

# STATES OF JERSEY



## DRAFT CRIMINAL PROCEDURE (JERSEY) LAW 201-

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Lodged au Greffe on 5th December 2017  
by the Council of Ministers

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STATES GREFFE





Jersey

## **DRAFT CRIMINAL PROCEDURE (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 (Jersey) Law 201- are compatible with the Convention Rights.

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

*Minister for Home Affairs*

Dated: 1st December 2017

## REPORT

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### Introduction

Jersey has a unique and effective Criminal Justice System, supported by able and committed public servants and a legal profession that is passionate about delivering justice for Islanders. While there are many aspects of the Criminal Justice System that Islanders may be proud of, the dated nature of the existing criminal procedure legislation presents a number of challenges to the delivery of justice in the 21st century, and elements can be a barrier to the modernisation of the Criminal Justice System as a whole.

Criminal procedure legislation in Jersey has not kept pace with developments in criminal justice practices here and elsewhere in the British Isles. It is essential that practice in the criminal courts is underpinned by a legal framework that enables the courts, public bodies and the legal profession to deliver just outcomes for defendants, and that protects the interests of victims and witnesses.

Although our Laws have stood the test of time and have ensured that the Island has maintained a reputation as a fair and just jurisdiction, it is widely acknowledged that the Laws upon which the Criminal Justice System is based are in need of revision and modernisation.

The legislative provisions making up the criminal procedure framework have been compiled in a piecemeal way over a considerable period. This organic method of development has created a unique and effective Criminal Justice System, but one that experiences certain practical difficulties in the 21st century.

The nature of offences and offending has changed over time, but the principal law governing the conduct of criminal proceedings has remained the *Loi* (1864) *réglant la Procédure Criminelle* (the “**1864 Law**”).

Written in French and for a different era of criminal justice, the 1864 Law does not provide the courts or the parties to criminal proceedings with all the legal tools they need to enable criminal proceedings to be dealt with expeditiously and efficiently. The need for expeditious and efficient criminal procedures is reflected in Articles 5 and 6 of the European Convention on Human Rights (the “**ECHR**”), given domestic legal effect by the Human Rights (Jersey) Law 2000.

All jurisdictions require a justice system that is, and is seen to be, modern and in touch with local communities, efficient, fair, responsive to all users with modern, and effective case management to remove unnecessary delays from the system. Importantly, the reports emphasize the need to streamline procedures to ensure cost-effectiveness in difficult financial times.

In 2011, the Jersey Criminal Justice System Board (“**CJSB**”) determined that a wholesale re-writing of criminal procedure and evidence was required as opposed to a piecemeal approach. Consequently, in 2012, monies from the Criminal Offences Compensation Fund were allocated to this important project. H.M. Attorney General has acted as project sponsor having direct oversight of the project. The Draft Criminal Procedure (Jersey) Law 201- (the “**draft Law**”) is the product of that project.

Governance for this project has come from the Legislation Steering Group who have been accountable, through the Criminal Justice Working Group, to the Jersey Criminal Justice System Board. The Legislation Steering Group has had the benefit of input from a range of stakeholders. As well as members of the Law Officers’ Department, its members include the Magistrate, a representative from the States of Jersey Police,

the Law Society, the Viscount, and officials from the Community and Constitutional Affairs Department.

The draft Law will repeal the 1864 Law and a number of other 19th and 20th century enactments that currently regulate criminal proceedings. The draft Law will support an effective Criminal Justice System today, and ensure that there is flexibility for the System to adapt to the challenges of the future.

#### **Why do we need the new legislation?**

The Criminal Justice System may affect everyone at some point in their lives, whether as a person suspected of committing an offence, as a victim of, or witness to, a crime or as a member of a jury.

The draft Law provides that the overriding objective of the new legal framework for the conduct of criminal proceedings should be to ensure that cases are dealt with justly. This means that Jersey's criminal procedures should continue to uphold and respect the rights of defendants, but also safeguard the wellbeing of victims and witnesses.

The draft Law is designed to ensure that all those involved in the Criminal Justice System can participate effectively in criminal proceedings that are conducted in a way that is, so far as is compatible with this objective, expeditious and efficient.

The draft Law aims to support a cohesive criminal courts system that ensures that effective case management takes place at an early stage, and that proceedings can be properly managed and transferred to the appropriate court for trial and sentence as efficiently as possible.

#### **What does the draft Law do?**

The Draft Criminal Procedure (Jersey) Law 201- is primary legislation setting out the procedure to be followed in connection with criminal proceedings against a person charged with an offence, or convicted of an offence. It provides for the quashing of acquittals by the Court of Appeal, and amends the Police Procedures and Criminal Evidence (Jersey) Law 2003 in connection with evidence in criminal proceedings.

The draft Law comprises 14 Parts and 5 Schedules.

**Part 1** sets out provisions regarding the interpretation of the draft Law and provides core definitions and explanations of the expressions used throughout the draft Law. The draft Law applies to proceedings in the Magistrate's Court, Youth Court and Royal Court.

**Part 2** sets out an overriding objective to ensure that cases in criminal proceedings are dealt with justly. This includes acquitting the innocent and convicting the guilty, dealing fairly with both the prosecution and defence, and respecting the interests of witnesses, victims and jurors. It obliges participants and the courts to further this objective.

**Part 3** requires the courts to further the overriding objective by actively managing cases in criminal proceedings. This includes early identification of witnesses, monitoring the progress of cases, discouraging delay and making use of technology. It provides the courts with wide-ranging powers for this purpose.

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

**Part 4** provides that, without prejudice to the powers reserved to a Centenier in respect of the power to charge, grant bail, conduct a Parish Hall Enquiry or present a defendant before the Magistrate's Court, the prosecution of criminal proceedings may

only be conducted by, or on behalf of, H.M. Attorney General. This Part also preserves the Attorney General's power to initiate proceedings directly in the Royal Court, and describes the procedures to be followed if any provision of an enactment or rule of customary law requires the consent of the Attorney General before criminal proceedings may be initiated.

**Part 5** specifies the functions and jurisdiction of the Magistrate. It provides for the Magistrate to sit at any time and in any place to hear proceedings and to remand or release defendants on bail. It details the maximum penalties which may be imposed by the Magistrate. These may be amended by Regulations; the maximum is currently set at the imposition of a £10,000 fine, imprisonment for a term of 12 months; or a combination of both.

**Part 6** explains how proceedings in the Magistrate's Court should function. It clarifies the procedure for summoning a person to Court who is to be charged with an offence, and the penalties for failing to answer to a summons without reasonable excuse.

This Part includes new provisions facilitating the proceedings between the Magistrate's Court and the Royal Court where that is appropriate in view of the gravity of an offence. Where a defendant enters a 'not guilty' plea, the Magistrate must decide whether the trial should take place in the Magistrate's Court or the Royal Court. Following a trial in the Magistrate's Court, provision is made for the Magistrate to send the defendant to the Royal Court for sentencing, where the gravity of the offence would require the imposition of a penalty in excess of the Magistrate's sentencing powers. Before doing so, the Magistrate is required to hear representations from parties and take into account all the circumstances of the case.

These provisions in this Part are designed to speed up the process of disposing of cases by ensuring that they can always be dealt with in the most appropriate venue. This Part also gives the Magistrate's Court powers to correct mistakes. It also makes provision in respect of appeals, including setting a time of 7 days within which a notice of appeal must be given after the defendant was convicted, sentenced or when an order was made.

This Part also provides for the payment of appropriate costs to appellants.

**Part 7** details how proceedings in the Royal Court should function. Powers are included to amend indictments and send cases back to the Magistrate's Court. Provision is also made as to when a trial will be held in the Royal Court before a judge and jury, or before a judge and Jurats. The defendant may elect to be tried with or without a jury for an offence under customary law. If a defendant does not make a decision, the Court will decide the appropriate mode of trial. In the case of a statutory offence, the trial will take place before the Inferior Number of the Royal Court sitting without a jury.

In the case of an indictment containing a mixture of customary and statutory offences, the court will decide upon the mode of trial.

**Part 8** makes provision regarding preparatory and pre-trial hearings between indictment and the start of a trial. The Bailiff is able to make rulings on the conduct of the trial which bind the parties until the end of trial. These provisions have been consolidated into the draft Law with few amendments, and are taken from the Police Procedures and Criminal Evidence (Jersey) Law 2003. This Part restricts the reporting in publications of preparatory hearings and rulings, subject to certain exemptions, and creates an offence of unlawful publication. A person guilty of the offence is liable to an unlimited fine.

**Part 9** makes provision in relation to jury and jury selection. This includes the provision that all persons over the age of 18 and under the age of 72, unless exempt or disqualified for a particular reason, are eligible to sit as a member of a jury. The procedures for jury selection are simplified, and there are provisions to ensure the good conduct of the jury. These provisions include powers for the court to order the surrender of electronic equipment by jurors while they are sitting as a jury. This Part enables, where a trial is expected to last longer than a week, the selection of reserve jurors who may be called to serve on the jury, if the original numbers of jurors is reduced.

Provision is made for the delivery of verdicts; in particular it includes a new provision regarding a ‘hung jury’. Where neither a unanimous nor a majority verdict can be agreed by the required number of jurors, the prosecution will be entitled to request a re-trial in respect of the offence. If the prosecution does not wish to bring a re-trial, the defendant would be discharged from the proceedings. This Part also allows a majority verdict to be delivered by 9 jurors where there are less than 12.

**Part 10** outlines a number of miscellaneous procedures in Magistrate’s Court and Royal Court. These include a provision that gives effect to what is commonly referred to as a ‘Newton Hearing’, and sets out the procedure to be followed where a defendant pleads guilty but disputes the facts of the offence alleged by the prosecution. This Part also prescribes the process for discontinuance or withdrawal of proceedings in the Magistrate’s Court and Royal Court.

This Part places duties upon the prosecution and defence in respect of disclosure. The draft Law places the prosecution’s disclosure obligations on a statutory footing, with the extent of the obligation on the prosecution remaining similar to existing guidelines. The draft Law introduces a new obligation for the defence to provide a defence case statement setting out the particulars of the defendant’s defence if he or she has entered a plea of ‘not guilty’. The requirement to submit a defence case statement allows the courts to concentrate time and effort on the real issues in the proceedings, and will reduce unnecessary pre-trial burdens on the prosecution preparing to address issues that are not in dispute.

The prosecution’s fulfilment of its initial duty to disclose unused material is a pre-requisite for the defence obligation to provide a defence case statement. There is a continuing duty on the prosecution to disclose unused material disclosure until proceedings are concluded.

The defence case statement does not interfere with the rights to silence. If a defendant is unrepresented, the court has the discretion to dispense with the requirement to provide a defence case statement. A defence case statement may be amended before trial, and the defence is under a duty to disclose any material change until proceedings are concluded.

However, where a defendant has legal representation and enters a ‘not guilty’ plea, there may be consequences for the defendant if they fail to serve a defence case statement or depart from the contents of the statement at trial. In such circumstances, there is the provision for the court to draw inference in deciding whether a defendant is guilty of the offence concerned.

This part of the draft Law also introduces a duty on the defendant to give notification to call witnesses and provide appropriate details.

A defendant is required to be present at court throughout a trial; although the court may conduct a trial in the absence of the defendant if the defendant is voluntarily absent from the proceedings.

**Part 11** sets out provisions in relation to defendants and witnesses. This Part also introduces Schedule 1, which prescribes offences in respect of which a spouse or civil partner of a defendant is compellable to give evidence. The draft Law replaces an earlier enactment in respect of criminal proceedings, and includes a wider range of offences that would give rise to an exemption from the general rule that spouses and civil partners cannot be compelled to give evidence.

This Part makes provision for the summoning of witnesses, and for penalties for a failure to comply with warnings to attend court.

This part also provides the courts with express powers to permit special measures to be put in place to enable witnesses to participate effectively in criminal proceedings. These measures include the pre-recording of video evidence and giving live evidence via a television link. The draft Law contains clear statutory provisions facilitating the use of special measures so as to provide greater certainty for the participants in proceedings about when special measures will be made available.

The draft Law provides that where a witness is a child, disabled or vulnerable due to fear or distress, then the courts must determine whether any special measures that are available would be likely to improve the quality of the witness's evidence. This may include the cross-examination of evidence in chief via a video link before trial.

The court must also take into account –

- the nature and circumstances of the offence
- any matters that could be considered relevant –
  - social and cultural background
  - ethnic origin
  - domestic and employment circumstances
  - religious beliefs
  - political opinions.

The court must also take into account –

- any behaviour towards the witness on the part of –
  - the defendant
  - family members or associates
  - any other person who is likely to be a defendant or a witness in the same proceedings.

This Part of the draft Law prevents defendants from cross-examining witnesses to specified offences. In these cases, the court must invite the defendant to arrange for a legal representative to cross-examine witnesses. If the defendant elects not to do so, the court will consider whether it is necessary for the witness to be cross-examined and if so, must choose and appoint an advocate for that purpose.

This Part makes provision for the offence of intimidation or harm to jurors and witnesses. The penalty for these offences comprises a term of imprisonment of 10 years and an unlimited fine.

**Part 12** makes provisions so that the defence, the prosecution, and in some cases, a third party, may be required to pay the costs of another party to proceedings, where those costs are incurred as a result of unnecessary or improper act or omission by that party.

**Part 13** establishes the Criminal Procedure Rules Committee. The new Committee is given the power to make criminal procedure rules that will govern the practices and



procedure to be followed in criminal proceedings within the framework of the draft Law. The Committee will be chaired by the Bailiff and will include persons involved in a number of aspects of the delivery of the Criminal Justice System.

**Part 14** includes miscellaneous provisions and introduces Schedules 2, 3, 4 and 5 of the draft Law.

**Schedule 2** concerns the quashing of a person's acquittal and provisions for their retrial. It specifies the cases that may be retried and under what circumstances.

**Schedule 3** amends the Police and Criminal Evidence (Jersey) Law 2003 and makes provision for the admissibility of statements not made in oral evidence in criminal proceedings. Schedule 3 also makes new provision in relation to the admission of bad character evidence, including whether this may show the defendant has a propensity to commit the type of offence the defendant is charged with.

**Schedule 4** outlines the enactments that are consequentially amended by the draft Law.

**Schedule 5** outlines the enactments that are repealed by the draft Law.

### **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.

A full public consultation was conducted between 24th July and 15th September 2017. There was a limited response to the consultation, which received 6 responses from a mixture of individuals and organisations with an interest in Criminal Procedure.

The Comité des Connétables, the Council of Ministers, and the Home Affairs and Education Scrutiny Panel have received a briefing on the draft Law. The remainder of States Members were invited to 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 being delivered as part of the Public Sector Reform agenda across the States of Jersey. It is anticipated that the draft Law will be fully in force by the end of 2019.

### **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**

It is clear that there is a need for significant investment in time and resource across the Criminal Justice System to implement the many changes that will be brought about by the enactment of the new Law in 2018. In order to effect this change, a 2-year project funded by public sector reform monies has already been established to manage the development and implementation of the revisions that will be required by the draft Law.

There are no other financial or staffing implications arising.

### **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.

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

These Notes have been prepared in respect of the Draft Criminal Procedure (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.**

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**

1. 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.
2. 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 ...”*
3. 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.
4. 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.
5. The ECtHR 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.”*

6. 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 4 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.
7. 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.
8. 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.
9. 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.”*
10. 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.
11. 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.
12. The States Assembly has recently enacted the Criminal Procedure (Bail) (Jersey) Law 2017 (L.20/2017) (the “**Bail Law**”); and the draft Law contains powers for the criminal courts to grant bail or remand a defendant in custody. These provisions include Article 15(2)(b), which sets out the Magistrate’s power to grant bail or remand a defendant. Article 1(6) of the draft Law makes it clear that the requirements in the Bail Law, including the right to bail and the limits in respect

of the imposition of conditions on bail grantable under the draft Law apply to bail granted under the draft Law, unless express provision is made to the contrary in the draft Law.

13. The Bail Law is compatible with Article 5 of the ECHR because Article 7(1) of the Bail Law requires a court to consider whether to grant bail on each occasion that the defendant appears in criminal proceedings and Article 7(2) of the Bail 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 Bail Law, and the requirement for the court to be satisfied that there are “substantial grounds” justifying the denial of bail should ensure that these grounds are convincingly demonstrated, satisfying the requirement in Article 5(3) ECHR.
14. Further, Article 10(1) and (2) of the draft Law place restrictions on the maximum length of adjournments during the course of criminal proceedings.
  - “(1) Where the Magistrate’s Court adjourns a hearing in the exercise of case management powers, or under any other provisions of this Law regardless of whether or not the defendant has legal representation, that hearing shall be adjourned for a period not exceeding 30 days.*
  - (2) Where the Royal Court adjourns a hearing in the exercise of case management powers or under any other provisions of this Law and the defendant has no legal representation, that hearing shall be adjourned for a period not exceeding –*
    - (a) 42 days in respect of a defendant in custody; and*
    - (b) 60 days in respect of a defendant on bail.”*
15. These limits ensure that a defendant’s case must be regularly reviewed by the courts. This will ensure that the grant or refusal of bail is reviewed at appropriate intervals during the course of proceedings, further ensuring compliance with Article 5(3) ECHR.
16. Of note is that the right to bail does not apply for the purposes of Article 39 (Bail on appeal or case stated), however there is no issue of compatibility with Article 5 of the ECHR because a defendant seeking bail in these circumstances would be lawfully detained following conviction by a competent court and would therefore fall within the exception from the right to liberty in Article 5(1)(a) of the ECHR, and so it is not necessary to extend the right to bail to these circumstances or justify refusing bail in the same way.

#### **Article 6 of the ECHR right to a fair trial**

17. Article 6 of the ECHR guarantees the right to a fair trial. It provides that –
  - “1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
  - 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

3. *Everyone charged with a criminal offence has the following minimum rights:*
  - a. *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
  - b. *to have adequate time and facilities for the preparation of his defence;*
  - c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
  - d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
  - e. *to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

18. Article 6 of the ECHR guarantees, *inter alia*, the rights of a defendant in criminal proceedings along with additional implied rights. The requirements of Article 6 of the ECHR have informed the whole of the framework for the conduct of criminal proceedings reflected in the draft Law so to provide a full account of every aspect of the draft Law where Article 6 ECHR is engaged would be impractical. Instead, this memorandum will focus on a smaller number of areas of the draft Law where significant or complex Article 6 ECHR compliance issues are raised and addressed by the draft Law.

### **The overriding objective and active case management**

19. Part 2 of the draft Law makes provision for what will be termed the ‘overriding objective’. This will ensure that criminal cases are dealt with justly; and Article 3 of the draft Law sets out a non-exhaustive list of the things that would constitute dealing with a case justly. Article 4 sets out the duties of a participant in criminal proceedings to –
- (a) progress the case in accordance with the overriding objective;
  - (b) comply with procedures set out in the draft Law and the Criminal Procedure Rules (“CPRs”) and practice directions made under Articles 112, 113 and 114; and
  - (c) inform the court expeditiously of any significant failure to follow the relevant procedures, rules or directions.
20. Article 5 of the draft Law requires the criminal courts to ensure that the overriding objective is implemented every time it exercises its powers. This requirement is supplemented by Part 3 of the draft Law, including the requirement for the court to actively manage cases in criminal proceedings and Article 8 of the draft Law requires the parties in criminal proceedings to actively assist the court in fulfilling its active case management duty.
21. Article 6(1) of the ECHR provides that the defendant is entitled to determination of any criminal charge against him within a reasonable time. The creation of the overriding objective and the obligations and powers to actively manage cases reflect and implement the reasonable time requirements of Article 6 of the ECHR.

### **Disclosure of unused material**

22. One of the requirements that arises from Article 6(1) of the ECHR is the requirement for there to be ‘adversarial’ proceedings, which entails having an opportunity to know and comment at trial on the observations filed or evidence adduced by the other party. A more specific requirement of adversarial

proceedings in a criminal trial requires the disclosure to the defence of evidence for or against the accused. Access to materials of a nature “vital” to the outcome of the case therefore must normally be granted by the prosecution to comply with Article 6 ECHR, (although the right to disclosure is not absolute).

23. So an issue arises where the use of confidential material is unavoidable. The question of non-disclosure must be put before the domestic courts, who must only approve the non-disclosure where that is strictly necessary. In this regard, challenges caused to the defence by non-disclosure must be sufficiently counterbalanced by safeguards adopted by the court, such as the release to the defence of a summary of the undisclosed evidence.
24. Article 83 of the draft Law sets out the prosecution’s ongoing duty to disclose to the defendant any unused prosecution material which has not previously been disclosed to the defendant, and which might reasonably be considered capable of undermining the case for the prosecution against the defendant, or of assisting the case for the defendant. That duty does not apply if, on the application of the prosecution, the court is of the view that it would not be in public interest to disclose that material.
25. The power for the court to limit the extent of the duty to disclose unused material will therefore be compatible with Article 6(1), as long as the discretion is exercised in an Article 6(1) ECHR-compliant manner on the assessment of individual cases.

#### **Duty to provide a defence case statement**

26. The right to remain silent and not to incriminate oneself arises from the “fair trial” requirement in Article 6(1) of the ECHR. This right prevents the prosecution from obtaining evidence it could otherwise gain by requiring the accused to testify against himself.
27. Article 84 of the draft Law requires the defendant to provide to the prosecution and the court a defence case statement, which is a written statement setting out matters such as the nature of the defendant’s defence and the matters of fact relied upon by the prosecution which the defendant disputes. Article 87 of the draft Law provides that the court may comment upon, or draw adverse inferences, if a defendant has failed to comply with the requirements with respect to defence case statements.
28. The requirement to provide a defence case statement does not infringe the rights in Article 6(1) and (2) ECHR to remain silent and be presumed innocent. The purpose of the defence case statement is to ensure that there is consistency and clarity as to the nature of the defence that the defendant wishes to put forward at trial, and no adverse inference may be drawn pursuant to these provisions where the defendant simply refuses to give evidence at trial.

#### **Defendant’s duty to attend trial and trial in absence**

29. Article 6(1) and 6(3) provide a right for a defendant to be present at his or her trial, but this does not mean that there is an obligation on the authorities to bring a defendant to a hearing if the defendant decides not to participate in the proceedings. A defendant may be tried in his or her absence without infringing Article 6(1) and (3) of the ECHR.
30. Article 88 of the draft Law enables the court, with the consent of the defendant with respect to trial, or after hearing representations from the parties with respect to any other hearing of the court, to treat the defendant as if he or she is present in court if that defendant is able appear by way of a live television link. The

requirement for the consent of the defendant with respect to trial ensures that this provision does not infringe Article 6 of the ECHR.

31. Article 89 of the draft Law provides that the court may proceed to try a defendant in his or her absence if the defendant chooses not to exercise his or her right to be present at trial by voluntarily absenting himself or herself from the court at the beginning of, or during his or her trial. This will only take place if the court has considered a range of factors as noted in the draft Law.
32. Further, a defendant convicted in his or her absence may appeal against the conviction. In each case, the Royal Court or the Court of Appeal will have the power to order a re-trial either under Article 36 of the draft Law or Article 28 of 1961 Law respectively. Article 89 is therefore compatible with Article 6(1) and (3) of the ECHR.

