greffe*.
3. The present position is as follows –

In the Royal Court

Article 72A of the 1864 Law provides¹ (in translation) as follows –

“... the [Royal] Court may, in any criminal proceedings, with the consent of the accused, order that the accused be deemed to be present at the proceedings if, during the proceedings, the accused is in prison or otherwise in lawful custody and, either by a direct television link, or by another means, the accused can see and hear the Court and can be seen and heard by the Court.”

In the Magistrate’s Court

Article 6 of the 1949 Law provides as follows –

“6 Power to hear accused through television links

In any proceedings for an offence, the Court may, with the consent of the accused, direct that the accused shall be treated as being present at the proceedings if, during the proceedings, the accused 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 is able also to be seen and heard by the Court.”

4. In the United Kingdom s. 57(1) of the Crime and Disorder Act 1998 makes the following provision –

“57 Use of live television links at preliminary hearings

... 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 the trial if, during that hearing –

- (a) *he is held in custody in a prison or other institution; and*

¹ *“... 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.”*

- (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.*²

This provision extends³ to hearings before the start of the trial. In Jersey, Article 72 of the 1864 Law requires an accused to be present at his or her trial.⁴ It has been held⁵ that Article 72 does not confer an automatic right to be present at preliminary hearings and that, even if Article 72 did not give an accused serving a sentence outside Jersey a right to consent to presence by video link in lieu of actual presence, the Royal Court had power so to order.

5. The draft Law would insert a new Article 72B in the 1864 Law in order to clarify the position in statute. It would provide, in translation, as follows –

“(1) *In any criminal proceedings before the start of the trial, the [Royal] Court may, without the need for the consent of the accused, provided that the Court has heard representations of the parties thereon, direct that the accused shall be treated as being present at the hearing if, during the hearing, 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.*

(2) *For the purposes of paragraph (1) the start of the trial means –*

- (a) *in the case of a trial before a jury, the commencement of the first hearing of evidence after the empanelling of the jury;*
(b) *in the case of a trial before the Inferior Number without a jury, the commencement of the first hearing of evidence for the prosecution.”*

6. The draft Law would insert a new provision to equivalent effect in Article 6 of the 1949 Law for the purposes of proceedings in the Magistrate’s Court –

“(2) *Notwithstanding paragraph (1), in any hearing before the start of a trial, the Court may, after hearing representations from the parties and without requiring the consent of the accused, direct that the accused shall be treated as being present in the Court if, during that hearing, either by way of a live television link or otherwise, the accused is able to see and hear the Court and to be seen and heard by the Court.*

(3) *For the purposes of paragraph (2) ‘the start of a trial’ means the first hearing at which the prosecution adduces evidence to prove its case.”*

7. A further amendment of the 1864 Law and the 1949 Law would be made. At present, Article 72A of the 1864 Law and Article 6 of the 1949 Law (both set out in *paragraph 3 above*) require that the accused must be in prison or otherwise in custody before their provisions can be invoked. Given that the procedure can only be invoked with the consent of the accused, there is no call to restrict its availability to cases only in which the accused is in custody. There may be cases of illness or unavoidable absence in which a video link

² Similar provision is made by s.17 of the Bail (Bailiwick of Guernsey) Law 2003

<http://www.guernseylegalresources.gg/article/97795/Bail-Bailiwick-of-Guernsey-Law-2003>

³ As does its Guernsey counterpart

⁴ *L’accusé sera présent aux débats et à tous les jugements qui le concernent, et le Verdict de l’enquête sera rendu en sa présence*

⁵ COURT OF APPEAL (Beloff, J.A.): 18th October 2012

could be made available (with the consent of the accused) to enable a trial to proceed. Article 72A and Article 6 would therefore be amended to remove the requirement for this purpose that the accused be in prison or otherwise in custody.

B: The other purpose of the draft Law

8. The draft Law also addresses the following residual matter.
9. Article 1 of the *Loi* (1853) *établissant la Cour pour la répression des moindres délits* (“Article 1”) provides in translation as follows (emphasis supplied) –