### **Special measures**

33. To be 'fair', the State must make provision to enable the defendant in a criminal trial to participate effectively in a court hearing. Where a defendant requires special assistance, he or she is required to bring the relevant physical or other deficiency to the attention of the trial court to enable the court to choose the best means of ensuring effective participation.
34. Article 101 of the draft Law sets out, for the purposes of Article 102, the meaning of "special measures" which may be provided under that Article to an "eligible witness" as defined under Article 101. An eligible witness may include the defendant.
35. Article 102 of the draft Law enables the court to order that special measures are put in place to assist an eligible witness. In respect of an eligible witness, the court must determine whether any of the special measures reasonably or practically available in relation to the witness would be likely to improve the quality of evidence given by the witness. The court is also given a discretion to order that special measures are put in place for a person who is not an eligible witness.
36. These provisions will provide the necessary assistance to defendants and other witnesses to help them give their best evidence, ensuring compliance with Article 6(1) and 6(3) of the ECHR.

### **Cross-examination of witness**

37. There is an overlap between the right to adversarial proceedings and equality of arms arising from Article 6(1) of the ECHR and Article 6(3)(d), which affords three distinct rights, namely the rights to –
  - (a) challenge witnesses for the prosecution (or test other evidence submitted by the prosecution in support of their case);
  - (b) in certain circumstances, call a witness of one's choosing to testify at trial; and
  - (c) examine prosecution witnesses on the same conditions as those afforded to the defence witnesses.

Where the ability to cross-examine a witness is restricted, this has the potential to infringe these rights.

38. Issues of compatibility therefore arise from Article 101 and 102 of the draft Law to the extent that they allow a prosecution witness to give pre-recorded video evidence before the trial takes place. Further, Article 104 of the draft Law operates to prohibit a defendant charged with any of the offences listed in Article 104(3) (which include sexual offences) from cross-examining: the victim in person; a person under the age of 18; or a person aged 18, or more, who is vulnerable.



Further, Article 105 enables the court to make an order prohibiting the defendant from cross-examining in person the witness if it appears to the court that the quality of the witness' evidence on cross-examination is likely to be diminished and that it would not be contrary to the interests of justice to make such an order.

39. These Articles of the draft Law may interfere with the defendant's Article 6(3)(d) ECHR rights. However, the draft Law, in particular Article 106, enables the court to consider the interests of justice and put sufficient safeguards in place to ensure that the trial, as a whole, remains fair. Further, Article 107 provides that where a defendant before the Royal Court is prevented from cross-examining a witness in person, the Bailiff must give the Jurats or jury such warning as he or she considers necessary to ensure that the defendant is not prejudiced by any inferences that might be drawn from the fact that the defendant has been prevented from cross-examining the witness.
40. These Articles of the draft Law are therefore compatible with Article 6(3)(d) of the ECHR in view of the safeguards attached to them.

### **Quashing an acquittal**

41. Article 6(1) of the ECHR requires respect for the principle that once a criminal acquittal has become final, it must become binding and there should be no risk of its being overturned. However, exceptions from this principle may be made.
42. Article 115 of, and Schedule 2 to, the draft Law sets out the provisions dealing with the quashing of a person's acquittal. This only applies with respect to a 'qualifying offence'. The offences that will amount to qualifying offences will be prescribed by Regulations, and it is intended that these should be limited to very serious offences. Further, there must also be new and compelling evidence in the case, and it must be in the interests of justice for the order to be made. The limits on the extent of the power to quash an acquittal are therefore sufficient to comply with the ECHR.

### **Hearsay and bad character**

43. Article 6(3)(d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. However, exceptions to this principle are possible, but must not infringe the rights of the defence, which, as a rule, require that the accused be given an adequate and proper opportunity to challenge and question a witness against him.
44. The amendments to the Police Procedures and Criminal Evidence (Jersey) Law 2003 permitting the admission of bad character and hearsay evidence, introduced by Article 117 of, and Schedule 3 to, the draft Law, have the potential to interfere with the right in Article 6(3)(d) of the ECHR.
45. However, there is no ECtHR case law to suggest that admitting a defendant's bad character is contrary to the right to a fair trial; and many Member States of the Council of Europe provide for the disclosure of previous convictions in criminal proceedings.
46. If a conviction were based solely or decisively on untested hearsay evidence, that may be contrary to the right to Article 6(3)(d) of the ECHR. However, where a conviction is based to an extent on statements made by a person whom the defendant has had no opportunity to examine, this may be compatible with Article 6(3)(d) of the ECHR, where there are sufficient safeguards in place to ensure the probative value of the evidence is properly tested.

47. The safeguards on the admission of hearsay evidence which have been set out in Schedule 5 to the draft Law closely follow those in place in the UK, which have previously been held to be adequate by the ECtHR. These safeguards will ensure the fairness of criminal proceedings where hearsay evidence is relied on, so that the draft Law is compliant with Article 6(3)(d) of the ECHR.

### **Compellability and Articles 8 of the ECHR**

48. 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.”*

49. Article 8(2) provides that an interference with the Article 8(1) 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) right 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).

50. Article 95 of the draft Law sets out which witnesses are compellable to give evidence on behalf of the prosecution or defence. These include –

- (a) the blood relatives of a defendant;
- (b) the relatives by adoption of a defendant; or
- (c) the relatives either by marriage or by the formation of a civil partnership of a defendant.

51. Where a spouse or civil partner of a defendant are jointly charged with an offence, neither is compellable to give evidence on behalf of the defence or the prosecution. However, a spouse or civil partner is otherwise compellable to give evidence on behalf of the defence or, on condition the offence is one set out in Schedule 1, on behalf of the prosecution.

52. Compelling a person to give evidence against his or her spouse or civil partner may amount to an interference with his or her Article 8(1) ECHR rights. However, such interference will be in accordance with the law, and pursue the legitimate aim of ensuring that the perpetrators of serious crimes are prosecuted. Limiting the offences to which the exception from spousal privilege apply to those in Schedule 1, which are the offences that are most likely to be charged in respect of domestic violence, will help to ensure that the interference is proportionate to this aim.

### **Reporting restrictions and Articles 6 and 10 of the ECHR**

53. 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.”*

54. Article 10(2) ECHR provides 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 10(1) ECHR rights would be justified 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).
55. In addition, Article 6(1) of the ECHR provides the right to a public hearing and decisions to protect criminal defendants from the secret administration of justice and to ensure greater visibility of justice, maintaining the confidence of the society in the judiciary. These requirements enable the press to exercise its function of public watchdog, which is also guaranteed by Article 10 of the ECHR.
56. The rights accorded by Article 6(1) and 10 of the ECHR are clearly qualified, as Article 6(1) ECHR also makes it clear that the press and public may be excluded from the trial in certain circumstances, though the presumption must always be in favour of a public hearing, and the exclusion must be strictly required by the circumstances of the case.
57. There are restrictions set out in Article 61 of the draft Law on reporting in respect of preparatory hearings and pre-trial rulings, subject to certain exceptions. This provision provides for the Bailiff or the Court of Appeal to have the power to order the lifting of such restrictions in whole or in part.
58. Article 90 of the draft Law enables the court, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in criminal proceedings, to order that a report of the proceedings in a publication or relevant programme in Jersey be postponed for any period that the court thinks necessary. In addition, paragraph 9 of Schedule 2 makes provisions for reporting restrictions in respect of matters surrounding an application to quash an acquittal and order a retrial.
59. The restrictions are limited so that they apply only for the period that reporting may prejudice the conduct of a trial. The restrictions are no more than is necessary to balance the rights of a defendant to receive a fair trial under Article 6(1) of the ECHR and the rights of journalists to report on proceedings under Article 10 of the ECHR and are therefore compatible with the ECHR.

## Explanatory Note

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The draft Criminal Procedure (Jersey) Law 201- (the “CPL”) prescribes the procedure to be followed in, or in connection with criminal proceedings against a person charged with, or convicted of an offence (referred to throughout as “defendant”). The CPL repeals and re-enacts, with modifications, the following enactments –

- Loi (1835) sur la procédure devant la Cour Royale;
- Loi (1853) établissant la Cour pour la répression des moindres délits;
- Loi (1862) sur la procédure devant la Cour Royale;
- Loi (1864) Régulant la Procédure Criminelle;
- Loi (1912) sur la Procédure devant la Cour Royale (Jours Fériés, Assises Criminelles, etc.);
- Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 (the “1949 Law”).

The CPL also introduces new measures to provide for the quashing of acquittals by the Court of Appeal (see *Schedule 2*) and amends the Police Procedures and Criminal Evidence (Jersey) Law 2003 (the “PPCE Law”, see *Schedule 3*) in relation to hearsay and bad character evidence in criminal proceedings.

### Part 1: Interpretation and Application – Article 1

*Article 1* defines words and expressions used throughout the CPL and provides for its application. It clarifies that the Bail (Jersey) Law 2017 applies to bail grantable under the CPL unless a provision of the CPL expressly provides otherwise and that, subject to the procedures set out in Parts 8 and 9 of the Mental Health (Jersey) Law 2016 (“Mental Health Law”), this Law applies in respect of criminal proceedings involving a defendant within the meaning of the Mental Health Law.

### Part 2: The Overriding Objective – Articles 2 to 6

*Article 2* declares that the overriding objective of the CPL is to ensure that criminal cases are dealt with justly.

*Article 3* sets out a non-exhaustive list of the sorts of things that would constitute dealing with a case justly for the purposes of meeting the overriding objective.

*Article 4* sets out the 3 duties to which a participant in criminal proceedings is subject to. A participant (i.e. anyone involved in the case or its conduct) must progress the case in accordance with the overriding objective; comply with procedures set out in the CPL, Criminal Procedure Rules (“CPRs” – see *Articles 112* and *113*) and practice directions (see *Article 114*); and inform the court expeditiously of any significant failure to follow the relevant procedures, rules or directions.

*Article 5* requires the court (i.e. the Magistrate’s Court, the Youth Court and the Royal Court) to ensure that the overriding objective is implemented every time it exercises powers under the CPL, other enactments, CPRs, practice directions, or interprets legislation.

*Article 6* enables the States to amend *Part 2* by Regulations.

### **Part 3: The Active Management of Criminal Proceedings – Articles 7 to 11**

*Article 7* requires the court, in furthering the overriding objective, actively to manage cases in criminal proceedings. This Article sets out a non-exhaustive list of the sorts of things that would constitute active case management such as monitoring progress, encouraging participant co-operation and making use of technology.

*Article 8* requires the parties in criminal proceedings, i.e. the defendant or his legal representatives and the prosecution, actively to assist the court in fulfilling its active case management duty. This Article sets out a non-exhaustive list of the sorts of things that would constitute active assistance such as regular communication between the parties and the reporting of those communications to the court.

*Article 9* enables the court to issue wide ranging directions for the purpose of fulfilling its active case management duty.

*Article 10* provides that where the Magistrate's Court adjourns a hearing in the exercise of case management powers, that hearing must be adjourned for a period not exceeding 30 days (regardless of whether or not the defendant has legal representation). Where the Royal Court adjourns a hearing and the defendant has no legal representation, that hearing must be adjourned for a period not exceeding 42 days in respect of a defendant in custody, and 60 days in respect of a defendant on bail. Where the court has ordered proceedings to be halted and left on file (as described in *Article 82(2)*), such an order is not an adjournment for the purposes of *Article 10*.

*Article 11* enables the States to amend *Part 3* by Regulations.

### **Part 4: Role of the Attorney General – Articles 12 to 14**

*Article 12* provides that only the Attorney General, or a person acting on his or her behalf, may conduct the prosecution of criminal proceedings. This provision does not affect the powers of a Centenier, under the Honorary Police (Jersey) Law 1974, to charge, grant bail, conduct a parish hall inquiry or present a defendant before the Magistrate's Court.

*Article 13* describes the procedures to be followed if a provision of an enactment or rule of customary law requires the consent of the Attorney General before criminal proceedings may be initiated. The Attorney General may delegate the giving of his or her consent to a prosecutor or Crown Advocate, and the States may, by Regulations, amend any enactment (including the CPL) for the purpose of removing any provision requiring the consent of the Attorney General before criminal proceedings may be initiated.

*Article 14* provides that, notwithstanding any rule of customary law or under an enactment that criminal proceedings must be commenced in the Magistrate's Court, the Attorney General may, if he or she considers it justified, directly initiate criminal proceedings in the Royal Court instead. This Article sets out the procedure for summoning a person to attend the Royal Court to answer the indictment charging the offence, and lodged by the Attorney General under *Article 43*. If it appears to the Attorney General that the person will fail to comply with the summons, the Attorney General may apply to the Bailiff for an order to arrest that person.

### **Part 5: Functions and Jurisdiction of the Magistrate – Articles 15 and 16**

*Article 15* is derived from Article 2 of the 1949 Law but is expanded to clarify the scope of the Magistrate's functions under the CPL and in relation to the Criminal

Justice (Young Offenders) (Jersey) Law 2014 (the “Young Offenders Law”). The Magistrate may determine criminal proceedings sitting anywhere and at any time and has the power to remand a defendant into custody or on bail.

*Article 16* is derived from Article 3 of the 1949 Law and sets out the maximum penalties which the Magistrate may impose on a defendant upon his or her conviction for an offence.

## **Part 6: Proceedings in the Magistrate’s Court – Articles 17 to 41**

*Article 17* explains that the provisions in *Part 6* deal with criminal proceedings before the Magistrate’s Court and appeals to the Royal Court.

*Article 18* sets out the definition of words and expressions used specifically in *Part 6*.

*Article 19* is derived from Article 9 of the 1949 Law. It provides for the summoning to the Magistrate’s Court of a person who is to be charged with an offence. The provision sets out the information which must be contained in the summons including the details of the charge and the offence.

*Article 20* is derived from Article 12 of the 1949 Law and provides that the Magistrate may order the arrest of a person who fails, without reasonable excuse, to answer a summons.

*Article 21* provides that a person who fails, without reasonable excuse, to answer a summons is guilty of an offence and is liable, on summary conviction, to imprisonment for a term not exceeding 12 months and to a fine of an unlimited amount.

*Article 22* is derived from Article 9 of the 1949 Law, and provides that a summons is not defective simply because the content of the summons varies from the evidence adduced. However, if it appears to the Magistrate that a variation between the contents of the summons and the evidence has misled the summoned person, the Magistrate must exercise such case management powers as are necessary, which might include adjourning the case, or giving directions.

*Article 23* sets out the procedure to be followed on a defendant’s first appearance before the Magistrate’s Court. A defendant who chooses not to enter a plea (as defined in *Article 1(4)*), whether at that first hearing, or any subsequent hearing, shall be taken to have pleaded “not guilty”. However, the Magistrate may direct that the defendant need not enter a plea.

*Article 24* enables the prosecution, at any stage of the proceedings, to amend an offence with which a defendant is charged. Amendment includes changing the particulars of the offence, substituting the offence with another or adding new or different offences. Any amended offences must be read out to the defendant who will be asked to enter a plea in respect of them.

*Article 25* sets out the procedure to be followed where a defendant has pleaded guilty to the offence charged. In such a case the Magistrate’s Court will record the defendant as convicted of the offence. The Magistrate must decide whether or not the defendant should be sentenced in the Magistrate’s Court or the Royal Court. If the gravity of the offence would not require the imposition of a penalty in excess of a fine of £10,000 and imprisonment for a term of 12 months, then the Magistrate must sentence the defendant. If, on the other hand, the gravity of the offence would require a sentence greater than the maximum penalty imposable by the Magistrate under *Article 16*, then the Magistrate must send the defendant to the Royal Court for sentencing. Even if the offence is one which falls within the scope of the Magistrate’s sentencing jurisdiction,

but it nevertheless would be in the interests of justice to do so, the Magistrate is required to send the defendant to the Royal Court for sentencing. Before deciding on the sentencing venue the Magistrate is required to hear any representations by or on behalf of the prosecutor and defendant and have regard to all the circumstances of the case and the defendant's previous convictions, if any.

*Article 26* sets out the procedure to be followed where a defendant has pleaded not guilty to the offence charged. The Magistrate must decide whether or not the defendant should be tried in the Magistrate's Court or the Royal Court. As with *Article 25*, the Magistrate is required to make the venue determination based upon whether, if the defendant were found guilty, the gravity of the offence would require a sentence falling within, or outside the scope of the Magistrate's sentencing jurisdiction. Also, as with *Article 25*, before deciding on the trial venue, the Magistrate must hear representations from the parties, but not as regards the defendant's previous convictions. If the defendant is to be tried in the Magistrate's Court, but information later comes to light that would indicate that, if the defendant were found guilty, the gravity of the offence would require the imposition of a penalty in excess of the Magistrate's sentencing jurisdiction, the Magistrate must send the defendant to the Royal Court for trial instead.

*Article 27* sets out the procedure to be followed for the sentencing of a defendant following his or her trial in the Magistrate's Court. If, following the trial, it appears that the gravity of the offence would require the imposition of penalty in excess of the Magistrate's sentencing jurisdiction, the Magistrate must send the defendant to the Royal Court for sentencing. Even if the offence is one which falls within the scope of the Magistrate's sentencing jurisdiction, but it nevertheless would be in the interests of justice to do so, the Magistrate is required to send the defendant to the Royal Court for sentencing. Before deciding on the sentencing venue the Magistrate is required to hear any representations by the parties and have regard to all the circumstances of the case and the defendant's previous convictions, if any.

*Article 28* sets out the procedures to be followed once the Magistrate has decided to send a defendant to the Royal Court for sentencing or trial. The Magistrate may issue case management directions including setting a date for the first hearing before the Royal Court, if practicable. If it emerges that it would be appropriate for the Magistrate to sentence or try the defendant after all, the Magistrate may direct the return of the case to the Magistrate's Court, provided this occurs at any time up to (but not including) the date set for the first hearing before the Royal Court.

*Article 29* sets out the procedures to be followed where a defendant is charged with more than one offence which are unconnected. The Magistrate may direct that the offences are considered at the same hearing to determine the sentencing or trial venue. The Magistrate may also direct that the defendant is sent to the Royal Court for sentencing or trial in relation to an unconnected offence even if that offence would fall within the scope of the Magistrate's sentencing jurisdiction.

*Article 30* sets out the procedures to be followed where the Magistrate is to make a venue determination in respect of more than one defendant charged with offences which appear to be connected. Such a determination must be taken having regard to the general principle that it is desirable for defendants charged with connected offences to be tried or sentenced together in the Magistrate's Court or Royal Court, as the case may be. This provision also sets out the procedures on venue determination where a child or young person pleads not guilty to committing a connected offence and an adult co-defendant is to be sent to the Royal Court for sentencing or trial.

*Article 31* sets out the Magistrate’s powers, within 28 days of passing the sentence or making a community service order, probation order, or order as to costs, to replace or rescind that sentence or order if it would further the overriding objective to do so.

*Article 32* applies if the Royal Court remits a case to the Magistrate’s Court for sentencing or trial. In such a case, the Magistrate’s Court must proceed as if the case had never be sent to the Royal Court in the first place.

*Article 33* sets out a defendant’s right of appeal to the Royal Court. Essentially, the defendant can appeal against –

- (a) the sentence or order (i.e. community service order, probation order, or order as to costs), if he or she pleaded guilty or admitted the facts;
- (b) the conviction, sentence or order, if he or she pleaded not guilty; or
- (c) the conviction, if her or she pleaded not guilty and following the trial was sent to the Royal Court for sentencing.

*Article 34* is derived from Article 18 of the 1949 Law and sets out the procedures for giving a notice of appeal which must be given not more than 7 days after the day the defendant was convicted, sentenced, or the order (see sub-paragraph (a) above) was made.

*Article 35* is derived from Article 19 of the 1949 Law and sets out the procedures for abandoning an appeal. Notice of abandonment has to be given not later than the 3rd working day before the day fixed for the appeal, but an appellant who has not given such notice may apply for leave to abandon his or her appeal up to, and including the day before the appeal hearing.

*Article 36* is derived from Article 20 of the 1949 Law. On an appeal, the Royal Court may confirm, reverse or vary the decision of the Magistrate’s Court; remit the matter to the Magistrate’s Court with its opinion; make such other order as it thinks just, and may by such order exercise any power which the Magistrate’s Court might have exercised. The Royal Court may impose any penalty, whether more or less severe than that imposable by the Magistrate under Article 16. If the appeal is successful, the Royal Court may order the payment out of public funds of such sums as appear to the Court reasonably sufficient to compensate the appellant for any expenses properly incurred.

*Article 37* is derived from Article 21 of the 1949 Law and provides that any party who is aggrieved by the conviction, order, determination or other proceeding of the Magistrate’s Court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Magistrate to state a case for the opinion of the Royal Court on the question of law or jurisdiction involved. If a defendant has a right of appeal under *Article 33* but makes an application under this Article, he or she will no longer have a right of appeal under *Article 33*.

*Article 38* is derived from Article 22 of the 1949 Law and provides that where the Magistrate has decided to state a case, the Royal Court may reverse, affirm or amend the Magistrate’s determination; remit the matter to the Magistrate’s Court; or make such other order in relation to the matter, including an order as to costs.

*Article 39* is derived from Article 24 of the 1949 Law and applies where a defendant has given notice of appeal or has applied for a case to be stated. A defendant may be granted bail but the right of a defendant to be granted bail under Article 7(2) of the Criminal Procedure (Bail) (Jersey) Law 2017 (the “Bail Law”) does not apply. A defendant granted bail must immediately surrender himself or herself to the custody of a police officer or the Viscount if or she subsequently wishes to abandon his or her appeal, or application to the Magistrate to state a case. A defendant who, without



reasonable excuse, fails to surrender himself or herself as required is guilty of an offence and liable to imprisonment for a term not exceeding 12 months and to a fine of an unlimited amount.

*Article 40* is derived from Article 25 of the 1949 Law. Where notice of appeal is given, or an application for a case to be stated is made in relation to an order the effect of which is to suspend or withdraw a licence or other permit, the Magistrate may direct that the order be stayed pending the disposal of the appeal or application. Where the Magistrate has ordered the confiscation of goods, the goods must be confiscated pending the disposal of the appeal or application.

*Article 41* makes miscellaneous procedural provisions relating to the hearing of appeals, the effect of judgements or orders of the Royal Court and costs.

### **Part 7: Proceedings in the Royal Court – Articles 42 to 51**

*Article 42* explains that the provisions in *Part 7* deal with criminal proceedings before the Royal Court.

*Article 43* sets out the procedural requirements relating to the bringing of a defendant before the Royal Court after he or she has been sent there from the Magistrate's Court or where the Attorney General has decided to initiate criminal proceedings directly in the Royal Court under *Article 14*.

*Article 44* is analogous to *Article 20* and provides for the arrest of a defendant who fails to attend his or her first appearance before the Royal Court. A defendant who fails, without reasonable excuse, to attend is guilty of an offence and is liable, on summary conviction, to imprisonment for a term not exceeding 12 months and to a fine of an unlimited amount.

*Article 45* is analogous to *Article 23* and sets out the procedure to be followed on a defendant's first appearance before the Royal Court. The defendant is formally identified and the indictment (as defined in *Article 1(1)*) being the document which formally specifies the offence with which a person is charged and sets out the particulars of the offence) is read out. A defendant who chooses not to enter a plea whether at that first appearance or subsequently, shall be taken to have pleaded "not guilty". However, the Bailiff may direct that the defendant need not enter a plea. Where a defendant has pleaded guilty to the offence, or is a defendant who has been sent to the Royal Court for sentencing, the Royal Court may, after enquiring into the circumstances of the case and hearing representations from the parties, sentence the defendant at that hearing.

*Article 46* is analogous to *Article 24* and enables the Royal Court, at any stage of the proceedings, to amend the indictment by changing the particulars of the offence, substituting the offence with another or adding new or different offences, or removing an offence. Any amended offences must be read out to the defendant who will be asked to enter a plea in respect of them.

*Article 47* enables the Royal Court to remit a defendant to the Magistrate's Court for sentencing or trial if the circumstances justify it, including where the nature or gravity of the offence has changed or reduced to the extent that the Magistrate would be able to impose a penalty under *Article 16*.

*Article 48* provides that a defendant may be tried either by the Royal Court sitting with a jury, or by the Inferior Number of the Royal Court sitting without a jury depending whether the offence is one under customary law, or under an enactment. If the indictment only charges an offence which is an offence under customary law, the

defendant may elect to be tried with or without a jury. If the defendant make no such election or the indictment charges 2 or more offences at least one of which is an offence under customary law and the other an offence under an enactment, the Royal Court must decide the method of trial. Unless an enactment expressly provides otherwise, a defendant whose indictment only charges an offence which is an offence under an enactment must be tried by the Inferior Number of the Royal Court sitting without a jury.

*Article 49* applies where a defendant is to be tried by the Royal Court sitting with a jury. In a trial under this Article the Royal Court is be composed only of the Bailiff sitting with 12 jurors selected in accordance with *Article 66*. Where a defendant is found guilty, the Royal Court must for the purposes of sentencing that defendant, sit as the Inferior Number or as the Superior Number, depending upon the penalty that the Court may decide to impose.

*Article 50* applies where a defendant found guilty is to be sentenced, and the defence disputes the facts upon which the defendant was found guilty. Under this Article, the trial court can communicate its view of the facts to the sentencing court being either the Royal Court sitting as the Inferior Number or Superior number (as the case requires).

*Article 51* provides that where there is a hung verdict by reason of the Inferior Number not being fully constituted because of the indisposition of the 2nd Jurat (see *Article 15A(2)* of the Royal Court (Jersey) Law 1948 as inserted by *paragraph 2(c)(iii) of Schedule 4*), the Bailiff must determine the verdict.

## **Part 8: Preparatory hearings and rulings in the Royal Court – Articles 52 to 62**

*Article 52* explains that the provisions of *Part 8* apply in relation to criminal proceedings which have been sent from the Magistrate's Court to the Royal Court or where proceedings are directly initiated before the Royal Court under *Article 14*. *Part 8* mostly re-enacts Part 10 of the PPCE Law which is repealed by *paragraph 11 of Schedule 3*.

*Article 53* is derived from Article 84 of the PPCE Law and empowers the Bailiff, on application, or on his or her own motion, to order a preparatory hearing for certain trials which appear to him or her to be likely to be so long or so complex that a preparatory hearing would have substantial benefits for the purposes of identifying issues which are likely to be material to the verdict of the Royal Court or jury; assisting comprehension of those issues; expediting the proceedings before the Royal Court or jury; or assisting the management of the trial.

*Article 54* is derived from Article 85 of the PPCE Law and provides that the trial begins at the commencement of the preparatory hearing and that the indictment is to be read out at the start of that hearing unless it has previously been read out.

*Articles 55 and 56* are derived from Articles 86 and 87 of the PPCE Law and provide that the Bailiff may adjourn a preparatory hearing and make rulings on admissibility of evidence and questions of law. The Bailiff may also order the prosecution and the defence to make certain specified disclosures aimed at achieving one or more of the purposes set out in *Article 53* and he or she may make such an order at or before the commencement of the preparatory hearing.

*Article 57* is derived from Article 89 of the PPCE Law and permits the Bailiff or any other party to the proceedings to comment where a party departs from any facts disclosed under *Article 55*. The Royal Court or jury may draw any reasonable inferences from that departure.

*Article 58* is derived from Articles 88 and 90 of the PPCE Law and permits a party to appeal to the Court of Appeal against any ruling of the Bailiff, with leave of the Bailiff or the Court of Appeal. This Article also enables rules of court to be made under the Court of Appeal (Jersey) Law 1961 (the “Court of Appeal Law”) to specify the time within which an appeal under this Part to the Court of Appeal must be made and to regulate generally the practice and procedure relating to any such appeal.

*Article 59* is derived from Article 93 of the PPCE Law and defines a pre-trial hearing as a hearing if it relates to a trial for an offence in the Royal Court and it takes place after the defendant has been sent for trial to the Royal Court under *Part 6*, or after the proceedings for the offence have been initiated in the Royal Court, under *Article 14*, and before the start of the trial.

*Article 60* is derived from Article 94 of the PPCE Law and permits the Bailiff either on application or on his or her own motion to rule on admissibility of evidence or questions of law at a pre-trial hearing.

*Article 61* is derived from Article 95 of the PPCE Law and restricts the reporting in publications (written or broadcast) of preparatory hearings and rulings subject to certain exceptions, and provides for the Bailiff or the Court of Appeal to have the power to order the lifting of such restrictions whether in whole or in part.

*Article 62* creates an offence if a person contravenes *Article 61* by including a report in a publication. A person guilty of an offence under this Article is liable to a fine of an unlimited amount.

#### **Part 9: Juries – Articles 63 to 76**

*Article 63* provides that every person who is aged 18 and up to, and including, the age of 71, is registered to vote, and is not otherwise exempt from, or disqualified for jury service, is eligible to serve as a juror. This Article also lists the persons who are exempt from, or disqualified for jury service.

*Article 64* provides a Regulation making power to make provision for the compilation by the Viscount of a list of persons who are eligible to serve as jurors (“jury list”), and the preparation of a list of persons (“panel list”) taken from the jury list, who may be called upon to serve as jurors. Any person whose name appears on the panel list will be summoned by the Viscount to attend for jury service.

*Article 65* enables the Viscount of his or her own motion or on the written application of a person summoned to attend for jury service, to exempt that person from his or her duty to attend, provided the Viscount considers that the person would be exempted from or disqualified for jury service under *Article 63* or under any other enactment; or for any other reason which the Viscount considers sufficient to justify such exemption. A person who, with the intention of obtaining an exemption under this Article, makes a false declaration or representation in a written application, is guilty of an offence and liable to a fine of an unlimited amount.

*Article 66* provides that a jury is constituted of 12 persons. This Article also sets out the jury selection process in relation to the persons who have been summoned to attend for jury service. Where a trial is expected to last for more than 5 days, 2 persons, in addition to the 12 already selected, must be selected to serve as reserve jurors. A reserve juror may be called to serve on the jury if, before the commencement of the Bailiff’s summing up of the case, the number of jurors is reduced, but will be discharged from jury service if he or she is not so required.

*Article 67* creates an offence if a person fails, without reasonable excuse, to attend for jury service, or fails to serve on a jury once selected. A person guilty of an offence under this Article is liable to a fine of an unlimited amount.

*Article 68* enables the Bailiff to discharge a person from the requirement to attend for jury service if it appears that 2 people on the panel list are closely related to each other – e.g. married to each other, in a civil partnership with each other, or are siblings. In such a case the second person on the panel list would be discharged.

*Article 69* enables the defence or prosecution to challenge, for a good reason, any potential juror on the panel list. The Bailiff will only allow a challenge for a legitimate good reason if there is a risk of material prejudice, the potential juror is manifestly unsuitable or, in the interests of justice. If, when all the names on the panel list have been read out, the number of unchallenged or undischarged persons remaining is insufficient to constitute a jury, the trial must be postponed until the persons whose names appear on any supplementary or new panel list are summoned to constitute a jury in accordance with *Article 66*.

*Article 70* requires every juror to take an oath or make a solemn affirmation whereupon he or she becomes a full jury member until discharged from the jury.

*Article 71* provides that if during a trial the number of jurors is reduced to 10, the jury shall be deemed to be duly constituted, and the proceedings must continue. But if the number of jurors falls below 10, and there is an insufficient number of reserve jurors to constitute a jury of not less than 10, the Bailiff must discharge the jury from the proceedings and the Attorney General must notify the Bailiff as to whether or not there is to be a retrial.

*Article 72* prohibits the jury members from communicating with anyone except each other or staff of the Royal Court or Viscount unless the Bailiff permits the jurors, at any time either before or after they have retired to consider their verdict, to leave the custody of the Viscount and to separate, in which case the prohibition against communicating with anyone only applies to communications concerning the case. A juror who contravenes the communication prohibition is guilty of an offence and liable to imprisonment for a term not exceeding 2 years and to a fine of an unlimited amount. The jurors are required to select from one of their number a juror who will chair the jury's deliberations and deliver the jury's verdict.

*Article 73* provides that the Bailiff may order the members of the jury to surrender, for a period, any form of device which is capable of transmitting or receiving, in any manner, communications in any form. It is a contempt of court for a member of a jury to fail to surrender such a device in accordance with the Bailiff's order.

*Article 74* provides that it is an offence for a juror who, during the period of a trial, researches a case by intentionally searching for information on an electronic database, including via the internet and when doing so, knows or ought reasonably to know that the information is, or may be relevant to the case which is being tried. A juror guilty of an offence under this Article is liable to imprisonment for a term not exceeding 2 years and to a fine of an unlimited amount.

*Article 75* provides that if a verdict cannot be delivered on the same day as the jury retires to consider its verdict, the proceedings must be adjourned until a verdict is delivered. The jury must deliver a unanimous verdict unless the Bailiff directs that the jury may deliver a majority verdict. A majority verdict is delivered if at least 10 out of 12 jurors agree, or at least 9 jurors agree if there are less than 12 of them. When the jury is ready to deliver its verdict, the Judicial Greffier must ask the jury chairperson whether the defendant is guilty or not guilty of the offence charged in the indictment and in the case of a majority verdict, how many jurors were in favour of acquitting and

how many jurors were in favour of convicting the defendant. If, following such period of time for deliberation as the Bailiff thinks reasonable the jury is unable to deliver a majority verdict, the Bailiff must discharge the jury from the proceedings and from the custody of the Viscount. Where no verdict is reached, the Attorney General must, not more than 7 days after the day the jury is discharged, notify the defendant and the Bailiff whether or not there is to be a retrial of the proceedings.

*Article 76* sets out the procedure for formally discharging a defendant from criminal proceedings where the Attorney General has given notification that there is to be no retrial.

#### **Part 10: Miscellaneous Procedures in Magistrate’s Court and Royal Court – Articles 77 to 91**

*Article 77* explains that the provisions of *Part 10* apply in relation to criminal proceedings before the Magistrate’s Court and the Royal Court and sets out definitions of words used in this Part.

*Article 78* applies where the court orders the arrest of a person. The court may grant the person bail by endorsing the order with a direction that the person arrested is to be released on bail subject to a duty to appear before the court or on condition that the person provides a security for his or her appearance before the court. If a person granted bail subject to a security fails, without reasonable excuse, to appear before the court as notified, the security must be forfeited in accordance with Article 13 of the Bail Law. A person granted bail who, without reasonable excuse, fails to appear before the court as notified, is also guilty of an offence. A person guilty of an offence under this Article is, by reason of Article 20 of the Bail Law, liable to imprisonment for a term not exceeding 12 months and to a fine of an unlimited amount.

*Article 79* is the provision which gives effect to what is commonly referred to as a “*Newton hearing*” and sets out the procedure to be followed where a defendant pleads guilty but disputes the facts of the offence alleged by the prosecution. The court may invite the parties to make representations and a hearing of the evidence of the facts in dispute may be required by the court.

*Article 80* enables a defendant to withdraw a guilty plea at any time, with the court’s permission.

*Article 81* provides that the Attorney General may, at any time during the preliminary stages of the proceedings, give notice that he or she does not want the proceedings to continue in relation to an offence. This Article sets out the procedure for discontinuing the proceedings. The discontinuance of proceedings does not prevent the Attorney General from instituting fresh proceedings in respect of the same offence provided that certain circumstances specified in this Article justify the institution of fresh proceedings in respect of that offence.

*Article 82* enables the Attorney General, at any time, with leave of the court to withdraw or recommence previously withdrawn criminal proceedings, or progress previously halted criminal proceedings.

*Article 83* sets out the prosecution’s ongoing duty to disclose to the defendant any unused prosecution material which has not previously been disclosed to the defendant and which might reasonably be considered capable of undermining the case for the prosecution against the defendant, or of assisting the case for the defendant. Unless the court orders otherwise, that duty does not apply if the prosecution is of the view that it would not be in public interest to disclose that material.

*Article 84* requires the defendant to provide to the prosecution and the court a defence case statement which is a written statement in a form prescribed by Criminal Procedure Rules containing the particulars set out in *Article 85*.

*Article 85* sets out the matters which must be contained in a defence case statement, such as the nature of the defendant's defence and the matters of fact relied upon by the prosecution which the defendant disputes. A defence case statement must also identify any witness the defendant intends to call in support of an alibi.

*Article 86* requires the defendant to notify the prosecution and the court whether he or she intends to call any witnesses, and to provide details of those witnesses' names, addresses and dates of birth.

*Article 87* provides that the court may comment, or draw adverse inferences if a defendant has failed to comply with the requirements to give a defence case statement, serve one which sets out the required particulars under *Article 85*, or sets out inconsistent defences, or at the trial the defendant puts forward a new or different defence.

*Article 88* is derived from Article 6 of the 1949 Law and enables the court, with the consent of the defendant, to treat the defendant as if he or she is present in court if that defendant is able to see and hear the court and be seen or heard by the court by way of a live television link. In respect of any hearing other than the trial, the court may, nevertheless, direct that the defendant is treated as present in court via a live television link without the consent of the defendant, after hearing representations from the parties.

*Article 89* provides that unless the court excuses a defendant from attending his or her trial, a defendant is required to be present at court throughout his or her trial. The court may proceed to try the defendant in his or her absence if the defendant chooses not to exercise his or her right to be present at his or her trial by voluntarily absenting himself or herself from the court at the beginning of, or during his or her trial.

*Article 90* enables the court, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in criminal proceedings, order that inclusion of a written report of the proceedings in a publication in Jersey or broadcast in programme for reception in Jersey, be postponed for any period that the court thinks necessary. A person specified in *Article 90(5)* who contravenes an order under this Article is guilty of an offence and liable to a fine of an unlimited amount.

*Article 91* provides a defence in respect of an offence committed under *Article 90(5)* if the person does not know and has no reason to suspect that an order has been made under *Article 90(1)*. It is for that person to prove that he or she has a defence under this Article.

## **Part 11: Provisions in Relation to Defendants and Witnesses – Articles 92 to 108**

*Article 92* explains that the provisions of *Part 11* apply in relation to criminal proceedings before the Magistrate's Court and the Royal Court and sets out definitions of words used in this Part.

*Article 93* provides that everybody, regardless of age, is competent to give evidence, unless it appears to the court that he or she is not a person who is able to understand questions put to him or her as a witness and give answers to them which can be understood. A defendant is not competent to give evidence for the prosecution.

*Article 94* provides that the Bailiff or Magistrate (as the case may be) must determine, whether a witness is competent to give evidence in criminal proceedings if raised by

the court or a party to the proceedings. The party calling the witness must satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

*Article 95* sets out which witnesses are compellable to give evidence on behalf of the prosecution or defence. These are –

- (a) the blood relatives of a defendant;
- (b) the relatives by adoption of a defendant; or
- (c) the relatives either by marriage or by the formation of a civil partnership of a defendant.

Where a spouse or civil partner of a defendant are jointly charged with an offence neither is compellable to give evidence on behalf of the defence or the prosecution. However, a spouse or civil partner is otherwise compellable to give evidence on behalf of the defence or, on condition the offence is one set out in Schedule 1, on behalf of the prosecution.

*Article 96* provides that a witness who is competent to give oral evidence in criminal proceedings must give that oral evidence on oath. The Bailiff or Magistrate (as the case may be) must determine whether a witness is competent to give evidence in criminal proceedings if raised by the court or a party to the proceedings. The witness may not be sworn for the purpose of giving evidence on oath unless he or she has attained the age of 14, and has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility involved in taking an oath to tell the truth.

*Article 97* provides that a witness who is competent to give evidence in criminal proceedings, but by virtue of *Article 96* is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings, must give unsworn evidence. A deposition of unsworn evidence must be treated as if it had been given on oath.

*Article 98* provides that where a person has made a written statement in accordance with *Article 9* of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998, a person authorized by the Attorney General may warn that person to attend before the court to give oral evidence on the day and at the time so warned. A person who fails to comply with that warning, without reasonable excuse, is guilty of an offence punishable with a fine of level 3 on the standard scale (currently £10,000).

*Article 99* enables the court to issue a witness summons if it is satisfied that a person is likely to be able to give evidence in support of a party applying for a witness summons under this *Article*. The court would need to be satisfied that the evidence is likely to be material evidence, or that the person can produce any document or thing likely to be material evidence, for the purpose of the proceedings before the court. Also, that there is reason to believe that that person will fail to attend court to give evidence and it is in the interests of justice to issue a summons to secure his or her attendance.

*Article 100* provides that a person who, without reasonable excuse, fails to comply with a witness summons by failing to attend before the court or to give the evidence or produce the document or thing specified in the summons, is guilty of contempt of court.

*Article 101* sets out, for the purposes of *Article 102*, the meaning of “special measures” which may be provided under that *Article* to an “eligible witness” as defined under *Article 101*. An eligible witness may include the defendant.

*Article 102* enables the court to order assistance by way of special measures to an eligible witness, of its own motion or on the application of a party. The court must determine whether any of the special measures reasonably or practically available in

relation to the witness would, in its opinion, be likely to improve the quality of evidence given by the witness. The States may by Regulations make supplementary provisions about orders as to special measures under this Article including the type of measures which may be ordered.

*Article 103* is derived from Article 7 of the 1949 Law and enables the court to adjourn to hear a witness elsewhere than in the court room where the witness cannot attend to give evidence owing to illness or being off the Island.

*Article 104* prohibits a defendant charged with any of the offences listed in Article 104(3) (which includes sexual offences), from cross-examining in person the victim, a person under the age of 18, or a person aged 18 or more, who is vulnerable (as described in *Article 104(1)(c)*).

*Article 105* applies in a case where *Article 104* does not operate so as to prevent a defendant from cross-examining, in person, a witness. The court may make an order prohibiting the defendant from cross-examining, in person, the witness if it appears to the court that the quality of the witness' evidence on cross-examination is likely to be diminished if the cross-examination is conducted by the defendant, and would be likely to be improved if an order were given under this Article, and that it would not be contrary to the interests of justice to make such an order.

*Article 106* applies where a defendant is prevented from cross-examining, in person, a witness by virtue of *Article 104* or *105*. In such a case the court must invite the defendant to arrange for a legal representative to act for him or her for the purpose of cross-examining the witness. If the defendant notifies or fails to notify the court that no legal representative is to act for him or her for the purpose of cross-examining the witness, the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the defendant. If the court decides that it is so necessary, it must appoint an advocate (chosen by the court) to cross-examine the witness in the interests of the defendant. An advocate so appointed is not responsible to the defendant.

*Article 107* provides that where a defendant before the Royal Court is prevented from cross-examining, in person, a witness, the Bailiff must give the Jurats or jury such warning as he or she considers necessary to ensure that the defendant is not prejudiced by any inferences that might be drawn from the fact that the defendant has been prevented from cross-examining the witness, or by the fact that the cross-examination was carried out by a court appointed legal representative and not by a person acting as the defendant's own legal representative.

*Article 108* makes it an offence for a person to intimidate or harm (including intimidation by way of threat of harm) a member or potential member of the jury, or a witness or potential witness in criminal proceedings. A person guilty of an offence under this Article is liable to imprisonment for a term of 10 years and to a fine of an unlimited amount.

## **Part 12: Wasted Costs in Criminal Proceedings – Articles 109 to 111**

*Article 109* enables the court to order a party to pay costs incurred by another party to the proceedings, which have arisen as a result of an unnecessary or improper act or omission of the party against whom the order is made.

*Article 110* provides that the court may order the defence or prosecution to meet the whole of any wasted costs, or such part of them as the court may determine. "Wasted costs" is defined as costs incurred by any party as a result of any improper, unreasonable or negligent act or omission on the part of the defence or prosecution, or



which the court considers it is unreasonable to expect a party to pay. Regulations may make further provision as to the court's determination of costs for the purposes of an order.

*Article 111* provides for a Regulation making power to enable the court to make an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings. Such an order would be subject to the condition that there has been serious misconduct by the third party. The Regulations would, amongst other things, specify the types of misconduct which would not amount to serious misconduct for the purposes of the order.

### **Part 13: Establishment and Functions of the Criminal Procedure Rules Committee – Articles 112 to 114**

*Article 112* replaces the provisions in Article 13 of the Royal Court (Jersey) Law 1948 (the “Royal Court Law”) concerning the making of Rules of Court for the purpose of regulating and prescribing the procedure of the Royal Court in relation to criminal proceedings. Under this Article, a new Criminal Procedure Rules Committee (the “Committee”) is established to make Criminal Procedure Rules governing the practice and procedure to be followed in criminal proceedings before the Magistrate’s Court and Royal Court. The Committee is composed of 8 members listed in *Article 112(4)* and chaired by the Bailiff or Deputy Bailiff who are both members as well (10 members in total). The 8 listed members may nominate a person in their stead, subject to prior consultation with the Bailiff. The Committee is quorate with 5 members. Before making Criminal Procedure Rules, the Committee must consult such persons it considers appropriate, and meet, unless a meeting would be inexpedient.

*Article 113* sets out the scope of the Criminal Procedure Rules and provides that the power to make Criminal Procedure Rules is to be exercised with a view to securing that the criminal justice system is accessible, fair and efficient, and the rules are both simple and simply expressed.

*Article 114* enables the Bailiff or Magistrate to issue practice directions as to the practice or procedure to be followed by the participants in criminal proceedings, where either no provision has been made in Criminal Procedure Rules, or so as to complement any such Rules. Practice directions may be published in such manner or form as the Bailiff or Magistrate considers appropriate.

### **Part 14: Miscellaneous and Closing provisions – Articles 115 to 120**

*Article 115* introduces *Schedule 2* which sets out the provisions dealing with the quashing of a person’s acquittal.

*Article 116* sets out the scope of the Regulation making powers under this Law.

*Article 117* introduces *Schedule 3* which amends the PPCE Law.

*Article 118* introduces *Schedule 4* which amends miscellaneous enactments as a consequence of the provisions of this Law.

*Article 119* provides that the enactments listed in *Schedule 5* are repealed.

*Article 120* sets out the title by which this Law may be cited and provides for its coming into force by Appointed Day Act of the States.

## **Schedule 1 – Compellability of Spouse or Civil Partner**

This Schedule lists the offences in respect of which, under *Article 95(3)*, a spouse or civil partner of a defendant is compellable to give evidence on behalf of the prosecution or any other defendant charged in the same proceedings.