*“The Judge of the Petty Debts Court shall sit on 4 days of every week, and more often if it is necessary, at 10 o’clock in the morning, in a place designated by the States, in order to hear Police Causes which can be dealt with summarily, and the punishment for which shall not exceed £5 fine or 8 days imprisonment. He shall hear the witnesses in the most serious cases where the suspect has been apprehended, in order to decide if there are grounds to detain him in prison, or whether he should be freed, or whether he should be granted bail; in the latter case, the Judge shall fix the amount of bail which must be furnished.”*⁶
10. The reference to ‘a place designated by the States’⁷ has been construed down the years as requiring the States, every time the Magistrate’s Court moves location, to make an Act designating such location. The last such Act was the Magistrate’s Court and Petty Debts Court (Location) (Jersey) Act 2006 [R&O.18/2006] designating “The Magistrate’s Court, Union Street, Saint Helier, JE1 1BD” for the purposes of Article 1. Not only is this a pointless exercise but, in relation to the Video Link Project, there is no room for provisions restricting location and timing of sittings. At all events, such matters have long been within the domain of Rules of Court under Article 13 of the Royal Court (Jersey) Law 1948 and arguably, therefore, Article 1 could at all events be overridden by Rules of Court. In any event, the opportunity now presents itself to amend Article 1 to reflect modern day reality.
11. Moreover, if the discretion to use video links is to be as wide as possible, constraints on time and location that serve no apparent purpose need to be avoided. With this in mind, the draft Law would amend Article 1 to replace the words “*on 4 days of every week, and more often if it is necessary, at 10 o’clock in the morning, in a place designated by the States*” with the words “*at all necessary times and places*”⁸, thus enabling the Court to sit as and when it was necessary for the Court to do so, and in whatever location was appropriate.

⁶ *Le Juge de la Cour pour le Recouvrement de Petites Dettes, siégera 4 jours la semaine, et plus s’il est nécessaire, à 10 heures du matin, dans un local désigné par les Etats, afin d’entendre et juger les Causes de Police qui peuvent être traitées et jugées sommairement, et dont la punition n’excédera pas £5 d’amende ou 8 jours d’emprisonnement. Il entendra les témoins dans les causes plus graves où le prévenu aura été saisi, afin de décider s’il y a lieu à le détenir en prison, ou s’il doit être libéré, ou s’il doit être admis à caution; dans ce dernier cas, le Juge fixera le montant du cautionnement qui devra être fourni.*

⁷ ‘un local désigné par les États’

⁸ “en tous temps en tous lieux nécessaires”

Financial and manpower implications

There are no 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 Note on the Draft Criminal Procedure (Miscellaneous Amendments) (Jersey) Law 201-

1. This Note has been prepared in respect of the Draft Criminal Procedure (Miscellaneous Amendments) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

Article 6 ECHR

2. The draft Law amends the Loi (1864) réglant la procédure criminelle (“the 1864 Law”) and the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 (“the 1949 Law”). At present, Article 72A of the 1864 Law and Article 6 of the 1949 Law provide the use in any criminal proceedings, with the consent of the accused, of a live television or other similar link or by which the accused can see and hear the court and can be seen and heard by the court.
3. The use of such electronic link is dependent upon the consent of the accused and also dependent upon the accused being in prison or otherwise in custody at the time.
4. The first purpose of the draft Law is to remove the requirement that the accused must be in prison or otherwise in custody in order for the court to be able to utilise this facility.
5. The second purpose of the draft Law is to provide, in relation to any criminal proceedings before the start of the trial, that the court may utilise an electronic link without the need for the consent of the accused, provided the court has heard representations of the parties. The start of a trial in the Royal Court is defined to mean the commencement of the first hearing of evidence after the empanelling of the jury (in the case of an assize trial); or the commencement of the first hearing of evidence for the prosecution (in the case of a trial before the Bailiff and 2 Jurats). The start of a trial in the Magistrate’s Court is defined to mean the first hearing at which the prosecution adduces evidence to prove its case.
6. The third purpose of the draft Law is to make it clear – in Article 1 of the *Loi* (1853) *établissant la Cour pour la répression des moindres délits* – that the Magistrate’s Court may sit as and when it is necessary for the Court to do so rather than, as at present, only at certain specified times in a place designated by the States.
7. In relation to the first and second purposes of the draft Law, the extent of the right of an accused to be present at criminal proceedings was the subject of a judgment of the Court of Appeal in 2012⁹ (Beloff, J.A. presiding). The Royal Court had refused to permit the applicant, who was in prison in England, to be physically present at the hearing of a preliminary application by the Attorney General for order preventing him from contacting a juror. The applicant

⁹ [2012] (2) JLR 286] WARREN v. ATTORNEY GENERAL [2012]JCA191

applied for leave to appeal, submitting *inter alia* that the proceedings to resolve the Attorney General's application were criminal and that he was therefore entitled to be present in person. The Court of Appeal drew the distinction between proceedings before and during trial: the accused had no general right to be present at the former, but did have such a right in relation to the latter. The Court observed that it was "noteworthy that under the European Convention on Human Rights it is presence at a criminal trial, and not elsewhere, that is mandated under art. 6 (*Ekbatani v. Sweden* (3) (13 E.H.R.R. 504, at para. 25); *Hermi v. Italy* (5) (46 E.H.R.R. 46, at para. 58))."