## **Schedule 2 – Quashing of Person’s Acquittal and Retrial**

*Paragraph 1* sets out the definitions of words and expressions used in this Schedule.

*Paragraph 2* explains the scope of this Schedule which applies in relation to cases where a person has been acquitted of a “qualifying offence” in proceedings before the Royal Court, on appeal against conviction in the Royal Court or on an appeal from a decision on such an appeal. Qualifying offences under this Schedule will be specified in Regulations.

*Paragraph 3* allows the Attorney General to apply to the Court of Appeal for an order which quashes a person’s acquittal and orders him or her to be retried for the qualifying offence. Where a person has been acquitted outside Jersey the Court will need to consider whether or not the acquittal would act as a bar to a further trial in Jersey and, if it does, the Court can order that it must not be a bar.

*Paragraph 4* sets out the decisions which the Court of Appeal may make in response to an application for an acquittal to be quashed. The Court must make an order quashing an acquittal and ordering a retrial if it considers that there is new and compelling evidence in the case, and that it is in the interests of justice for the order to be made. The Court must dismiss an application where it is not satisfied as to these 2 factors.

*Paragraph 5* sets out the requirement for there to be new and compelling evidence against the acquitted person in relation to the qualifying offence, and defines evidence which is “new and compelling”.

*Paragraph 6* sets out the factors the Court of Appeal must have particular regard to when determining that in all the circumstances it is in the interests of justice for the Court to quash an acquittal and order a re-trial.

*Paragraph 7* sets out a number of technical and evidential procedures to be followed in bringing an application for an acquittal to be quashed.

*Paragraph 8* provides that the acquitted person or the Attorney General may appeal against a decision of the Court of Appeal under *paragraph 3*, but only with the permission of the Court of Appeal.

*Paragraph 9* makes provisions for reporting restrictions to apply in respect of matters surrounding the application for a retrial, until either the end of the re-trial or to any point at which it is clear that the acquitted person can no longer be re-tried.

*Paragraph 10* sets out the offences created by the reporting restrictions under *paragraph 9* and the penalties which may be imposed upon conviction. Prosecutions under this paragraph may only be brought with the consent of the Attorney General.

*Paragraph 11* provides a defence in respect of an offence committed under *paragraph 10*.

*Paragraph 12* sets out a number of technical and evidential procedures relating to the holding of retrials.

*Paragraph 13* relates to the authorization and conduct of police investigations. It requires the police to obtain the consent of the Attorney General before taking certain steps in the re-investigation of cases where new evidence has come to light, or where

there are reasonable grounds to believe that further investigation will give rise to new evidence.

*Paragraph 14* makes complementary provisions to *paragraph 13*, in circumstances where the police need to act urgently to prevent the investigation being substantially and irrevocably prejudiced, for example by securing evidence immediately.

*Paragraph 15* enables the States to amend this Schedule by Regulations to make supplementary provisions concerning the issue of a summons, arrest order, detention or grant of bail of an acquitted person.

*Paragraph 16* enables rules of court under Article 40 of the Court of Appeal (Jersey) Law 1961 to be made in respect of the various court procedures set out in this Schedule.

### **Schedule 3 – PPCE Law amended**

*Paragraph 1* is the interpretation provision for this Schedule.

*Paragraph 2* amends the long title of the PPCE Law to remove the reference to the conduct of criminal proceedings, because, as a consequence of the repeal of Part 10 of that Law (see *paragraph 10* of this Schedule) and the re-enactment of Part 10 as *Part 7* of the CPL, the PPCE Law is no longer concerned with the conduct of criminal proceedings other than in relation to matters of evidence.

*Paragraph 3* amends various definitions in Article 1 of the PPCE Law as a consequence of the CPL.

*Paragraphs 4* and *5* replace Articles 29A and 48A of the PPCE Law as consequence of the CPL. Both those Articles are themselves prospective amendments which will come into effect when Schedule 2 to the Bail Law comes into force in 2018, ahead of the CPL.

*Paragraph 6* replaces all of the provisions contained within Part 8 of the PPCE Law dealing with hearsay evidence, as follows –

- (a) new *Article 63* sets out definitions of words used in Part 8;
- (b) new *Article 64* sets out the circumstances in which a statement which is not made in oral evidence during criminal proceedings can be used as evidence of the facts stated within it;
- (c) new *Article 64A* preserves a number of customary law rules which means that in the specified circumstances, an out of court statement will be admissible as evidence of any matters stated in it;
- (d) new *Article 65* sets out a series of categories under which first-hand hearsay evidence, whether oral or documentary, will be admissible, provided that the witness is unavailable to testify for a reason specified in this Article;
- (e) new *Article 66* provides for the admissibility of statements in documentary records provided certain conditions are met as provided under *Article 66(2)*;
- (f) new *Article 67* clarifies the relationship between hearsay evidence and previous inconsistent statements;
- (g) new *Article 67A* makes other previous statements admissible as evidence of the truth of their contents in the circumstances specified in this Article;
- (h) new *Article 67B* sets out the approach which the courts should take to multiple hearsay. “Multiple hearsay” is where information passes through more than one person before it is recorded;

- (i) new *Article 67C* provides that if a statement previously made by a witness is admitted in evidence and produced as an exhibit under *Article 67 or 67A*, in a trial before a jury, the jury should not take the exhibit with them when they retire to the jury room, unless the Bailiff considers it appropriate or all the parties agree that it should accompany them;
- (j) new *Article 67D* provides that an out of court statement cannot be admitted under *Article 65, 67 or 67A* if the person who made the statement did not have the “required capability” for making a statement at the time the statement was made. This Article reflects the test for witness competence to give evidence in criminal proceedings under *Article 93* of the CPL;
- (k) new *Article 67E* makes provision for challenges to the credibility of the maker of a hearsay statement who does not give oral evidence in person in the proceedings;
- (l) new *Article 67F* imposes a duty on the Royal Court to stop a case and for the Bailiff either to direct the jury to acquit the defendant, or discharge the jury, if the case against him or her is based wholly or partly on an out of court statement which is so unconvincing that, considering its importance to the case, a conviction would be unsafe;
- (m) new *Article 67G* provides that nothing in Part 8 makes a defendant’s confession admissible if it would not be admissible under *Article 74* or new *Article 74A* of the PPCE Law;
- (n) new *Article 67H* provides where a statement generated by a machine is based on information implanted into the machine by a human, the output of the device will only be admissible where it is proved that the information was accurate;
- (o) new *Article 67I* provides that Criminal Procedure Rules under the CPL may be made for the purposes of Part 8 of the PPCE Law;
- (p) new *Article 67J* provides that a statement in a document can be proved by producing either the original document or an authenticated copy. It is intended to cover all forms of imaging technology.

*Paragraph 7* repeals *Articles 68 to 70* of the PPCE Law which are now subsumed within the amendments provided under *paragraph 6*.

*Paragraph 8* inserts a new *Article 74A* into Part 9 of the PPCE Law and applies the same rules to confessions adduced by a co-defendant to those adduced by the prosecution under *Article 74* of the PPCE Law.

*Paragraph 9* inserts new *Part 9A* into the PPCE Law which contains provisions dealing with evidence of a person’s bad character, as follows –

- (a) new *Article 82A* defines terms employed in this new Part;
- (b) new *Article 82B* requires a court, when considering the relevance or probative value of bad character evidence, to assume that the evidence is true;
- (c) new *Article 82C* defines the sort of evidence whose admissibility is to be determined under new *Part 9A*. The definition covers evidence of, or of a disposition towards, misconduct. The term “misconduct” is further defined in *Article 82A(1)* as the commission of an offence or other reprehensible behaviour;
- (d) new *Article 82D* abolishes the customary law rules governing the admissibility of bad character evidence;
- (e) new *Article 82E* provides that evidence of a defendant’s bad character is admissible in any of the circumstances set out in this Article. This is subject to

an application by the defendant to have the evidence excluded if admitting it would have such an adverse effect on the fairness of the trial that it ought to be excluded;

- (f) new *Article 82F* relates to evidence of a defendant's bad character that is admissible because it is relevant to an important matter at issue between the defendant and the prosecution;
- (g) new *Article 82G* deals with evidence that becomes admissible as a result of the defendant attacking another person's character. A defendant attacks another person's character if he or she gives evidence that they committed an offence (either the one charged or a different one) or have behaved in a reprehensible way;
- (h) new *Article 82H* relates to evidence that is relevant to issues between the defendant and a co-defendant;
- (i) new *Article 82I* relates to evidence that is admissible to correct a false impression given by the defendant. For this provision to apply, the defendant must have been responsible for an assertion that gives a false or misleading impression about himself or herself;
- (j) new *Article 82J* sets out the circumstances in which, outside the alleged facts of the offence and its investigation and prosecution, evidence can be given of the previous misconduct of a person other than a defendant in the proceedings;
- (k) new *Article 82K* provides that Criminal Procedure Rules under the CPL may be made for the purposes of new *Part 9A*.

*Paragraph 10* repeals Part 10 which is now re-enacted under *Part 7* of the CPL, and Part 12 and Schedule 4 which are no longer required as a consequence of the CPL and the amendments made by this Schedule.

#### **Schedule 4 – Enactments Consequentially amended**

*Paragraph 1* amends the Loi (1908) au sujet des témoins et informateurs so as to remove the provisions relating to the competence and compellability of witnesses in criminal proceedings which have been replaced by the provisions contained in *Part 11* of the CPL.

*Paragraph 2* amends the Royal Court Law in relation to the powers to make rules of court for the purposes of criminal proceedings. Those provisions have been replaced by the provisions contained in *Part 13* of the CPL. A new *Article 15A* is inserted to deal with the quorum of the Inferior Number of the Royal Court which ordinarily is the Bailiff and 2 Jurats, or the Bailiff and just one Jurat if the 2nd Jurat dies or is otherwise indisposed when a trial is underway.

*Paragraph 3* amends the Court of Appeal Law so as to include procedures relating to quashing of acquittal applications introduced under *Schedule 2*.

*Paragraph 4* makes various consequential amendments to Costs in Criminal Cases (Jersey) Law 1961 arising from the CPL in relation to costs in criminal proceedings.

*Paragraph 5* amends the Solemn Affirmations (Jersey) Law 1963 so as to bring it into line with the CPL requirements as to the making of an oath.

*Paragraph 6* makes various consequential amendments to the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 arising from new provisions under the CPL in relation to the giving of evidence.

*Paragraph 7* amends the Criminal Justice (Evidence of Children) (Jersey) Law 2002 so as to amend the penalty for an offence of perjury under Article 8(4), from imprisonment to a fine of level 1 on the standard scale (currently £200).

*Paragraph 8* makes various consequential amendments to the Young Offenders Law arising from *Parts 5* and *6* of the CPL (relating to the functions and jurisdiction of the Magistrate) and the jurisdiction of the Magistrate when sitting without other members of the Youth Court.

*Paragraph 9* makes various consequential amendments to the Bail Law to bring it into line with expressions used in the CPL.

#### **Schedule 5 – Enactments repealed**

This Schedule repeals 8 enactments as a consequence of the CPL.



Jersey

## DRAFT CRIMINAL PROCEDURE (JERSEY) LAW 201-

### Arrangement

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Jersey

## DRAFT CRIMINAL PROCEDURE (JERSEY) LAW 201-

A LAW prescribing the procedure to be followed in, or in connection with, criminal proceedings; to provide for the quashing of acquittals by the Court of Appeal; to amend the Police Procedures and Criminal Evidence (Jersey) Law 2003 in connection with evidence in criminal proceedings; 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 and application

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

“adjourn” means a decision by the court to suspend or delay the hearing of criminal proceedings until another day;

“administration of the States” has the same meaning as in Article 1 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>1</sup>;

“Assistant Magistrate” shall be construed in accordance with Article 1 of Loi (1864) concernant la charge de Juge d’Instruction<sup>2</sup>;

“Bail Law” means the Criminal Procedure (Bail) (Jersey) Law 2017<sup>3</sup>;

“Bâtonnier” means the person elected under Article 33 of The Law Society of Jersey Law 2005<sup>4</sup>;

“Broadcasting Act” means the Broadcasting Act 1990 of the United Kingdom, as extended to Jersey by the Broadcasting Act 1990 (Jersey) Order 1991<sup>5</sup> and the Broadcasting Act 1990 (Jersey) (No. 2) Order 1991<sup>6</sup>;

“case management powers” shall be construed in accordance with Article 9;

“child” means a person who has attained the age of 10 years and has not attained the age of 15 years;

“Commissioner” means a person appointed in accordance with Article 10 of the Royal Court (Jersey) Law 1948<sup>7</sup>;

“community service order” shall be construed in accordance with Article 4 of the Community Service Orders Law;

“Community Service Orders Law” means the Criminal Justice (Community Service Orders) (Jersey) Law 2001<sup>8</sup>;

“complainant” means the person against whom an offence is alleged to have been committed;

“court” means the Magistrate’s Court (including the Youth Court) or the Royal Court;

“Criminal Procedure Rules Committee” shall be construed in accordance with Article 112;

“Criminal Procedure Rules” shall be construed in accordance with Article 112(1) and 113;

“criminal proceedings” means proceedings before the court for the determination of a case against a defendant;

“Crown Advocate” means an advocate appointed under Article 1 of the Crown Advocates (Jersey) Law 1987<sup>9</sup>;

“defence” means the defendant or a person acting as his or her legal representative;

“defendant” means a person –

- (a) charged with an offence; or
- (b) convicted of an offence and awaiting sentence;

“délégué” has the same meaning as in the Probation Law;

“Greffier Substitute” means an officer of the Judicial Greffe designated in accordance with Article 6 of the Departments of the Judiciary and the Legislature (Jersey) Law 1965<sup>10</sup>;

“incapacity” shall be construed in accordance with Article 55 of the Mental Health Law;

“indictment” means the document referred to in Article 43(3) which formally specifies the offence with which a person is charged and sets out the particulars of the offence;

“juror” mean a person selected to serve on a jury in accordance with Article 66;

“jury” shall be construed in accordance with Article 66;

“jury list” shall be construed in accordance with Article 64;

“Magistrate’s Court” includes the Youth Court;

“Mental Health Law” means the Mental Health (Jersey) Law 2016<sup>11</sup>;

“offence” includes an alleged offence;

“overriding objective” shall be construed in accordance with Article 2;

“panel list” shall be construed in accordance with Article 64;

“participant” and “party” in relation to criminal proceedings means the prosecution, defence and any such other person as the court may direct, or who otherwise appears to the court to participate in the conduct of the proceedings;

“police officer” includes an officer of the Impôts within the meaning of the Customs and Excise (Jersey) Law 1999<sup>12</sup>;

“practice directions” shall be construed in accordance with Article 114;

“prescribed” means prescribed by Criminal Procedure Rules;

“proceedings” means criminal proceedings;

“programme service” has the same meaning as in the Broadcasting Act;

“Probation Law” means the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée<sup>13</sup>;

“probation order” means an order under Article 2 of the Probation Law;

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings;

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act;

“rules” means Criminal Procedure Rules, and “rule” shall be construed accordingly;

“Solemn Affirmations Law” means the Solemn Affirmations (Jersey) Law 1963<sup>14</sup>;

“trial” means a hearing to determine criminal proceedings and includes a retrial or a hearing, if required under Article 79, to determine facts disputed;

“witness” in relation to criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings;

“young person” means a person who has attained the age of 15 years and has not attained the age of 18 years;

“Young Offenders Law” means the Criminal Justice (Young Offenders) (Jersey) Law 2014<sup>15</sup>;

“Youth Court Panel” shall be construed in accordance with paragraph 1 of the Schedule to the Young Offenders Law.

(2) For the purposes of this Law –

- 
- (a) “prosecution” means –
- (i) the Attorney General,
  - (ii) a prosecutor, or
  - (iii) except in relation to proceedings before the Royal Court, or where a reference is made to “prosecution” in Parts 10 and 11, a Centenier;
- (b) “prosecutor” –
- (i) means an advocate employed in the Law Officers’ Department authorized by the Attorney General to undertake criminal proceedings on his or her behalf in the Magistrate’s Court or Royal Court; or
  - (ii) means a solicitor, or a person admitted –
    - (A) to the degree of the Utter Bar of one of the Inns of Court of England and Wales,
    - (B) as a solicitor of the Senior Courts of England and Wales,
    - (C) as a member of the Faculty of Advocates or as a Solicitor in Scotland,
    - (D) at the Bar of Northern Ireland or as a Solicitor of the Court of Judicature of Northern Ireland, or
    - (E) at the Bar of Guernsey,employed in the Law Officers’ Department and authorized by the Attorney General to undertake criminal proceedings on his or her behalf in the Magistrate’s Court, and
  - (iii) includes a Crown Advocate.
- (3) References in this Law to –
- (a) “functions” in relation to a person shall be construed as if they were references to any powers or duties conferred on a person by or under an enactment, including this Law;
  - (b) “material” are to material of all kinds, and in particular include references to –
    - (i) information, and
    - (ii) objects of all descriptions.
- (4) The expression “enter a plea” in relation to a defendant means where he or she pleads “guilty” or “not guilty” to committing an offence.
- (5) Where this Law requires something to be done or to occur within 48 hours, in determining when the period of 48 hours expires, there shall be disregarded Christmas Day, Good Friday and any Sunday.
- (6) Where bail is grantable under any provision of this Law, the provisions of the Bail Law shall apply –
- (a) unless express provision is made to the contrary;
  - (b) unless alternative or different provision is made by or under this Law; or



- (c) subject to any modifications to those provisions made by or under this Law.
- (7) In relation to a defendant within the meaning of the Mental Health Law, the provisions of this Law shall, subject to the provisions of Parts 8 and 9 of the Mental Health Law, apply in respect of such a defendant in criminal proceedings.
- (8) Nothing in this Law shall be taken to override the inherent jurisdiction of the Royal Court in relation to criminal proceedings.
- (9) The States may by Regulations amend this Part.

## **PART 2**

### **THE OVERRIDING OBJECTIVE**

#### **2 The overriding objective of the Law**

The overriding objective of this Law is to ensure that cases in criminal proceedings are dealt with justly.

#### **3 Implementation of the overriding objective**

- (1) For the purposes of satisfying the overriding objective, dealing with cases in criminal proceedings “justly” includes –
  - (a) acquitting the innocent and convicting the guilty;
  - (b) dealing fairly with both the prosecution and the defence;
  - (c) recognizing the rights of a defendant, particularly those rights granted under Article 6 of the European Convention on Human Rights (right to a fair trial);
  - (d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
  - (e) dealing with the case efficiently and expeditiously; and
  - (f) ensuring that appropriate information is available to the court when bail or sentence is being considered.
- (2) Dealing with a case justly also includes dealing with it in ways that take into account –
  - (a) the gravity of the alleged offence;
  - (b) the complexity of what is in issue;
  - (c) the severity of the consequences for the defendant and for others that are affected;
  - (d) whether the costs of the proceedings are proportionate having regard to the seriousness of the offence; and
  - (e) the needs of other cases.

---

**4 Duties of the participants in criminal proceedings**

- (1) A participant in criminal proceedings must –
  - (a) prepare and conduct the case in accordance with the overriding objective;
  - (b) comply with the relevant procedures; and
  - (c) as soon as is reasonably practicable, inform the court and all parties to the proceedings if there is a significant failure (whether or not the participant's) to take a procedural step required by the relevant procedures.
- (2) For the purpose of paragraph (1) –
  - (a) relevant procedures are the procedures prescribed by this Law, Criminal Procedure Rules or practice directions; and
  - (b) a failure is significant if it might hinder the court in furthering the overriding objective.

**5 The application by the court of the overriding objective**

The court must act to ensure the implementation of the overriding objective when it –

- (a) exercises a power given to it by an enactment (including this Law);
- (b) applies Criminal Procedure Rules;
- (c) applies a practice direction; or
- (d) interprets legislation (including this Law), Criminal Procedure Rules or practice directions.

**6 Regulations amending Part 2**

The States may by Regulations amend this Part.

**PART 3****THE ACTIVE MANAGEMENT OF CRIMINAL PROCEEDINGS****7 The duty of the court**

- (1) The court must further the overriding objective by actively managing cases in criminal proceedings.
- (2) The active management of cases in criminal proceedings includes –
  - (a) the early identification of the key issues;
  - (b) the early identification of the needs of witnesses;
  - (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;

- (d) monitoring the progress of the case and compliance with any directions given by the court;
- (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
- (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
- (g) encouraging the participants to co-operate in the progression of the case; and
- (h) making use of technology.

## **8 The duty of the parties**

- (1) Each party must –
  - (a) actively assist the court in fulfilling its duty under Article 7; and
  - (b) apply for a direction if needed to further the overriding objective.
- (2) Active assistance for the purposes of this Article includes –
  - (a) communication between the prosecution and the defence at the first available opportunity, and in any event no later than the beginning of the day of the first hearing;
  - (b) ongoing communication between the parties and with the court until the conclusion of the case;
  - (c) by such communication establishing, among other things –
    - (i) whether the defendant is likely to plead guilty or not guilty,
    - (ii) what is agreed and what is likely to be disputed,
    - (iii) what information, or other material, is required by one party of another, and why, and
    - (iv) what is to be done, by whom, and when (without, or if necessary with, a direction); and
  - (d) reporting on that communication to the court –
    - (i) at the first hearing, and
    - (ii) after that, as directed by the court.
- (3) For the purposes of paragraph (2)(a), the expression “first available opportunity” includes as soon as a person is –
  - (a) charged;
  - (b) summoned; or
  - (c) notified by the Attorney General that criminal proceedings have, under Article 14, been initiated in respect of that person.

## **9 The court’s case management powers**

- (1) In fulfilling its duty under Article 7 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with any rule made under this Law or provision of this Law or other enactment.

- 
- (2) In particular, the court may –
    - (a) give a direction on its own initiative or on application by a party;
    - (b) ask or allow a party to propose a direction;
    - (c) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
    - (d) give a direction –
      - (i) at a hearing, in public or in private, or
      - (ii) without a hearing;
    - (e) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
    - (f) shorten or extend (even after it has expired) a time limit fixed by a direction (including a practice direction) or Criminal Procedure Rules;
    - (g) require that issues in the case should be –
      - (i) identified in writing, and
      - (ii) determined separately;
    - (h) decide in what order the issues will be determined; and
    - (i) specify the consequences of failing to comply with a direction.
  - (3) The Magistrate’s Court may give a direction that will apply in the Royal Court if the case is to continue there.
  - (4) The Royal Court may give a direction that will apply in the Magistrate’s Court if the case is to continue there.
  - (5) Any power to give a direction includes a power to vary or revoke that direction.
  - (6) Unless the Royal Court directs otherwise, the Magistrate’s Court may vary or revoke a direction given by the Royal Court under paragraph (4).
  - (7) The Royal Court may vary or revoke a direction given by the Magistrate’s Court under paragraph (3).
  - (8) If a party fails to comply with a direction or rule, the court may –
    - (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
    - (b) exercise its powers to make an order as to the payment of costs; and
    - (c) impose such other sanction as may be appropriate, including such sanction as may be specified under any enactment including this Law.

## **10 Hearings and adjournments**

- (1) Where the Magistrate’s Court adjourns a hearing in the exercise of case management powers, or under any other provisions of this Law regardless of whether or not the defendant has legal representation, that hearing shall be adjourned for a period not exceeding 30 days.

- 
- (2) Where the Royal Court adjourns a hearing in the exercise of case management powers or under any other provisions of this Law and the defendant has no legal representation, that hearing shall be adjourned for a period not exceeding –
    - (a) 42 days in respect of a defendant in custody; and
    - (b) 60 days in respect of a defendant on bail.
  - (3) Subject to Articles 88 and 89, the court may, in the exercise of case management powers, direct that any hearing may be held in the absence of a defendant provided that absence does not conflict with the overriding objective.
  - (4) The court may grant a defendant bail for the period of any adjournment.
  - (5) An order by the court for proceedings to be “left on file” as referred to in Article 82(2) shall not be taken to be an adjournment for the purposes of this Article.

#### **11 Regulations amending Part 3**

The States may by Regulations amend this Part.

### **PART 4**

#### **ROLE OF THE ATTORNEY GENERAL**

#### **12 Role of the Attorney General in prosecution of criminal proceedings**

Without prejudice to the powers reserved to a Centenier under Article 3(2) of the Honorary Police (Jersey) Law 1974<sup>16</sup>, the prosecution of criminal proceedings may only be conducted by or on behalf of the Attorney General.

#### **13 Consent of the Attorney General before commencing criminal proceedings**

- (1) This Article applies if a provision of an enactment or rule of customary law requires the consent of the Attorney General before criminal proceedings may be initiated.
- (2) The Attorney General’s consent must be in writing and shall, in so far as is practicable, be given before –
  - (a) a person is charged with an offence;
  - (b) a person is summoned to appear before the Magistrate’s Court under Article 19; or
  - (c) the initiation of proceedings in the Royal Court under Article 14.
- (3) If it is not practicable for consent to be given in accordance with paragraph (2), it must in any event be given before the person’s first appearance before the court.
- (4) If, notwithstanding paragraph (3), consent has not been given by the time of the person’s first appearance, or it appears to the court that the consent

has been defectively given, the court may nevertheless authorize the case to proceed pending receipt of the Attorney General's consent or properly given consent, as the case may be.

- (5) The Attorney General may delegate the giving of his or her consent to such prosecutor as the Attorney General may, from time to time, designate in writing.
- (6) The States may, by Regulations, amend any enactment (including this Law) for the purpose of removing any provision requiring the consent of the Attorney General before criminal proceedings may be initiated.

#### **14 Attorney General's power to initiate proceedings directly in the Royal Court**

- (1) The Attorney General may, if he or she considers it justified, directly initiate criminal proceedings in the Royal Court in respect of a person who is to be indicted and Article 43 applies for the purpose of initiating proceedings.
- (2) Paragraph (1) applies notwithstanding any other provisions of this Law or any other enactment or rule of customary law which require the initiation of criminal proceedings in the Magistrate's Court.
- (3) The Attorney General shall summons the person referred to in paragraph (1) to appear before the Royal Court at the time, and on the date notified in the summons, to answer the indictment referred to in Article 43.
- (4) Such summons shall contain a statement setting out the following particulars –
  - (a) the specific offence with which the person is charged;
  - (b) a short description of the offence in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence; and
  - (c) if the offence charged is one created under an enactment, a reference to the provision of the enactment creating the offence.
- (5) If it appears to the Attorney General that the person will fail to comply with the summons, the Attorney General may apply to the Bailiff for an order to arrest that person.
- (6) The Bailiff may, upon proof of service of the summons, order the person to be arrested and brought before the Royal Court to answer the indictment.
- (7) Unless the Bailiff grants the person bail under Article 78(2), an order under paragraph (6) authorizes every police officer or the Viscount to arrest and detain the person to whom the order relates and to bring him or her before the Royal Court within 48 hours of his or her arrest.

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**PART 5****FUNCTIONS AND JURISDICTION OF THE MAGISTRATE****15 Jurisdiction of Magistrate**

- (1) The Magistrate may exercise the powers given under this Article subject to –
  - (a) the provisions of Parts 2, 3, 6, 10, 11 and 12;
  - (b) the maximum penalties which he or she may impose under Article 16; and
  - (c) the provisions of the Young Offenders Law.
- (2) The Magistrate may sit at any time and in any place, and shall have the power to –
  - (a) hear and determine all criminal proceedings, including proceedings to determine matters ancillary to such criminal proceedings; and
  - (b) determine whether to remand a defendant into custody or release him or her from the custody of the Magistrate's Court on bail.

**16 Maximum penalties which may be imposed by Magistrate**

- (1) Subject to paragraph (2), the maximum penalties which may be imposed by the Magistrate are –
  - (a) a fine of £10,000;
  - (b) imprisonment for a term of 12 months; or
  - (c) both a fine of £10,000 and imprisonment for a term of 12 months.
- (2) If the Magistrate passes a sentence of imprisonment on a defendant, the Magistrate may order that the sentence shall commence at the expiration of any other term of imprisonment to which that defendant has been previously sentenced.
- (3) If a defendant is convicted of more than one offence, the aggregate of the fines or terms of imprisonment imposed by the Magistrate in respect of those offences shall not exceed the maximum fine or term of imprisonment which the Magistrate is empowered by this Article to impose.
- (4) The States may, by Regulations, amend the penalties listed in paragraph (1).

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**PART 6****PROCEEDINGS IN THE MAGISTRATE'S COURT****17 Application of Part 6**

This Part applies in respect of criminal proceedings before the Magistrate's Court and appeals to the Royal Court against a decision of the Magistrate's Court.

**18 Interpretation of Part 6**

(1) In this Part –

“appellant” means a defendant who has a right of appeal to the Royal Court under Article 33;

“designated police station” shall be construed in accordance with Code C, A Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, set out in the Schedule to the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004<sup>17</sup>;

“prison” has the meaning given in Article 1(1) of the Prison (Jersey) Law 1957<sup>18</sup>;

“Royal Court” means the Inferior Number of the Royal Court.

(2) In Articles 31, 33 and 34 “order” means –

- (a) a community service order;
- (b) a probation order; or
- (c) an order for the payment of costs.

**19 Summons**

(1) This Article applies to a person who is to be charged with an offence and liable to arrest.

(2) A person to whom this Article applies may, instead of being arrested, be summoned by the Attorney General or, with his or her approval, a prosecutor or a Centenier, to appear before the Magistrate's Court at the time, and on the date notified in the summons.

(3) Such summons shall contain a statement setting out the following –

- (a) the specific offence with which the person is to be charged including such particulars as may be necessary for giving reasonable information as to the nature of the charge;
- (b) a short description of the offence in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence; and
- (c) if the offence to be charged is one created under an enactment, a reference to the provision of the enactment creating the offence.



**20 Failure to comply with summons**

- (1) If a person summoned, under Article 19, to appear before the Magistrate's Court fails, without reasonable excuse, to comply with the summons, the Court may, upon proof of the service of the summons, order the person's arrest.
- (2) An order under paragraph (1) authorizes every police officer or the Viscount to arrest and detain the person to whom the order relates and to bring that person before the Magistrate's Court.
- (3) Unless the Magistrate grants the person bail under Article 78(2), a person arrested and detained under this Article, shall be brought before the Magistrate's Court within 48 hours of his or her arrest.
- (4) Subject to Article 10(3), the Magistrate may determine a case in the absence of a person who, without reasonable excuse, fails to comply with his or her summons.

**21 Offence of failing to comply with summons**

- (1) A person summoned under Article 19 to appear before the Magistrate's Court who, without reasonable excuse, fails to comply with that summons is guilty of an offence.
- (2) It shall be for the person to prove that he or she had a reasonable excuse for his or her failure to comply with the summons.
- (3) A person guilty of an offence under this Article shall be convicted summarily and liable to imprisonment for a term not exceeding 12 months and to a fine.

**22 Error in summons**

- (1) No objection shall be made to a summons issued under Article 19 on the ground that –
  - (a) the summons is defective in substance or form; or
  - (b) there is a variation between the summons and the evidence adduced by or on behalf of the prosecution.
- (2) But, if it appears to the Magistrate that –
  - (a) there is a variation between the summons and the evidence adduced; and
  - (b) the variation has misled the person summoned,the Magistrate shall exercise such case management powers as he or she sees fit.

**23 Procedure on first appearance**

- (1) When a defendant first appears before the Magistrate's Court –
  - (a) the defendant shall be identified as the person charged with the offence;

- (b) the particulars of the offence with which the defendant is charged, shall be read out by the Centenier, or with the Centenier's agreement, a prosecutor; and
  - (c) subject to paragraph (3), the defendant shall be asked to enter a plea.
- (2) If the defendant does not enter a plea, whether at a first appearance or at any subsequent stage of the proceedings, the defendant shall be taken to have pleaded "not guilty".
- (3) The Magistrate may direct that the defendant need not enter a plea.

#### **24 Amendment of details of offence and further or alternative offences**

- (1) This Article applies once the particulars of the offence have been read out.
- (2) Immediately thereafter or at any subsequent stage of the proceedings, the prosecution may –
- (a) amend the particulars of the offence;
  - (b) substitute the offence; or
  - (c) add a new or an alternative offence.
- (3) The particulars of the amended, substituted, additional or alternative offence, as the case may be, shall be read out and the defendant asked to enter a plea in respect of that offence.

#### **25 Magistrate's determination as to sentencing venue – guilty plea**

- (1) Where a defendant has entered a guilty plea, the Magistrate must, in accordance with this Article, decide whether the case should proceed for sentencing in the Magistrate's Court or the Royal Court.
- (2) The Magistrate's Court shall record the defendant as convicted of the offence in respect of which he or she has entered a guilty plea.
- (3) Subject to paragraph (4), if it appears to the Magistrate that –
- (a) the gravity of the offence would require the imposition of a penalty in excess of any penalty imposable under Article 16, the Magistrate shall send the defendant to the Royal Court for sentencing;
  - (b) the gravity of the offence would not require the imposition of a penalty in excess of any imposable under Article 16, the Magistrate shall determine that the case should proceed for sentencing in the Magistrate's court; or
  - (c) notwithstanding that the gravity of the offence –
    - (i) would not require the imposition of a penalty in excess of any imposable under Article 16, but
    - (ii) it would nevertheless be in the interests of justice to do so, the Magistrate shall send the defendant to the Royal Court for sentencing.
- (4) Before making a decision under paragraph (3), the Magistrate must –

- (a) hear any representations by or on behalf of the prosecutor and defendant; and
- (b) have regard to all the circumstances of the case including any matters as may appear to be relevant and the defendant's previous convictions, if any.

## **26 Magistrate's determination as to trial venue – not guilty plea**

- (1) Where a defendant has entered a not guilty plea, the Magistrate must, in accordance with this Article, decide whether the case should proceed for trial in the Magistrate's Court or the Royal Court.
- (2) Subject to paragraph (3), if it appears to the Magistrate that –
  - (a) the gravity of the offence, if the defendant were to be found guilty, would require the imposition of a penalty in excess of any penalty imposable under Article 16, the Magistrate shall send the defendant to the Royal Court for trial;
  - (b) the gravity of the offence, if the defendant were to be found guilty, would not require the imposition of a penalty in excess of any imposable under Article 16, the Magistrate shall determine that the case should proceed for trial in the Magistrate's court; or
  - (c) notwithstanding that the gravity of the offence, if the defendant were to be found guilty –
    - (i) would not require the imposition of a penalty in excess of any imposable under Article 16, but
    - (ii) it would nevertheless be in the interests of justice to do so, the Magistrate shall send the defendant to the Royal Court for trial.
- (3) Before making a decision under paragraph (2), the Magistrate must –
  - (a) hear any representations by or on behalf of the prosecutor and defendant;
  - (b) have regard to all the circumstances of the case including any matters as may appear to be relevant.
- (4) If, following a determination under paragraph (2)(b), information emerges to show that the gravity of the offence, if the defendant were to be found guilty, would require the imposition of a penalty in excess of any penalty imposable under Article 16, the Magistrate shall send the defendant to the Royal Court for trial instead.

## **27 Magistrate's determination as to sentencing venue following trial**

- (1) If, following a defendant's trial, the Magistrate finds the defendant guilty and, subject to paragraph (2), it appears that –
  - (a) the gravity of the offence would require the imposition of a penalty in excess of any penalty imposable under Article 16, the Magistrate shall send the defendant to the Royal Court for sentencing; or
  - (b) notwithstanding that the gravity of the offence –

- (i) would not require the imposition of a penalty in excess of any imposable under Article 16, but
  - (ii) it would nevertheless be in the interests of justice to do so, the Magistrate shall send the defendant to the Royal Court for sentencing.
- (2) Before making a decision under paragraph (1), the Magistrate must –
  - (a) hear any representations by or on behalf of the prosecutor and defendant; and
  - (b) have regard to all the circumstances of the case including any matters as may appear to be relevant including the defendant's previous convictions, if any.

## **28 Magistrate's directions in respect of cases sent to the Royal Court**

- (1) If the Magistrate decides to send a defendant to the Royal Court for sentencing under Article 25 or 27, or trial under Article 26, the Magistrate shall adjourn the case and –
  - (a) if it is practicable to do so, direct that a date is set for the first hearing of that case before the Royal Court; or
  - (b) make such other direction in the exercise of case management powers as are required.
- (2) This paragraph applies where, at any time up to (but not including) the date set for the first hearing of the defendant's case before the Royal Court, it appears to the Magistrate that information has emerged to show that it would be appropriate, after all, for the defendant to be sentenced or tried (as the case may be) in the Magistrate's Court.
- (3) Where paragraph (2) applies, the Magistrate may direct that the defendant's case is remitted to the Magistrate's Court for sentencing or trial (as the case may be).

## **29 Magistrate's determination as to sentencing or trial venue – unconnected offences**

- (1) This Article applies where a defendant is charged with more than one offence and the offences are not connected with each other.
- (2) The Magistrate may direct that any unconnected offences should be considered at the same hearing for the purposes of making a decision under any of Articles 25 to 27.
- (3) If –
  - (a) the Magistrate decides to send a defendant to the Royal Court for sentencing or trial in relation to one offence; and
  - (b) notwithstanding that it appears to the Magistrate that the gravity of another unconnected offence is such as would not require the imposition of a penalty in excess of any maximum penalty imposable under Article 16, it would be in the interests of justice to do so,

the Magistrate may direct that the defendant is also sent to the Royal Court for sentencing or trial in relation to that other unconnected offence.

- (4) In this Article and Article 30, in relation to offences, references to “connected” means offences which are connected by reason of being founded on the same facts, or form or are part of a series of offences of the same or similar character, and references to “unconnected” in relation to offences shall be construed accordingly.

**30 Magistrate’s determination as to sentencing or trial venue – multiple defendants, including child or young person**

- (1) This Article applies where the Magistrate is to make a decision under any of Articles 25 to 27 in respect of more than one defendant charged with offences which appear to be connected.
- (2) If the Magistrate considers the offences to be sufficiently connected, a decision taken under any of Articles 25 to 27 shall be taken having regard to the general principle that it is desirable for defendants charged with connected offences to be tried or sentenced together in the Magistrate’s Court or Royal Court, as the case may be.
- (3) This paragraph applies where, pursuant to Article 26(1)(a) or (b) of the Young Offenders Law, a child or young person appears before the Magistrate’s Court and –
- (a) pleads not guilty to committing a connected offence; and
- (b) another defendant (who has attained the age of 18), with whom the child or young person is jointly charged with committing a connected offence, is to be sent to the Royal Court for sentencing or trial, as the case may be.
- (4) Where paragraph (3) applies, the Magistrate shall direct that the child or young person is tried in the Youth Court unless –
- (a) it appears to the Magistrate that if the child or young person were to be found guilty, the gravity of the offence would require the imposition of an order or sentence in excess of any order or sentence imposable by the Youth Court; or
- (b) it is in the interests of justice that the child or young person and the other defendant are jointly sentenced or tried, as the case may be,
- in which case the Magistrate shall send the child or young person to the Royal Court for trial.

**31 Magistrate’s power to rectify mistakes**

- (1) Subject to paragraph (3), the Magistrate may, within 28 days of passing a sentence or making an order in respect of a defendant, amend or rescind that sentence or order, if it appears to the Magistrate that it would further the overriding objective to do so.
- (2) The power of the Magistrate under paragraph (1) includes the power –

- (a) to replace a sentence or order that appears to the Magistrate to be invalid with a sentence or order that the Magistrate has the power to impose or make; or
  - (b) provided no injustice would be caused, to correct errors which have resulted in a defendant having pleaded guilty to, or been convicted of, an incorrectly charged offence.
- (3) The Magistrate may, in exceptional circumstances, amend or rescind a sentence or order under paragraph (1) after the 28 day period has expired.
- (4) If the Magistrate amends a sentence or order, the amended sentence or order takes effect from the time the original sentence or order took effect unless the Magistrate otherwise directs.

### **32 Proceedings in Royal Court remitted to Magistrate's Court**

- (1) This Article applies where, under Article 47, the Royal Court remits a case to the Magistrate's Court.
- (2) The Magistrate's Court shall proceed to sentence or try the defendant as if the defendant had never been sent to the Royal Court for sentencing or trial in the first instance.

### **33 Right of appeal**

- (1) A defendant convicted by the Magistrate's Court may appeal to the Royal Court in the circumstances set out in paragraph (2).
- (2) If the defendant –
  - (a) pleaded guilty or admitted the facts, he or she may appeal against the sentence or order;
  - (b) pleaded not guilty, he or she may appeal against the conviction, sentence or order; or
  - (c) pleaded not guilty and was sent to the Royal Court for sentencing under Article 27, he or she may appeal against the conviction.

### **34 Notice of appeal**

- (1) An appeal under Article 33 shall be commenced by the appellant giving notice of appeal to the Judicial Greffier not more than 7 days after the day on which the appellant was convicted, sentenced or the order was made.
- (2) A notice of appeal shall be in writing and shall state the general grounds of appeal.
- (3) Where it appears to the Royal Court, on application made in accordance with paragraph (4), that an appellant has failed to give the notice of appeal within the period of 7 days prescribed by paragraph (1), the Royal Court may, if it thinks fit, direct that –
  - (a) any such notice of appeal given by the appellant after the expiration of the said 7 day period shall be treated as if given within that period; or

- (b) any such notice of appeal may be given by the appellant within such further period as may be specified in the direction and shall be treated as if given within the said 7 day period.
- (4) An application for a direction under paragraph (3) shall be made in writing to the Judicial Greffier.
- (5) In determining when the 7 day expires, there shall be disregarded Christmas Day, Good Friday and any Bank Holiday.

### **35 Abandonment of appeal**

- (1) An appellant may abandon an appeal under Article 33 by giving notice in writing to the Judicial Greffier, not later than the 3rd working day before the day fixed for the hearing of the appeal.
- (2) An appellant who has not given notice by the day mentioned in paragraph (1) may apply at any time up to, and including the day before the day fixed for the hearing of the appeal, to the Royal Court for leave to abandon his or her appeal.
- (3) Where notice to abandon an appeal has been given under paragraph (1) –
  - (a) subject to anything already suffered or done by the appellant under the decision from which the appeal is made, such decision shall be enforceable forthwith by due process of law;
  - (b) the Magistrate's Court may, on the application of the prosecutor, order the appellant to pay to the prosecutor such costs as appear to the Magistrate's Court to be just and reasonable in respect of expenses properly incurred by the prosecutor in connection with the appeal before notice of the abandonment was given.
- (4) Criminal Procedure Rules may make provision as to the hearing of an application under paragraph (3)(b).

### **36 Determination of appeals**

- (1) On any appeal under Article 33, the Royal Court may –
  - (a) confirm, reverse or vary the decision of the Magistrate's Court;
  - (b) remit the matter to the Magistrate's Court with its opinion;
  - (c) make such other order as it thinks just, and may by such order exercise any power which the Magistrate's Court might have exercised.
- (2) Any order made under paragraph (1)(c) shall have the like effect and may be enforced in like manner as if it had been made by the Magistrate's Court.
- (3) The powers of the Royal Court under paragraph (1) shall be construed as including power to impose any penalty, whether more or less severe than that imposable by the Magistrate under Article 16.
- (4) If, at any stage of the proceedings, the Royal Court is of opinion that the appeal is frivolous or vexatious or brought for the purpose of delay, it may forthwith dismiss the appeal.

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- (5) The Royal Court may –
    - (a) direct that witnesses shall be heard before it at the hearing of any appeal under Article 33 in relation to any matter or thing relevant to the appeal; or
    - (b) require the production of a transcript of the trial.
  - (6) On any appeal under Article 33 –
    - (a) if the appeal is successful, the Royal Court may order the payment out of public funds of such sums as appear to the Court reasonably sufficient to compensate the appellant for any expenses properly incurred –
      - (i) in the prosecution of the appeal, and
      - (ii) in the proceedings in the Magistrate’s Court; or
    - (b) if the appeal is unsuccessful, the Royal Court may order the appellant to pay the whole or any part of the costs of the appeal.

### **37 Application to Magistrate to state a case**

- (1) Subject to paragraph (2), any party who is aggrieved by the conviction, order, determination or other proceeding of the Magistrate’s Court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Magistrate to state a case for the opinion of the Royal Court on the question of law or jurisdiction involved.
- (2) A party shall not make an application under this Article in respect of a decision which by virtue of any enactment is final.
- (3) An application under paragraph (1) shall be made not later than 7 days after the day on which the decision of the Magistrate’s Court was given.
- (4) If a defendant has a right of appeal under Article 33 but makes an application under this Article, he or she shall no longer have a right of appeal under Article 33.
- (5) If the Magistrate is of opinion that an application under this Article is frivolous, the Magistrate may refuse to state a case and, if the applicant so requires, shall give the applicant a certificate stating that the application has been refused.
- (6) The Magistrate shall not refuse to state a case if the application is made by or under the direction of the Attorney General.
- (7) Where the Magistrate refuses to state a case, the Royal Court may, on the application of the party who applied for the case to be stated, make an order requiring the Magistrate to state a case and it shall be the duty of the Magistrate to comply with the order.
- (8) For the purposes of an application under this Article, “order” means –
  - (a) any order of the Magistrate in the exercise of case management powers;
  - (b) a community service order;
  - (c) a probation order;



- (d) an order for the payment of costs; or
- (e) an order made under any enactment in respect of which the Magistrate has no discretion as to the making of the order or its terms.

### **38 Royal Court determination of a case stated**

- (1) Where the Magistrate states a case under Article 37, the Royal Court shall hear and determine the question or questions of law arising on the case and may –
  - (a) reverse, affirm or amend the determination in respect of which the case has been stated;
  - (b) remit the matter to the Magistrate’s Court, with its opinion thereon; or
  - (c) make such other order in relation to the matter, including such order as to costs, as may seem fit.
- (2) The Royal Court shall also have power, if it thinks fit, to cause the case to be remitted to the Magistrate’s Court for amendment upon which the case shall be amended accordingly, and judgment delivered.
- (3) Any conviction, order, determination or other proceeding of the Magistrate’s Court varied by the Royal Court under this Article, and any judgment or order of the Royal Court under this Article, may be enforced as if it were a decision of the Magistrate’s Court.