8. The 1864 Law and the 1949 Law, as both would be amended by the draft Law, specifically make the distinction between –
 - (a) proceedings at any stage (in other words including proceedings at the actual trial); and
 - (b) proceedings before the start of the trial.
9. The provision made by the draft Law preserves, in relation to proceedings at a trial, the right of the accused to insist on his/her presence by providing that the TV/video link can only be employed by the court with the consent of the accused. In relation to proceedings before the start of a trial, the court has a discretion, under the provision made by the draft Law, after hearing the representations of the parties, to allow the use of such a link.
10. **The first and second purposes of the draft Law are therefore, based on the reasoning above, compatible with Article 6 ECHR.**
11. The third purpose of the draft Law – to clarify that the Magistrate's Court may sit as and when it is necessary for the Court to do so – does not give rise to any human rights issues.
12. No other provisions of the ECHR are engaged by the draft Law.

Explanatory Note

This Law provides miscellaneous amendments to widen the ability of the Royal Court and the Magistrate's Court to hear evidence by way of a live television link or otherwise and to remove the restriction on the time and location for sittings of the Magistrate's Court.

Articles 1(a) and 2(b) amend Article 72A of the Loi (1864) réglant la procédure criminelle and Article 6 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949, respectively, to remove the requirement that an accused be in prison or otherwise in detention for the Royal Court or the Magistrate's Court (as the case may be) to have the discretion to direct that the accused be treated as being present at proceedings during which a live television link allows the accused to see and hear the court and to be seen and heard by the court.

Articles 1(b) and 2(c) amend the Loi (1864) réglant la procédure criminelle and Article 6 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949, respectively, to give the Royal Court or Magistrate's Court (as the case may be) the discretion, without requiring the consent of the accused and provided the court has heard representations from the parties, to direct that the accused be treated as present in the court for any particular hearing before the start of the trial if, during that hearing, either by way of a live television link or otherwise, the accused is able to see and hear the court and to be seen and heard by the court.

Article 3 amends the Loi (1853) établissant la Cour pour la répression des moindres délits to remove the restriction on the time and location for sittings of the Magistrate's Court in relation to minor offences so that the court may sit at any time and in any place necessary.

Article 4 provides for the citation and commencement of the Law.



Jersey

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LAW 201-**

Arrangement

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Jersey

**DRAFT CRIMINAL PROCEDURE
(MISCELLANEOUS AMENDMENTS) (JERSEY)
LAW 201-**

A **LAW** to amend the Loi (1864) réglant la procédure criminelle, the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 and the Loi (1853) établissant la Cour pour la répression des moindres délits.

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 –

1 Amendment of the Loi (1864) réglant la procédure criminelle

In the Loi (1864) réglant la procédure criminelle¹ –

- (a) in Article 72A the words “il est en prison ou autrement en détention et,” shall be deleted;
- (b) after Article 72A there shall be inserted the following Heading and Article –

“DISPOSITIONS SUPPLEMENTAIRES

72B

- (1) Dans toute audience avant le commencement des preuves dans un procès criminel, la Cour pourra, sans besoin du consentement de l’accusé, pourvu que la Cour y ait entendu des représentations des parties, ordonner que l’accusé sera censé être présent à l’audience si, durant l’audience, 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.
- (2) Aux fins de l’alinéa (1) le commencement des preuves signifie –

- (a) en cas d'un procès devant l'enquête, le commencement de la première audience des preuves après l'installation de l'enquête;
- (b) en cas d'un procès devant le Nombre Inférieur sans enquête, le commencement de la première audience des preuves à charge.”.

2 Amendment of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949

In Article 6 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949² –

- (a) at the beginning there shall be inserted the paragraph number “(1)”;
- (b) in paragraph (1) the words “the accused is in prison or otherwise in detention and,” shall be deleted.
- (c) after paragraph (1) there shall be added the following paragraphs –
 - “(2) Notwithstanding paragraph (1), in any hearing before the start of a trial, the Court may, after hearing representations from the parties and without requiring the consent of the accused, direct that the accused shall be treated as being present in the Court if, during that hearing, either by way of a live television link or otherwise, the accused is able to see and hear the Court and to be seen and heard by the Court.
 - (3) For the purposes of paragraph (2) ‘the start of a trial’ means the first hearing at which the prosecution adduces evidence to prove its case.”.

3 Amendment of the Loi (1853) établissant la Cour pour la répression des moindres délits

In Article 1 of the Loi (1853) établissant la Cour pour la répression des moindres délits³ for the words “siégera, 4 jours la semaine, et plus s'il est nécessaire, à 10 heures du matin, dans un local désigné par les Etats,” there shall be substituted the words “siégera en tous temps en tous lieux nécessaires”.

4 Citation and commencement

This Law may be cited as the Criminal Procedure (Miscellaneous Amendments) (Jersey) Law 201- and shall come into force 7 days after it is registered.

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- ¹ *chapter 08.740*
² *chapter 07.595*
³ *chapter 07.140*