### **39 Bail on appeal or case stated**

- (1) This Article applies where a defendant has given notice of appeal under Article 34 or has applied for a case to be stated under Article 37.
- (2) Where this Article applies, the defendant may be granted bail but the right of a defendant to be granted bail under Article 7(2) of the Bail Law shall not apply.
- (3) A defendant granted bail under this Article must immediately surrender himself or herself to the custody of a police officer or the Viscount, if or she subsequently wishes to abandon his or her –
  - (a) appeal in accordance with Article 35;
  - (b) appeal after the appeal proceedings have commenced in the Royal Court; or
  - (c) application to the Magistrate to state a case.
- (4) A defendant who, without reasonable excuse, fails to surrender himself or herself as required under paragraph (3) shall –
  - (a) be guilty of an offence and shall be convicted summarily and liable to imprisonment for a term not exceeding 12 months and to a fine; and
  - (b) be required to pay the costs of the prosecution.

- (5) The Magistrate or Royal Court, as the case may be, may order the arrest of a defendant who, without reasonable excuse, fails to surrender himself or herself as required under paragraph (3).
- (6) An order under paragraph (5) authorizes every police officer or the Viscount to arrest and detain the defendant to whom the order relates, and to place him or her in custody at the designated police station pending the defendant's transfer to prison.
- (7) Article 78 shall not apply for the purposes of an order under paragraph (5).

#### **40 Operation of certain orders pending appeal or case stated**

Where notice of appeal is given under Article 34, or an application for a case to be stated is made under Article 37, in respect of a decision which includes either of the following –

- (a) an order the effect of which is to suspend or withdraw a licence or other permit, the Magistrate may, unless otherwise provided by the enactment under which the licence or permit was granted, direct that the order be stayed pending the disposal of the appeal or application;
- (b) an order for the confiscation of goods, the goods shall be confiscated pending the disposal of the appeal or application.

#### **41 Miscellaneous provisions**

- (1) Any appeal or application under this Part may be heard and determined by the Royal Court either in term or in vacation.
- (2) Any judgment or order of the Royal Court under this Part shall be final and conclusive.
- (3) Costs ordered to be paid under this Part to the prosecution shall be enforced as a civil debt without further order of the Court.

## **PART 7**

### **PROCEEDINGS IN THE ROYAL COURT**

#### **42 Application of Part 7**

This Part applies in respect of criminal proceedings before the Royal Court.

#### **43 Notice of proceedings and lodging of indictment**

- (1) In the case of a defendant who has been sent by the Magistrate's Court to the Royal Court for sentencing or trial, as the case may be, that defendant shall first appear before the Royal Court –
  - (a) on the date directed by the Magistrate under Article 28(1)(a); or
  - (b) on such date as may otherwise be directed by the Royal Court.

- (2) Where paragraph (1)(b) applies, the Royal Court shall give the parties 7 days, or more, notice of the hearing date.
- (3) The Attorney General must, in relation to a defendant –
  - (a) who has been sent by the Magistrate’s Court to the Royal Court for sentencing or trial, as the case may be; or
  - (b) in respect of whom the Attorney General has decided to initiate criminal proceedings in the Royal Court under Article 14,  
prepare an indictment in the prescribed form, sign and lodge it with the Judicial Greffier and serve a copy of it upon the defendant.
- (4) Where paragraph (3)(a) applies and subject to paragraph (5), the indictment must be lodged and served 48 hours, or more, before the date directed for the defendant’s first appearance before the Royal Court.
- (5) The period referred to in paragraph (4) shall not apply if the Attorney General notifies the Royal Court as soon as practicable before the date directed for the defendant’s first appearance that the indictment is not ready for lodging.
- (6) Where paragraph (5) applies, the Royal Court may, for the purposes of securing the lodging of the indictment, make such order or directions it sees fit.
- (7) Where paragraph (3)(b) applies, the time for lodging the indictment shall be prescribed.

#### **44 Failure to attend first appearance**

- (1) Subject to paragraph (3), the Royal Court may order the arrest of a defendant who, without reasonable excuse, fails to attend before the Court for his or her first appearance in accordance with any directions given under Article 28(1)(a) or 43(1)(b), or summons under Article 14(3).
- (2) An order under paragraph (1) authorizes every police officer or the Viscount to arrest and detain the defendant to whom the order relates and to bring him or her before the Royal Court.
- (3) Unless the Royal Court grants the defendant bail under Article 78(2), a defendant arrested and detained under this Article, shall be brought before the Royal Court not later than 48 hours commencing with the time of his or her arrest.
- (4) A defendant who, without reasonable excuse, fails to attend before the Royal Court for his or her first appearance is guilty of an offence.
- (5) It shall be for the defendant to prove that he or she had a reasonable excuse for his or her failure to attend the Royal Court.
- (6) A defendant guilty of an offence under this Article shall be convicted summarily and liable to imprisonment for a term not exceeding 12 months and to a fine.

**45 Procedure on first appearance**

- (1) Where a defendant has been sent by the Magistrate's Court to the Royal Court for trial or appears before that Court pursuant to Article 14, paragraphs (2) and (3) shall apply.
- (2) When a defendant mentioned in paragraph (1) first appears before the Royal Court –
  - (a) the defendant shall be identified as the person charged with the offence;
  - (b) the contents of the indictment shall be read out; and
  - (c) subject to paragraph (4), the defendant shall be asked to enter a plea.
- (3) If the defendant does not enter a plea, whether at a first appearance or at any subsequent stage of the proceedings, the defendant shall be taken to have pleaded "not guilty".
- (4) The Bailiff may direct that the defendant need not enter a plea.
- (5) Where a defendant has been sent by the Magistrate's Court to the Royal Court for sentencing, when he or she first appears before the Royal Court –
  - (a) the defendant shall be identified as the person charged with the offence; and
  - (b) the contents of the indictment shall be read out.
- (6) Where a defendant has, under paragraph (2)(c), pleaded guilty to the offence, or is a defendant who has been sent to the Royal Court for sentencing, the Royal Court may, after enquiring into the circumstances of the case and hearing representations from the parties including, if necessary, representations under Article 79 to determine facts in dispute, sentence the defendant at that hearing.
- (7) If –
  - (a) there is more than one offence specified in the indictment and the defendant pleads not guilty in respect of any other offence, the Royal Court may adjourn the hearing for sentencing of the defendant in respect of the guilty plea until the defendant's trial in respect of the other offence is concluded; or
  - (b) in furtherance of the overriding objective Article 3(1)(f) is relevant, the Royal Court may adjourn the hearing for the sentencing of the defendant at a later date.

**46 Power to amend indictment**

- (1) Where, before trial or sentencing, or at any stage of a trial, it appears to the Royal Court on the application of the prosecution, that the indictment requires amendment for any reason or is otherwise defective, the Court shall make such order for the amendment of the indictment as the Court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

- (2) An order amending an indictment under paragraph (1) may –
  - (a) amend the particulars of an offence;
  - (b) substitute an offence;
  - (c) add a new or an alternative offence; or
  - (d) remove an offence.
- (3) Where an order is made under this Article, the particulars of the amended, substituted, additional or alternative offence, as the case may be, shall be read out and the defendant asked to enter a plea in respect of an offence referred to in the indictment as amended.

#### **47 Power to remit case to the Magistrate's Court**

- (1) The Royal Court may, if the circumstances of the case justify it, remit a case to the Magistrate's Court for the sentencing or trial of a defendant, as the case may be.
- (2) Circumstances which may justify the remitting of a case to the Magistrate's Court include where –
  - (a) the nature or gravity of the offence has changed or reduced to the extent that the Magistrate would be able to impose any penalty under Article 16; or
  - (b) it is not in the interests of justice that a child or young person who has been sent to the Royal Court under Article 30(4)(b), should be jointly sentenced or tried, as the case may be, with another defendant who is not a child or young person.

#### **48 Mode of trial**

- (1) Subject to the provisions of this Article, a defendant may be tried either by the Royal Court sitting with a jury, or by the Inferior Number of the Royal Court sitting without a jury.
- (2) A defendant whose indictment only charges an offence which is an offence under customary law, may elect to be tried –
  - (a) by the Royal Court sitting with a jury; or
  - (b) by the Inferior Number of the Royal Court sitting without a jury.
- (3) This paragraph applies where –
  - (a) no election is made under paragraph (2); or
  - (b) a defendant's indictment charges 2 or more offences at least one of which is an offence under customary law and the other an offence under an enactment.
- (4) Where paragraph (3) applies, the Royal Court shall decide, having regard to the nature and gravity of the offence and after hearing any submissions from the defence and the prosecution, the method by which the defendant shall be tried.
- (5) Unless an enactment expressly provides otherwise, a defendant whose indictment only charges an offence which is an offence under an

enactment shall be tried by the Inferior Number of the Royal Court sitting without a jury.

- (6) For the purposes of this Article, an “offence under an enactment” includes an offence under an enactment of the United Kingdom which extends or applies to Jersey.

#### **49 Sitings and composition of the Royal Court for trial with a jury**

- (1) This Article applies where a defendant is to be tried by the Royal Court sitting with a jury.
- (2) In a trial under this Article the Royal Court shall be composed only of the Bailiff sitting with 12 jurors selected in accordance with Article 66.
- (3) The Royal Court shall convene –
- (a) when necessary so as to conduct one or more trials under this Article; and
- (b) for as long as is necessary to conclude such trials.
- (4) Where, at the conclusion of a trial, the defendant is found guilty, the Royal Court shall for the purposes of sentencing that defendant, sit as the Inferior Number or as the Superior Number, depending upon the penalty that the Court may decide to impose.

#### **50 Sentencing where facts in dispute**

- (1) This Article applies where a defendant found guilty is to be sentenced, and the defence disputes the facts upon which the defendant was found guilty.
- (2) Where this Article applies, the trial court –
- (a) shall, if invited by the defence or prosecution to do so; or
- (b) may, of its own motion,
- communicate its view of the facts to the sentencing court.
- (3) In this Article –
- (a) “trial court” means –
- (i) where the defendant was tried by the Royal Court sitting with a jury, the Bailiff, or
- (ii) where the defendant was tried by the Inferior Number of the Royal Court sitting without a jury, the Bailiff and Jurats;
- (b) “sentencing court” means the Royal Court sitting as the Inferior Number or Superior number, as the case requires.

#### **51 Verdict where Royal Court sitting as Inferior Number with Bailiff and single Jurat**

- (1) This Article applies where Article 15A(2) of the Royal Court (Jersey) Law 1948<sup>19</sup> applies.

- (2) Where the Bailiff and the Jurat disagree upon a verdict, the Bailiff shall determine the verdict.

## **PART 8**

### **PREPARATORY HEARINGS AND RULINGS IN THE ROYAL COURT**

#### *Preparatory hearings*

#### **52 Application of Part 8**

This Part applies in relation to proceedings for an offence if a defendant is sent for trial by the Magistrate's Court to the Royal Court or where proceedings are directly initiated before the Royal Court under Article 14.

#### **53 Power to order preparatory hearing**

- (1) Where it appears to the Bailiff that a case is so complex or is a case the trial of which is likely to be so long that substantial benefits are likely to accrue from a hearing before the trial and for any of the purposes listed in paragraph (2), he or she may order that a hearing (in this Part referred to as a "preparatory hearing") shall be held.
- (2) The purposes are those of –
  - (a) identifying issues which are likely to be material to the verdict of the Royal Court or jury;
  - (b) assisting comprehension of those issues;
  - (c) expediting the proceedings before the Royal Court or jury;
  - (d) assisting the management of the trial.
- (3) The Bailiff may make an order under paragraph (1) on the application of the prosecution, the defence, or of his or her own motion.

#### **54 Start of trial**

If the Bailiff orders a preparatory hearing the trial shall start with that hearing and the contents of the indictment shall be read out to the defendant at the start of that hearing, unless it has taken place before then.

#### **55 The preparatory hearing**

- (1) At the preparatory hearing the Bailiff may exercise any of the powers specified in this Article.
- (2) The Bailiff may adjourn a preparatory hearing from time to time.
- (3) The Bailiff may make a ruling as to –
  - (a) any question as to the admissibility of evidence;
  - (b) any other question of law relating to the case; or

- 
- (c) any question as to the joinder or severance of the offences in the indictment.
- (4) The Bailiff may order the prosecution –
    - (a) to give the Royal Court and each defendant a written statement (a “case statement”) of the matters falling within paragraph (5);
    - (b) to prepare the prosecution evidence and any explanatory material in a form that appears to the Bailiff to be likely to aid comprehension by the Royal Court or jury and to give it in that form to that court and to each defendant;
    - (c) to give the Royal Court and each defendant written notice of documents the truth of the contents of which ought, in the prosecution’s view, to be admitted and of any other matters which in the prosecution’s view ought to be agreed;
    - (d) to make any amendments of any case statement given in pursuance of an order under sub-paragraph (a) that appear to the Bailiff to be appropriate, having regard to objections made by any defendant.
  - (5) The matters referred to in paragraph (4)(a) are –
    - (a) the principal facts of the case for the prosecution;
    - (b) the witnesses who will speak to those facts;
    - (c) any exhibits relevant to those facts;
    - (d) any proposition of law on which the prosecution proposes to rely;
    - (e) the consequences in relation to any of the charges or counts in the indictment that appear to the prosecution to flow from the matters falling within sub-paragraphs (a) to (d).
  - (6) Where the Bailiff has ordered the prosecution to give a case statement and the prosecution has complied with the order, the Bailiff may order each defendant –
    - (a) to give the Royal Court and the prosecution a written statement setting out in general terms the nature of the defendant’s defence and indicating the principal matters on which he or she takes issue with the prosecution;
    - (b) to give the Royal Court and the prosecution written notice of any objections that the defendant has to the case statement;
    - (c) to give the Royal Court and the prosecution written notice of any point of law, including any point as to the admissibility of evidence, which the defendant wishes to take, and any authority on which the defendant intends to rely for that purpose.
  - (7) Where the Bailiff has ordered the prosecution to give notice under paragraph (4)(c) and the prosecution has complied with the order, the Bailiff may order each defendant to give the Royal Court and the prosecution a written notice stating –
    - (a) the extent to which he or she agrees with the prosecution as to documents and other matters to which the notice under paragraph (4)(c) relates; and
    - (b) the reason for any disagreement.



- (8) The Bailiff, on making an order under paragraph (6) or (7), shall warn each defendant of the possible consequences under Article 57 of not complying with it.
- (9) If it appears to the Bailiff that reasons given in pursuance of paragraph (7) are inadequate, the Bailiff shall so inform the person giving them and may require the person to give further or better reasons.
- (10) An order under this Article may specify the time within which any requirement contained in it is to be complied with.
- (11) An order or ruling made under this Article shall have effect throughout the trial, unless it appears to the Bailiff, on application made to the Bailiff, that the interests of justice require the Bailiff to vary or discharge it.

### **56 Orders before preparatory hearing**

- (1) This Article applies where the Bailiff orders a preparatory hearing and he or she decides that any order which could be made under Article 55(4), (6) and (7) at the hearing, should be made before the hearing.
- (2) In that case, the Bailiff may make that order before the hearing, or at the hearing, and Article 55(4) to (11) shall apply accordingly.

#### *Later stages*

### **57 Later stages of trial**

- (1) Any party may depart from the case he or she disclosed in pursuance of a requirement imposed under Article 55.
- (2) Where a party departs from the case he or she disclosed in pursuance of a requirement imposed under Article 55, or a party fails to comply with that requirement, the Bailiff or, with the leave of the Bailiff, any other party may make any comment that appears to the Bailiff or the other party to be appropriate, and the Royal Court or jury may draw any inference that appears proper.
- (3) In deciding whether to give leave the Bailiff shall have regard to the extent of the departure or failure and to whether there is any justification for it.
- (4) Except as provided by this Article no part of a statement given under Article 55(6)(a) or of any other information relating to the case for a defendant which was given in pursuance of a requirement imposed under Article 55, may be disclosed at a later stage in the trial without the consent of the defendant concerned.

### **58 Appeals to Court of Appeal**

- (1) An appeal shall lie to the Court of Appeal from any ruling of the Bailiff under Article 55(3), but only with the leave of the Bailiff or of the Court of Appeal.

- (2) The Bailiff may continue a preparatory hearing notwithstanding that leave to appeal has been granted under paragraph (1), but the trial shall not otherwise proceed further until after the appeal has been determined or abandoned.
- (3) On the hearing of the appeal the Court of Appeal may confirm, reverse or vary the decision appealed against.
- (4) The power to make rules of court under the Court of Appeal (Jersey) Law 1961<sup>20</sup> shall include a power to specify the time within which an appeal under this Part to the Court of Appeal shall be made and to regulate generally the practice and procedure relating to any such appeal.

### *Rulings*

#### **59 Meaning of pre-trial hearing**

- (1) For the purposes of this Part a hearing is a pre-trial hearing if it relates to a trial for an offence in the Royal Court and it takes place after the defendant has been sent for trial by the Magistrate's Court to the Royal Court under Part 6, or after the proceedings for the offence have been initiated in the Royal Court, under Article 14, and before the start of the trial.
- (2) For the purposes of this Article the start of a trial occurs when –
  - (a) a jury is sworn to consider the issue of guilt;
  - (b) the Royal Court, sitting with Jurats, sits to determine the issue of guilt; or
  - (c) if the Royal Court accepts a plea of guilty before it begins to determine the issue of guilt, when that plea is accepted, but subject to Article 54.

#### **60 Power to make rulings**

- (1) The Bailiff may make, at a pre-trial hearing, a ruling as to any question as to the admissibility of evidence and any other question of law relating to the case concerned.
- (2) A ruling may be made under this Article on an application by a party to the case or of the Bailiff's own motion.
- (3) Subject to paragraph (4), a ruling made under this Article has binding effect from the time it is made until the case against each defendant is disposed of, and the case against a defendant is disposed of if he or she is acquitted or convicted or the prosecution decides not to proceed with the case against the defendant.
- (4) The Bailiff may discharge, vary or further vary a ruling made under this Article if it appears to the Bailiff that it is in the interests of justice to do so, and the Bailiff may act under this paragraph on an application by a party to the case or of his or her own motion.

- (5) No application may be made under paragraph (4) unless there has been a material change of circumstances since the ruling was made or, if a previous application has been made, since the last application was made.

*Reporting restrictions*

**61 Restrictions on reporting preparatory hearings or rulings**

- (1) Except as provided by this Article no publication shall include a report of proceedings falling within paragraph (2), or matters falling within paragraph (3) and no report of those proceedings or matters shall be included in a relevant programme for reception in Jersey.
- (2) The following proceedings fall within this paragraph –
- (a) a preparatory hearing;
  - (b) an application for leave to appeal in relation to that hearing; and
  - (c) an appeal in relation to that hearing.
- (3) The following matters fall within this paragraph –
- (a) a ruling made under Article 60;
  - (b) proceedings on an application for a ruling to be made under Article 60;
  - (c) an order that a ruling made under Article 60 be discharged or varied;
  - (d) proceedings on an application for a ruling made under Article 60 to be discharged or varied.
- (4) The Bailiff, in dealing with a preparatory hearing, may order that paragraph (1) shall not apply, or shall not apply to a specified extent, to a report of the preparatory hearing or an application to the Bailiff for leave to appeal to the Court of Appeal under Article 58(1) in relation to the preparatory hearing.
- (5) The Bailiff, in dealing with any matter falling within paragraph (3), may order that paragraph (1) shall not apply, or shall not apply to a specified extent, to a report of the matter.
- (6) The Court of Appeal may order that paragraph (1) shall not apply, or shall not apply to a specified extent, to a report of an appeal to the Court of Appeal under Article 58(1) in relation to a preparatory hearing or an application to that Court for leave to appeal to it under Article 58(1) in relation to a preparatory hearing.
- (7) Where there is only one defendant and he or she objects to the making of an order under paragraph (4), (5) or (6) the Bailiff or the Court of Appeal (as the case may be) shall make the order if satisfied after hearing the representations of the defendant that it is in the interests of justice to do so and if the order is made it shall not apply to the extent that a report deals with that objection or those representations.
- (8) Where there are 2 or more defendants and one or more of them objects to the making of an order under paragraph (4), (5) or (6) the Bailiff or the

Court of Appeal (as the case may be) shall make the order if satisfied after hearing the representations of each of the defendants that it is in the interests of justice to do so and if the order is made it shall not apply to the extent that a report deals with that objection or those representations.

- (9) Paragraph (1) shall not apply to the following at the conclusion of the trial of the last of the defendants to be tried –
- (a) the inclusion in a publication of a report of a preparatory hearing or any matter falling within paragraph (3); or
  - (b) the inclusion in a publication of a report of an appeal in relation to a preparatory hearing or of an application for leave to appeal in relation to that hearing.
- (10) In relation to proceedings falling within paragraph (2), paragraph (1) shall not apply to a report which only contains one or more of the following matters –
- (a) the identity of the court and the name of the person presiding;
  - (b) the name and age of a defendant of full age;
  - (c) the offence or offences, or a summary of them, with which a defendant is charged;
  - (d) the name of any advocate in the proceedings;
  - (e) where the proceedings are adjourned, the date and place to which they are adjourned;
  - (f) whether the defendant was granted bail;
  - (g) whether the defendant was granted legal aid.
- (11) Nothing in this Article affects any prohibition or restriction imposed by virtue of any other enactment on the inclusion of any matter in a publication.

## **62 Offences in connection with reporting preparatory hearings or rulings**

- (1) If a report is included in a publication in contravention of Article 61, each of the following persons shall be guilty of an offence –
- (a) where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
  - (b) where the publication is a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;
  - (c) in the case of any other publication, the person who publishes it.
- (2) A person guilty of an offence under this Article shall be liable to a fine.
- (3) Proceedings for an offence under this Article shall not be commenced without the consent of the Attorney General.

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**PART 9****JURIES****63 Eligibility for jury service**

- (1) Subject to the provisions of this Part, every person shall be eligible to serve as a juror and be liable, accordingly, to attend for jury service when summoned, if –
  - (a) he or she has attained the age of 18 and has not attained the age of 72;
  - (b) he or she is entitled to have his or her name included on the electoral register in accordance with Article 5 of the Public Elections (Jersey) Law 2002<sup>21</sup>; and
  - (c) he or she is not exempt from, or disqualified for jury service.
- (2) A person is exempt from jury service if he or she is –
  - (a) the Attorney General or Solicitor General;
  - (b) the Bailiff or Deputy Bailiff;
  - (c) a Commissioner;
  - (d) the Judicial Greffier, Deputy Judicial Greffier or a Greffier Substitute;
  - (e) a Jurat;
  - (f) the Magistrate or Assistant Magistrate;
  - (g) the Viscount or Deputy Viscount;
  - (h) a member of the Youth Court Panel;
  - (i) an advocate, solicitor, prosecutor or Centenier who, in the 12 months immediately before being summoned for jury service, has participated in any criminal proceedings;
  - (j) an officer of the Bailiff's Department or Law Officers Department appointed, as referred to in Article 1(1) of the Departments of the Judiciary and the Legislature (Jersey) Law 1965<sup>22</sup> (the "1965 Law"), to ensure the service of those Departments; or
  - (k) a police officer in the States of Jersey Police Force.
- (3) A person is disqualified for jury service if he or she –
  - (a) is detained, or liable to be detained, under the Mental Health Law;
  - (b) is subject to guardianship under Part 4 of the Mental Health Law;
  - (c) lacks capacity, within the meaning of the Capacity and Self-Determination (Jersey) Law 2016<sup>23</sup>, to serve as a juror;
  - (d) has at any time, in Jersey or elsewhere, been sentenced to imprisonment for one month or more;
  - (e) has, within 10 years immediately before being summoned for jury service, been convicted –
    - (i) of any offence, and –

- (A) sentenced to imprisonment (including a sentence by virtue of Article 4 of the Young Offenders Law),
- (B) been subject to a probation order with a condition imposed under Article 3 of the Probation Law, or
- (C) been subject to an order imposed under Article 2 of the Community Service Orders Law, or
- (ii) of an offence under the law of a jurisdiction other than Jersey, and sentenced to a penalty equivalent to any of those listed in clause (i);
- (f) is bound over by virtue of an order under Article 2 of the Probation Law and who remains subject to such an order;
- (g) is, in Jersey or elsewhere –
  - (i) awaiting trial for any offence punishable with imprisonment,
  - (ii) in contempt of court, or
  - (iii) liable to arrest.
- (4) The States may, by Regulations, amend the list of persons exempt from, or disqualified for, jury service set out in paragraphs (2) and (3).
- (5) In paragraph (2)(j) “Bailiff’s Department” and “Law Officers Department” have the meaning given in Article 1(1)(a) and (b) of the 1965 Law.

#### **64 Jury and panel lists**

- (1) Regulations under this Article shall make provision for, or in connection with, the following requirements –
  - (a) for the Viscount to compile a list of persons who are eligible to serve as jurors (“jury list”);
  - (b) for the parishes or any other administration of the States to provide the Viscount with such information, and in such form, as may be prescribed to enable the compilation of the jury list;
  - (c) for the Viscount, upon notification by the Judicial Greffier in such manner as may be prescribed, to prepare a list of persons (“panel list”) who may be called upon to serve as jurors.
- (2) When the Viscount receives notification that a panel list is required, the Viscount shall, from the jury list, select at random such numbers of persons as appear to the Viscount to be necessary for the purposes of securing that a sufficient number of persons will be available to serve on a jury for a trial on a given date or trials throughout a given period.
- (3) The Viscount may, if he or she considers it expedient, form a supplementary panel list compiled in accordance with paragraph (2).
- (4) When the panel list has been compiled, it shall be signed by the Viscount who shall then individually summon the persons named on that list to attend for jury service.
- (5) A summons requiring a person to attend for jury service shall be –
  - (a) signed by the Viscount;

- (b) in the prescribed form and contain such information as may be prescribed; and
- (c) served upon the person in such manner as may be prescribed.

#### **65 Viscount's power to exempt from jury service**

- (1) The Viscount may, of his or her own motion or on the written application of a person summoned to attend for jury service, exempt the person from his or her duty to attend –
  - (a) if the Viscount considers the person to be exempted from or disqualified for jury service under Article 63 or under any other enactment; or
  - (b) for any other reason which the Viscount considers sufficient to justify such exemption.
- (2) The Viscount shall notify the Judicial Greffier of every application received and decision he or she has made under paragraph (1) together with the reasons given for the decision.
- (3) A person aggrieved by a decision of the Viscount following a written application under paragraph (1) may renew that application to the Royal Court.
- (4) Criminal Procedure Rules may make provision as to procedure for an application under paragraph (3) and for the determination of that application.
- (5) A person who, with the intention of obtaining an exemption under this Article, makes a false declaration or representation in a written application under paragraph (1), is guilty of an offence and liable to a fine.

#### **66 Selection of persons for jury service**

- (1) A jury shall be constituted of 12 persons.
- (2) The persons who constitute the jury shall be selected in accordance with this Article and Articles 68 and 69.
- (3) Except as provided under paragraph (4), on the day upon which a person has been summoned to attend for jury service, the names of not less than 12 persons appearing on the panel list shall, in open court, be read out by the Judicial Greffier in the order in which the names appear on the list.
- (4) A person whose name appears on the panel list shall not be read out –
  - (a) if that person has, since the compilation of that list, been exempted from jury service under Article 65; or
  - (b) if it appears to the Bailiff that it would be in the interests of justice not to identify that person.
- (5) This paragraph applies where a trial is expected to last for more than 5 days.

- (6) Where paragraph (5) applies, once 12 persons have been selected to serve as jurors, the names of 2 further persons shall, subject to paragraph (4), be read from the list in the order in which their names appear on the list.
- (7) The 2 further persons referred to in paragraph (6) shall, subject to Articles 68 and 69, be the jury's reserve jurors.
- (8) A reserve juror may be called to serve on the jury if, before the commencement of the Bailiff's summing up of the case, the number of jurors is reduced, and shall be discharged from jury service if he or she is not required to serve before the commencement of the Bailiff's summing up.

**67 Offence of failing to attend or serve as a juror**

- (1) A person is guilty of an offence and liable to a fine if, without reasonable excuse, that person –
  - (a) fails to attend for jury service when summoned under Article 64(4);
  - (b) having attended for jury service, is not available when selected to serve as a juror; or
  - (c) having been selected to serve as a juror, withdraws from jury service without the permission of the Bailiff.
- (2) It shall be for the person to prove that he or she had a reasonable excuse under paragraph (1).

**68 Non-selection of person for jury service - family relationship**

- (1) This Article applies where it appears to the Bailiff that a father or mother and a son or daughter; a husband and a wife; 2 civil partners in a civil partnership; 2 brothers; 2 sisters; or a brother and a sister are both on the panel list.
- (2) A person who is related to another person by reason of the relationship described in paragraph (1) ("related person") and whose name appears on the list after the other related person on the list, cannot serve on the same jury and the Bailiff shall discharge him or her from the requirement to attend for jury service on that occasion.

**69 Non-selection of person for jury service by reason of successful challenge**

- (1) The defence or prosecution may, for good reason, challenge any person whose name is read from the list and that challenge must be made after the person's name has been read out and before he or she is sworn to serve on a jury.
- (2) A challenge shall not be accepted by the Bailiff other than for a legitimate reason, that is to say –
  - (a) a risk of material prejudice to the trial;
  - (b) manifest unsuitability; or
  - (c) in the interests of justice.



- (3) The fact that a person summoned to serve on a jury is not qualified to serve as a juror, or is otherwise not permitted to serve, shall be a ground of challenge for good reason.
- (4) The Bailiff may, of his or her own motion, discharge a person from the requirement to attend for jury service on one or more of the grounds referred to in paragraphs (2) and (3).
- (5) If, when all the names on the panel list have been read out, the number of unchallenged or undischarged persons remaining is insufficient to constitute a jury, the trial shall be postponed until –
  - (a) the persons whose names appear on any supplementary panel list, formed under Article 64(3); or
  - (b) the Viscount forms a new panel list and the persons on that list, are summoned to constitute a jury in accordance with Article 66.

#### **70 Swearing of jurors**

- (1) Each juror and reserve juror selected under Article 66 –
  - (a) must take an oath or make a solemn affirmation; and
  - (b) becomes a full jury member until discharged.
- (2) For the purposes of this Article, the States may, by Regulations, prescribe the form of oath which may be taken by a juror.
- (3) The solemn affirmation shall be in the appropriate form set out in the Schedule to the Solemn Affirmations Law.

#### **71 Reduction in number of jurors**

- (1) This paragraph applies if, during a trial, a member of the jury –
  - (a) dies;
  - (b) becomes ill or is otherwise indisposed preventing him or her from continuing as a juror; or
  - (c) is discharged by the Court for any other legitimate reason.
- (2) Where paragraph (1) applies, provided the number of jurors is not reduced below 10, the jury shall be deemed to be duly constituted and the proceedings shall continue and a verdict may be delivered accordingly.
- (3) If there is an insufficient number of reserve jurors to constitute a jury of not less than 10 jurors, the Bailiff shall discharge the jury from the proceedings and from the custody of the Viscount (as referred to in Article 72(1)(a)).
- (4) Where paragraph (3) applies, the Attorney General shall, not more than 7 days after the day the jury is discharged, notify the defendant and the Bailiff whether or not there is to be a retrial of the proceedings.
- (5) In determining when the 7 day expires, there shall be disregarded Christmas Day, Good Friday and any Bank Holiday.

- (6) The Bailiff shall adjourn the case pending receipt of the Attorney General's notification, and may remand the defendant in custody or on bail.
- (7) Article 76 shall apply in the event that notification is given under paragraph (4) that there is to be no retrial of the proceeding against the defendant.

## **72 Conduct of jury**

- (1) Except where paragraph (4) applies, from the time when the jury is sworn, until the time the jury delivers its verdict –
  - (a) the jury shall remain in the custody of the Viscount throughout the course of the trial; and
  - (b) the jurors are only permitted to communicate with –
    - (i) each other, or
    - (ii) a member of the staff of the Royal Court or Viscount.
- (2) The Viscount shall ensure that the jury does not otherwise communicate with any other person outside the jury room.
- (3) A juror who communicates with another person in contravention of paragraph (1)(b), is guilty of an offence and liable to imprisonment for a term not exceeding 2 years and to a fine.
- (4) The Bailiff may, if he or she thinks fit, permit the jurors, at any time either before or after they have retired to consider their verdict, to leave the custody of the Viscount and to separate, and in such a case the prohibition against communicating with anyone shall only apply to communications concerning the case.
- (5) At the conclusion of the trial the jurors, escorted by the Viscount, shall retire to the jury room to consider their verdict.
- (6) The jurors shall select from one of their number a juror who shall chair the jury's deliberations and deliver the jury's verdict.
- (7) Exhibits or other material relevant to the trial, may be made available to the jury in such manner as may be prescribed.
- (8) The costs incurred by placing the jury in the custody of the Viscount shall be paid out of the annual income of the States.

## **73 Surrender of communication devices**

- (1) The Bailiff may order the members of the jury to surrender, for a period, any form of device which is capable of transmitting or receiving, in any manner, communications in any form.
- (2) An order may be made only if the Bailiff considers that –
  - (a) the order is necessary or expedient in the interests of justice; and
  - (b) the terms of the order are a proportionate means of safeguarding those interests.

- (3) An order may only specify a period during which the members of the jury are –
  - (a) in the building in which the trial is being heard;
  - (b) in other accommodation provided at the Bailiff's request;
  - (c) visiting a place in accordance with arrangements made by the court; or
  - (d) travelling to or from a place mentioned in sub-paragraph (b) or (c).
- (4) An order may be made subject to exceptions.
- (5) It is a contempt of court for a member of a jury to fail to surrender any form of device in accordance with an order under this Article.

#### **74 Offence: research by jurors**

- (1) A juror who, during the period of a trial, researches a case –
  - (a) by intentionally searching for information on an electronic database, including by means of the internet; and
  - (b) when doing so, knows or ought reasonably to know that the information is, or may be relevant to the case which is being tried,is guilty of an offence and liable to imprisonment for a term not exceeding 2 years and to a fine.
- (2) Information relevant to the case includes information about –
  - (a) a person involved in events relevant to the case;
  - (b) the judge presiding at the trial;
  - (c) any other person involved in the trial, whether as a lawyer, a witness or otherwise;
  - (d) the law relating to the case;
  - (e) the law of evidence; and
  - (f) court procedure.
- (3) In this paragraph, the expression “the period of a trial” is the period –
  - (a) beginning when the juror is sworn to try the case; and
  - (b) ending when the Bailiff discharges the jury or, if earlier, when he or she discharges the juror.

#### **75 Verdicts**

- (1) If a verdict cannot be delivered on the same day as the jury retires to consider its verdict, the proceedings shall be adjourned to the following day, and from day to day if necessary, until the verdict has been delivered.
- (2) The jury must deliver a unanimous verdict unless the Bailiff directs that the jury may deliver a majority verdict.
- (3) A majority verdict is delivered if a jury is constituted of –
  - (a) 12 jurors and at least 10 of them agree on the verdict; or

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- (b) less than 12 jurors and at least 9 of them agree on the verdict.
  - (4) When the jury is ready to deliver its verdict, the Judicial Greffier must ask the juror selected under Article 72(6) –
    - (a) whether the defendant is guilty or not guilty of the offence (or each offence, if more than one) charged in the indictment;
    - (b) in the case of a guilty verdict, whether that verdict is in respect of a lesser offence than one charged in the indictment;
    - (c) whether the jury's verdict in respect of the offence (or each offence) was agreed unanimously or by a majority; and
    - (d) in the case of a majority verdict, how many jurors were in favour of acquitting and how many jurors were in favour of convicting the defendant.
  - (5) In the case of a guilty verdict the defendant shall stand convicted of the offence and sentenced accordingly.
  - (6) In the case of a not guilty verdict the defendant shall be acquitted of the offence and, provided the defendant is not convicted of another offence charged in the indictment, he or she shall be discharged from the proceedings.
  - (7) The Judicial Greffier shall make a record of every verdict.
  - (8) If, following such period of time for deliberation as the Bailiff thinks reasonable having regard to the nature and complexity of the case, the jury is unable to deliver a verdict upon which the majority of jurors are agreed, the Bailiff shall discharge the jury from the proceedings and from the custody of the Viscount.
  - (9) Where paragraph (8) applies, the Attorney General shall, not more than 7 days after the day the jury is discharged, notify the defendant and the Bailiff whether or not there is to be a retrial of the proceedings.
  - (10) In determining when the 7 day expires, there shall be disregarded Christmas Day, Good Friday and any Bank Holiday.
  - (11) The Bailiff shall adjourn the case pending receipt of the Attorney General's notification, and may remand the defendant in custody or on bail.
  - (12) No judgment after the verdict shall be liable to be set aside by reason of a failure to comply with the requirements of this Law as regards the summoning or empanelling of jurors or the incapacity of a person to serve as a juror.

## **76 Procedure where no retrial**

- (1) Where notification is given under Article 75(9) that there is to be no retrial of the proceeding against the defendant, the Bailiff shall, for the purposes of formally discharging the defendant from the proceedings, adjourn the case –
  - (a) if the defendant is in custody, to the next working day; or
  - (b) if the defendant has been released on bail, to the next practicable sitting date,

following receipt of the Attorney-General's notification.

- (2) The Bailiff may, for the period of the adjournment under paragraph (1), remand the defendant in custody or on bail.
- (3) The Bailiff may, upon formally discharging the defendant from the proceedings, make such other orders or directions as may be required in relation to the discharged proceedings, or in relation to any other criminal proceedings pending before the Royal Court in respect of that defendant.

## **PART 10**

### **MISCELLANEOUS PROCEDURES IN MAGISTRATE'S COURT AND ROYAL COURT**

#### *Application*

#### **77 Application and general interpretation of Part 10**

- (1) This Part applies to criminal proceedings before the Magistrate's Court and the Royal Court.
- (2) In this Part –  
“defence case statement” shall be construed in accordance with Article 85;  
“witness notice” shall be construed in accordance with Article 86.

#### *Arrest order with bail*

#### **78 Arrest order with bail**

- (1) This Article applies where the court, in the exercise of powers under this Law or under any other enactment, orders the arrest of a person.
- (2) Where this Article applies, the court may grant the person bail by endorsing the order with a direction in accordance with paragraph (3).
- (3) A direction endorsed on an order under paragraph (2), may state that the person arrested is to be released on bail –
  - (a) subject to a duty to appear before the court at the time and on the date notified by the court; or
  - (b) on condition that the person provides a security for his or her appearance before the court at the time and on the date notified by the court.
- (4) The security referred to in paragraph (3)(b) –
  - (a) shall be of such an amount as the court directs to be specified in the endorsement;
  - (b) must be deposited with the Viscount before the person is released on bail; and

- (c) may be provided by the person, or on his or her behalf.
- (5) If a person granted bail subject to a security under this Article fails, without reasonable excuse, to appear before the court as notified under paragraph (3)(a), the security shall be forfeited in accordance with Article 13 of the Bail Law.
- (6) A person granted bail under this Article who, without reasonable excuse, fails to appear before the court as notified under paragraph (3)(a), shall be guilty of an offence and Article 20 of the Bail Law shall apply for the purposes of that offence.

*Determination of disputed facts where guilty plea entered*

**79 Guilty plea - procedure to determine facts disputed**

- (1) This Article applies where a defendant pleads guilty but disputes the facts of the offence alleged by the prosecution.
- (2) Where agreement as to the facts disputed is not reached between the defendant and the prosecution, unless the court directs otherwise, the following procedure shall be followed –
  - (a) the defendant's basis of his or her plea must be set out in writing, identifying what is in dispute and must be signed by the defendant;
  - (b) the court may invite the parties to make representations about whether the dispute is material to sentence; and
  - (c) if the court decides that it is a material dispute, the court shall invite such further representations or evidence as it may require.
- (3) Where agreement as to the facts disputed is reached between the defendant and the prosecution, the court may, notwithstanding such agreement, of its own motion require that evidence relevant to the facts disputed shall be heard.
- (4) In proceedings before the Royal Court, representations or evidence under this Article shall be given before the Inferior Number.

*Withdrawal of guilty plea and discontinuance, withdrawal or continuation of proceedings*

**80 Withdrawal of guilty plea**

- (1) A defendant who has entered a guilty plea may at any time, with leave of the court, withdraw that plea.
- (2) Where the court grants a defendant leave to withdraw his or her guilty plea, the court shall give directions as to the future conduct of the proceedings.

**81 Discontinuance of proceedings**

- (1) In this Article –

“preliminary stage” in relation to proceedings for an offence does not include any stage of the proceedings after the Magistrate’s Court or Royal Court has begun to hear evidence for the prosecution;

“authorized prosecutor” means a prosecutor who is authorized in writing by the Attorney General to give a notice under paragraph (2).

- (2) The Attorney General or an authorized prosecutor may, at any time during the preliminary stages of the proceedings, give notice that he or she does not want the proceedings to continue in relation to an offence specified in the notice (“specified offence”).
- (3) The proceedings in respect of the specified offence shall be discontinued with effect from the giving of that notice to the Magistrate’s Court or Judicial Greffier, as the case may be, and a record shall be made to that effect.
- (4) The Attorney General or authorized prosecutor shall, in any notice given under paragraph (2) –
  - (a) state whether the reason for discontinuing the proceedings –
    - (i) is that it would not be in the public interest to proceed with the prosecution of the defendant for the specified offence, or
    - (ii) is that there is insufficient evidence to support the prosecution of the defendant for the specified offence; and
  - (b) where the proceedings are in the Magistrate’s Court, inform the defendant of his or her right to apply for the proceedings in respect of the specified offence to continue.
- (5) A defendant who, under paragraph (4)(b), wants the proceedings to continue, must serve the Magistrate’s Court with a notice to that effect not more than 35 days after the notice given under paragraph (2).
- (6) If the defendant serves a notice under paragraph (5) –
  - (a) the Magistrate must notify the Attorney General or authorized prosecutor; and
  - (b) the proceedings shall continue as if no notice had been given under paragraph (2).
- (7) The discontinuance of any proceedings under this Article shall not prevent the Attorney General from instituting fresh proceedings in respect of the same offence, provided that where the reason for discontinuing the original proceedings –
  - (a) was under paragraph (4)(a)(i), the Attorney General is of the opinion that there are exceptional circumstances justifying the institution of fresh proceedings in respect of that offence; or
  - (b) was under paragraph (4)(a)(ii) –
    - (i) further evidence has come to light,
    - (ii) the original decision to discontinue the proceedings was incorrect, or
    - (iii) the original decision to discontinue the proceedings would have been different in the light of a change in circumstances, or new information since the original decision was made.

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- (8) Criminal Procedure Rules may make provision as to the form, content and service of any notices given under this Article.

## **82 Withdrawal of proceedings or continuation of previous proceedings**

- (1) The Attorney General may, at any time, with leave of the court –
- (a) withdraw criminal proceedings;
  - (b) recommence previously withdrawn criminal proceedings; or
  - (c) progress previously halted criminal proceedings.
- (2) for the purposes of paragraph (1)(c) –
- (a) the reference to halted criminal proceedings is a reference to proceedings in relation to offences which the court has, at the request of the prosecution, ordered to be “left on file”; and
  - (b) such halted proceedings cannot be progressed in the future without leave of the court or Court of Appeal.
- (3) This paragraph applies where leave is sought to progress halted proceedings as required under paragraph (2)(b).
- (4) Where paragraph (3) applies and leave is sought from a court other than the Court of Appeal, unless the court which made the order halting the previous proceedings has expressly ordered otherwise, nothing in this Article shall be taken to prevent the Attorney General from applying for leave of a court other than the one which made the order halting the previous proceedings.

### *Disclosure*

## **83 Duty of prosecution to disclose unused material**

- (1) Subject to paragraph (3), the prosecution must –
- (a) disclose to the defendant any unused prosecution material which has not previously been disclosed to the defendant and which might reasonably be considered capable of undermining the case for the prosecution against the defendant, or of assisting the case for the defendant; and
  - (b) give to the defendant a written statement confirming –
    - (i) that all unused prosecution material of a description mentioned sub-paragraph (a) has been disclosed to the defendant, or
    - (ii) that the prosecution holds no material of such a description.
- (2) In paragraph (1), “unused prosecution material” is material which is in the prosecution’s possession, and came into its possession in connection with the case for the prosecution against the defendant.
- (3) Unless the court orders otherwise, the duty to disclose unused prosecution material under this Article shall not apply where the prosecution is of the view that it would not be in the public interest to disclose that material.



- (4) The prosecution must disclose any unused prosecution material after the defendant has first entered a not guilty plea and in accordance with any directions given by the court as to service of that material.
- (5) The prosecution shall be under a continuing duty to disclose any unused prosecution material, including material relevant to any matters set out in the defendant's defence case statement, until the trial of the defendant's case is concluded either by way of the defendant's acquittal or conviction, or the proceedings having otherwise been –
  - (a) discontinued under Article 81;
  - (b) withdrawn under Article 82(1)(a); or
  - (c) halted by the court.

#### **84 Duty to give defence case statement**

- (1) Where –
  - (a) the prosecution has served on the defendant a copy of the set of documents containing the evidence which is the basis of the charge; and
  - (b) the unused prosecution material has been disclosed in accordance with Article 83(3),the defendant must, subject to paragraph (3), give a defence case statement to the court and the prosecution.
- (2) The defence case statement shall –
  - (a) be in the prescribed form;
  - (b) be signed by the defendant, or if he or she is unable to sign it personally, by the defendant's legal representative on his or her behalf;
  - (c) contain the particulars set out in Article 85; and
  - (d) be served in accordance with the court's directions.
- (3) If the defendant has no legal representative the court may, in exceptional circumstances, on the application of the defendant or of the court's own motion dispense with the requirement to give a defence case statement.
- (4) If it appears to the Magistrate or Bailiff that the defendant has failed to comply fully with this Article so that there is a possibility of comment being made or inferences drawn under Article 87(2), he or she shall warn the defendant accordingly.
- (5) If it appears to the Magistrate or Bailiff that the defendant has not served a defence case statement which complies with the requirements set out in paragraph (2), the Magistrate or Bailiff (as the case may be) may order that –
  - (a) the defendant's legal representatives; or
  - (b) a defendant in person (where he or she is unrepresented),pay such of the prosecution's costs as have been incurred as at the date of the court's directions given under paragraph (2)(b).

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- (6) A determination under paragraph (5) shall be made as soon as practicable after the date of the court's directions.
  - (7) Any costs ordered to be paid under paragraph (5) shall be enforced as a civil debt without further order of the court.
  - (8) The defendant shall be under a continuing duty to disclose any material change to any matters set out in the defendant's defence case statement, or change in the defence relied upon, until the trial of the defendant's case is concluded either by way of the defendant's acquittal or conviction, or the proceedings having otherwise been –
    - (a) discontinued under Article 81;
    - (b) withdrawn under Article 82(1)(a); or
    - (c) halted by the court.

### **85 Content of defence case statement**

- (1) A defence case statement is a written statement which –
  - (a) sets out the nature of the defence, including any particular defences on which the defendant intends to rely;
  - (b) indicates the matters of fact on which the defendant takes issue with the prosecution;
  - (c) sets out, in the case of each such matter of fact, why the defendant takes issue with the prosecution;
  - (d) sets out particulars of the matters of fact on which the defendant intends to rely for the purposes of his or her defence; and
  - (e) indicates any point of law (including any point as to the admissibility of evidence or an abuse of process) which the defendant wishes to take, and any authority on which he or she intends to rely for that purpose.
- (2) A defence case statement that discloses an alibi must give particulars of it, including –
  - (a) the name, address and date of birth of any witness the defendant believes is able to give evidence in support of the alibi (that is, evidence that the defendant was in a particular place or area and at a particular time which is not consistent with the defendant having committed the alleged offence at a particular place and time), or as many of those details as are known to the defendant when the defence case statement is given; and
  - (b) any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the personal details mentioned in paragraph (a) are not known to the defendant when the defence case statement is given.
- (3) Where a defendant's legal representative has signed the defence case statement on the defendant's behalf, the statement shall be treated as if signed by the defendant.

- (4) For the purposes of fulfilling the continuing duty referred to in Article 84(8), a defence case statement shall be amended in such form or manner as may be prescribed.

#### **86 Notification of intention to call defence witnesses**

- (1) The defendant must give to the court and the prosecution a notice indicating whether he or she intends to call any persons (other than himself or herself), including a person mentioned in Article 85(2), as witnesses at his or her trial and, if so, such a notice (“witness notice”) shall include the following particulars –
  - (a) the name, address and date of birth of each such proposed witness, or as many of those details as are known to the defendant when the notice is given; and
  - (b) any information in the defendant’s possession which might be of material assistance in identifying or finding any such proposed witness in whose case any of the personal details mentioned in paragraph (a) are not known to the defendant when the notice is given.
- (2) The particulars mentioned in paragraph (1) do not have to be given under this Article to the extent that they have already been given under Article 85(2).
- (3) The defendant must give a witness notice under this Article within such period as may be prescribed.
- (4) If, following the giving of a witness notice, the defendant –
  - (a) decides to call a person (other than himself or herself) who is not included in that notice as a proposed witness, or decides not to call a person who is so included; or
  - (b) discovers any information which, under paragraph (1), he or she would have had to include in the notice if he or she had been aware of it when giving the notice,

the defendant must give an appropriately amended witness notice to the court and the prosecution.

#### **87 Non-compliant defence case statement or witness notice**

- (1) This Article applies where a defendant –
  - (a) fails to give a defence case statement as required by Article 84(1);
  - (b) fails to serve a defence case statement in accordance with directions given under Article 84(2)(d);
  - (c) fails to serve a defence case statement containing the particulars required under Article 85;
  - (d) sets out inconsistent defences in the defence case statement;
  - (e) at his or her trial –

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- (i) puts forward a defence which was not mentioned in his or her defence case statement or is different from any defence set out in that statement,
    - (ii) relies on a matter or any particular of any matter of fact which was not mentioned in his or her defence case statement,
    - (iii) adduces evidence in support of an alibi without having given particulars of the alibi in his or her defence case statement, or
    - (iv) calls a witness to give evidence in support of an alibi without having complied with Article 85(2) as regards the witness in his or her defence case statement; or
  - (f) at his or her trial calls a witness (other than himself or herself) not included, or not adequately identified, in a witness notice.
  - (2) Where this Article applies –
    - (a) the court or any other party may make such comment as appears appropriate;
    - (b) the Magistrate’s Court or the Royal Court sitting with Jurats or a jury may draw such inferences as appear proper in deciding whether the defendant is guilty of the offence concerned.
  - (3) A defendant shall not be convicted of an offence solely on an inference drawn under paragraph (2)(b).
  - (4) Where the defendant puts forward a defence which is different from any defence set out in his or her defence case statement, in doing anything under paragraph (2) or in deciding whether to do anything under it, the court shall have regard –
    - (a) to the extent of the difference in the defences; and
    - (b) to whether there is any justification for it.
  - (5) Where the defendant calls a witness whom he or she has failed to include, or to identify adequately in a witness notice, in doing anything under paragraph (2) or in deciding whether to do anything under it, the court shall have regard as to whether there is any justification for the failure.

*Attendance of defendant before a court*

**88 Power to hear the defendant through television link**

- (1) In any criminal proceedings, the court may, with the consent of the defendant, direct that the defendant shall be treated as being present at the proceedings if, during the proceedings, either by way of a live television link or by another means, he or she is able to see and hear the court and he or she is able also to be seen and heard by the court.
- (2) Notwithstanding paragraph (1), in any hearing, other than the trial hearing itself, the court may, after hearing representations from the parties and without requiring the consent of the defendant, direct that the defendant shall be treated as being present in the court if, during that

hearing, either by way of a live television link or otherwise, the defendant is able to see and hear the court and to be seen and heard by the court.

### **89 Defendant's duty to attend trial and trial in defendant's absence**

- (1) Unless the court excuses a defendant from attending his or her trial, a defendant is otherwise required to be present at court throughout his or her trial.
- (2) The court may, subject to paragraph (3), proceed to try the defendant in his or her absence if that defendant chooses not to exercise his or her right to be present at his or her trial by voluntarily absenting himself or herself from the court at the beginning of, or during his or her trial.
- (3) Before the court decides to proceed to try a defendant in his or her absence, the court shall have due regard to the interests of justice which shall include consideration of such of the following factors as appear to the court to be relevant –
  - (a) the conduct of the defendant;
  - (b) the disadvantage to the defendant;
  - (c) the public interest that will weigh in favour of commencing or continuing the trial taking account of the inconvenience and hardship –
    - (i) to witnesses and especially to any complainant, of a delay to the trial,
    - (ii) to witnesses who have attended court and are ready to give evidence;
  - (d) the effect of any delay;
  - (e) whether the defendant is off the Island;
  - (f) whether the attendance of the defendant could be secured at a later hearing;
  - (g) the likely outcome if the defendant is found guilty,as well as any other factors which also appear to the court to be relevant.
- (4) If a defendant is convicted in his or her absence, the court shall endeavour to secure that he or she is present at any sentencing hearing and, so far as is reasonably practicable, arrange for the defendant to be legally represented at that hearing.

#### *Reporting of criminal proceedings*

### **90 Contemporary reports of criminal proceedings**

- (1) In criminal proceedings, the court may, where it appears to the court to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other criminal proceedings pending or imminent, order that publication in Jersey of the proceedings or of any part of the proceedings, be postponed for any period that the court thinks necessary for that purpose.

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- (2) A court may make an order under paragraph (1) of its own motion or on application by any of the parties and, where a court makes an order under paragraph (1), it may give any directions that appear to the court to be necessary for the purposes of the order.
  - (3) A person aggrieved by an order under paragraph (1) may appeal in the case of an order made by the Magistrate's Court, to the Inferior Number of the Royal Court or in the case of an order made by the Youth Court, to the Youth Appeal Court or in the case of an order made by the Royal Court, to the Court of Appeal, and the decision of the court hearing that appeal shall be final.
  - (4) On the hearing of an appeal under paragraph (3) the court may do any of the following –
    - (a) stay any proceedings in any other court until after the appeal is disposed of;
    - (b) confirm, reverse or vary the order complained of; and
    - (c) make an order as to costs.
  - (5) Where a court has made an order under paragraph (1), if a report is included in a publication or relevant programme in contravention of that order the following shall be guilty of an offence and liable to a fine –
    - (a) where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
    - (b) where the publication is a relevant programme, any body corporate which provides the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;
    - (c) in the case of any other publication, the person who publishes it.
  - (6) This Article shall be in addition to, and not in derogation from, any other enactment or rule of customary law with respect to the publication of reports and proceedings of any court.

## **91 Defence of innocent publication**

- (1) A person is not guilty of an offence under Article 90(5) if at the time of publication (having taken all reasonable care) the person does not know and has no reason to suspect that an order has been made under Article 90(1).
- (2) The burden of proof of any fact tending to establish a defence afforded by this Article to any person lies upon that person.

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**PART 11****PROVISIONS IN RELATION TO DEFENDANTS AND WITNESSES***Application***92 Application and general interpretation of Part 11**

- (1) This Part applies to criminal proceedings before the Magistrate's Court and the Royal Court.
- (2) In this Part –
  - “oath” includes a solemn affirmation made in accordance with the Solemn Affirmations Law;
  - “spouse” means husband or wife;
  - “witness summons” shall be construed in accordance with Article 94.

*Competence and compellability of witnesses***93 Competence of defendant and witnesses to give evidence**

- (1) Except as provided under paragraphs (3) and (4), at every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.
- (2) A defendant is competent to give evidence in support of his or her defence, provided he or she agrees to do so, but the failure of a defendant, to give evidence shall not be made the subject of any adverse comment by the prosecution.
- (3) A person (including a defendant) is not competent to give evidence in criminal proceedings if it appears to the court that he or she is not a person who is able to –
  - (a) understand questions put to him or her as a witness; and
  - (b) give answers to them which can be understood.
- (4) A defendant is not competent to give evidence for the prosecution (whether he or she is the only defendant, or is one of two or more defendants charged in the same proceedings).
- (5) In paragraph (4) the reference to a defendant does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

**94 Determining competence of witnesses**

- (1) The Bailiff or Magistrate (as the case may be) shall determine, in accordance with this Article, any question as to whether a witness is competent to give evidence in criminal proceedings, whether raised –

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- (a) by a party to the proceedings; or
    - (b) by the court of its own motion.
  - (2) It is for the party calling the witness to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.
  - (3) In determining the question mentioned in paragraph (1) the court shall treat the witness as having the benefit of any special measures ordered, or proposed to be ordered, under Article 102, in relation to the witness.
  - (4) Expert evidence may, with leave of the court, be received on the question.
  - (5) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.

### **95 Compellability of witnesses related to defendant to give evidence**

- (1) Subject to the provisions of this Article, the following persons are compellable to give evidence as witnesses on behalf of the prosecution or defence –
  - (a) the blood relatives of a defendant;
  - (b) the relatives by adoption of a defendant; or
  - (c) the relatives either by marriage or by the formation of a civil partnership of a defendant.
- (2) Subject to paragraph (4), the spouse or civil partner of a defendant is compellable to give evidence on behalf of the defence or any other defendant charged in the same proceedings.
- (3) Subject to paragraph (4), the spouse or civil partner of a defendant is compellable to give evidence on behalf of the prosecution or any other defendant charged in the same proceedings on condition the offence is an offence specified in Schedule 1.
- (4) Where a spouse or civil partner of a defendant is jointly charged with the defendant in respect of an offence, neither the spouse nor civil partner (as the case may be) shall at the trial be compellable by virtue of paragraph (2) or (3) and Schedule 1 to give evidence in respect of that charge unless that spouse or that civil partner (as the case may be) is not, or is no longer, liable to be convicted of the said offence in the proceedings whether as a result of pleading guilty, or for any other reason.
- (5) A person who has been but who is no longer married to a defendant, or who has been but is no longer the civil partner of a defendant, shall be compellable to give evidence as if that person and the defendant had never been married, or had never been in a civil partnership.
- (6) The failure of a spouse or civil partner of a defendant, to give evidence shall not be made the subject of any adverse comment by the prosecution.



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*Giving of sworn or unsworn evidence***96 Determining whether witness to be sworn**

- (1) Subject to the provisions of this Article and Article 97, a witness who is competent to give oral evidence in criminal proceedings shall give that oral evidence on oath.
- (2) Any question whether a witness may be sworn for the purpose of giving evidence on oath, whether raised –
  - (a) by a party to the proceedings; or
  - (b) by the court of its own motion,shall be determined by the Bailiff or Magistrate (as the case may be) in accordance with this Article.
- (3) Expert evidence may, with leave of the court, be received on the question.
- (4) The witness may not be sworn for the purpose of giving evidence on oath unless –
  - (a) he or she has attained the age of 14; and
  - (b) he or she has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.
- (5) The witness shall, if he or she is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced by any party.
- (6) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the court that, on a balance of probabilities, the witness has attained the age of 14 and has a sufficient appreciation of the matters mentioned in paragraph (4)(b).
- (7) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.
- (8) For the purposes of this Article a person is able to give intelligible testimony if he or she is able to –
  - (a) understand questions put to him or her as a witness; and
  - (b) give answers to them which can be understood.

**97 Receiving of unsworn evidence**

- (1) This paragraph applies to a witness (of any age) who –
  - (a) is competent to give evidence in criminal proceedings; but
  - (b) by virtue of Article 96(4) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.
- (2) The evidence in criminal proceedings of a witness to whom paragraph (1) applies shall be given unsworn.

- (3) A deposition of unsworn evidence given by a person to whom paragraph (1) applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.
- (4) The court shall accordingly receive in evidence any evidence given unsworn in accordance with paragraph (2) or (3).
- (5) Where a witness who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no appeal against conviction or sentence shall be allowed by reason only that it appears to the Royal Court or Court of Appeal that the witness was a person falling within Article 96(4) (and should accordingly have given his or her evidence on oath).

*Requirement of witnesses to attend court*

**98 Warning of witnesses as to attendance at court**

- (1) Where a person has made a written statement in accordance with Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998<sup>24</sup>, a person authorized by the Attorney General may warn that person, in writing, or by attending upon him or her in person, to attend before the court to give oral evidence on the day and at the time so warned.
- (2) A person who, without reasonable excuse, fails to comply with a warning given under paragraph (1) shall be guilty of an offence punishable with a fine of level 3 on the standard scale.
- (3) It shall be for the person to prove that he or she had a reasonable excuse for his or her failure to comply with the warning.

**99 Issue of witness summons on application to the court**

- (1) This Article applies where the court is satisfied that a person is likely to be able to give evidence in support of a party applying for a witness summons under this Article if –
  - (a) the evidence is likely to be material evidence, or the person can produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the court;
  - (b) there is reason to believe that person will fail to attend court to give evidence; and
  - (c) it is in the interests of justice to issue a summons under this Article to secure the attendance of that person to give evidence or to produce the document or thing.
- (2) Where the court is so satisfied it shall, subject to the following provisions of this Article, issue a witness summons directed to the person concerned and requiring him or her to –
  - (a) attend before the court at the time and place stated in the witness summons; and
  - (b) give the evidence or produce the document or thing.

- 
- (3) Subject to paragraph (4), a witness summons may only be issued under this Article where a party –
    - (a) has given notice to the court and any other party to the proceedings of a proposed application for a witness summons; and
    - (b) has applied in writing to the court for the issue of a witness summons.
  - (4) The court may dispense with the requirement for a written application for a witness summons, unless the proposed application for a witness summons requires the proposed witness –
    - (a) to produce in evidence a document or thing that relates to another person; or
    - (b) to give evidence about information apparently held in confidence, that relates to another person.
  - (5) A party who wants the court to issue a witness summons must apply as soon as practicable after becoming aware of the existence of anything referred to paragraph (1)(a), that would satisfy the court.
  - (6) A party applying for a witness summons must –
    - (a) indicate when that party first became aware of the existence of anything referred to in paragraph (1)(a);
    - (b) identify the proposed witness;
    - (c) explain –
      - (i) what evidence the proposed witness can give or produce,
      - (ii) why it is likely to be material evidence, and
      - (iii) why there is reason to believe that the witness will fail to attend court to give evidence,
      - (iv) why it would be in the interests of justice to issue a summons; and
    - (d) identify, in relation to sub-paragraph (c), any specific document or thing the proposed witness should be required to bring to court.
  - (7) The court may refuse to issue a witness summons if any of the requirements of this Article are not fulfilled.
  - (8) Where the court decides to issue a witness summons under this Article, that summons may be served in accordance with the court's directions.
  - (9) Where the court does not issue any directions as to service of the witness summons, it shall be sufficient for the summons to be served on the witness personally or left at his or her last known address.
  - (10) Service of the witness summons shall be effected by the Viscount, an officer of the States of Jersey Police Force or a person authorized in writing by the States of Jersey Police Force.
  - (11) Criminal Procedure Rules shall make provision as to the form, content, notice period and service of any notice given under this Article.

**100 Consequences of failure to comply with witness summons**

- (1) A person who, without reasonable excuse, fails to comply with a witness summons by failing to –
  - (a) attend before the court at the time and place stated in the summons;  
or
  - (b) give the evidence or produce the document or thing specified in the summons,shall be guilty of contempt of court.
- (2) It shall be for the person to prove that he or she had a reasonable excuse for his or her failure to comply with the summons.
- (3) The court may order the arrest of a person who fails to attend before the court at the time and place stated in the summons, and a person so arrested may be remanded by the court, in custody or on bail, until such time as the court may appoint for receiving his or her evidence.

*Special measures***101 Eligibility of witness for special measures**

- (1) This Article applies in relation to the giving of evidence by an eligible witness in criminal proceedings.
- (2) In this Article and in Article 102 –
  - (a) “special measures” –
    - (i) means any form of individual assistance, facilitation or support specifically tailored to meet the needs of an eligible witness, whether such measures are applied individually or in combination and which would, in the opinion of the court, be likely to improve the quality of evidence given by that witness,
    - (ii) without limiting the generality of the measures described in clause (i), includes any measures which would enable a witness to give his or her evidence in chief, or under cross-examination, before the commencement of the trial;
  - (b) subject to paragraph (3), “eligible witness” means a person who at the time of the trial –
    - (i) is under the age of 18, or
    - (ii) is aged 18 or older and –
      - (A) suffers from mental disorder within the meaning of the Mental Health Law,
      - (B) has a significant impairment of intelligence and social functioning,
      - (C) has a physical disability or is suffering from a physical disorder,
      - (D) is or is expected to be off the Island, or

- (E) the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.
- (3) Except in relation to paragraph (2)(b)(ii)(D) and (E) a witness includes a defendant who gives evidence on his or her own behalf.
- (4) References in this Article and in Article 102 to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose "coherence" refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.
- (5) In determining whether a witness falls within paragraph (2)(b)(ii)(C) the court must consider any views expressed by the witness.
- (6) In determining whether a witness falls within paragraph (2)(b)(ii)(E) the court must take into account, in particular –
  - (a) the nature and alleged circumstances of the offence to which the proceedings relate;
  - (b) the age of the witness;
  - (c) any such other matters as appear to the court to be relevant, including –
    - (i) the social and cultural background and ethnic origins of the witness,
    - (ii) the domestic and employment circumstances of the witness, and
    - (iii) any religious beliefs or political opinions of the witness;
  - (d) any behaviour towards the witness on the part of –
    - (i) the defendant,
    - (ii) members of the family or associates of the defendant, or
    - (iii) any other person who is likely to be a defendant or witness in the proceedings.
- (7) For the purpose of a determination under paragraph (6), the court must in addition consider any views expressed by the witness.

## **102 Power of the court to order special measures**

- (1) The court may order the provision of special measures –
  - (a) of its own motion; or
  - (b) on the application of a party to the proceedings in relation to a witness in the proceedings.
- (2) Where the court determines under Article 101 that a witness is eligible for assistance by way of special measures, the court must then –
  - (a) determine whether any of the special measures reasonably or practically available in relation to the witness (or any combination

- of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and
- (b) if so –
    - (i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence, and
    - (ii) order the provision of the measure or measures so determined to apply to evidence given by the witness.
  - (3) In determining, for the purposes of paragraph (2), whether any special measure would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court must consider all the circumstances of the case, including in particular –
    - (a) any views expressed by the witness; and
    - (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.
  - (4) Notwithstanding paragraph (1), and regardless of whether or not a defendant is determined to be an eligible witness under Article 101, a defendant may apply in writing to the court for such special measures as will assist him or her in understanding and following the case or for giving instructions to his or her legal representatives.
  - (5) Regardless of whether or not the court receives an application under paragraph (4), or where the defendant is unrepresented, the court may, in the interests of justice, order the provision of such special measures as it considers necessary to assist the defendant.
  - (6) An order under this Article must specify particulars of the provision to be made in respect of each special measure which is to apply to the witness's or, in the case of paragraph (4), the defendant's evidence.
  - (7) Nothing in this Article shall be taken as preventing the court from making an order or giving leave of any description –
    - (a) in relation to a witness who is not an eligible witness; or
    - (b) in relation to an eligible witness where (as, for example, in a case where a foreign language interpreter is to be provided) the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.
  - (8) An application under paragraph (1)(b) may be made orally or in writing and Criminal Procedure Rules may make further provision for or in connection with such an application.
  - (9) The States may, by Regulations, make such further or supplementary provision as may be necessary or expedient for the purposes of any special measures which may be ordered under this Article including provision as to –
    - (a) the nature or description of such special measures;
    - (b) any specified circumstances in which special measures may, or may not be ordered;
    - (c) any specified circumstances in which special measures of a particular description must be ordered; or

- (d) the manner or form in which special measures may be delivered or implemented.

### **103 Power to hear witnesses elsewhere than in court**

Where a witness is, by reason of illness or being off the Island, unable to attend before the court to give evidence, the court may adjourn elsewhere to receive the witness' evidence and, in such case, the normal practice and procedure of the court shall be followed.

*Protection of witnesses from cross-examination by unrepresented defendant*

### **104 Defendant charged with certain offences – prohibition of cross-examination by defendant in person**

- (1) For the purposes of this Article “witness” means –
  - (a) a complainant;
  - (b) a person under the age of 18; or
  - (c) a person aged 18 or older who –
    - (i) suffers from mental disorder within the meaning of the Mental Health Law, or
    - (ii) has a significant impairment of intelligence and social functioning.
- (2) No defendant charged with an offence to which this Article applies may cross-examine, in person, a witness, either –
  - (a) in connection with that offence; or
  - (b) in connection with any other offence (of whatever nature) with which that defendant is charged in the proceedings.
- (3) The offences to which this Article applies are –
  - (a) the customary law offences of false imprisonment; gross indecency; incest; indecent assault; indecent exposure; kidnapping; manslaughter; murder; rape and sodomy;
  - (b) an offence under any of the following Articles of the Loi (1895) modifiant le droit criminel<sup>25</sup> –
    - (i) Article 1.1 (procuring any woman or girl by threats for unlawful carnal connection),
    - (ii) Article 1.2 (procuring a woman or girl by false pretences for unlawful carnal connexion, or causing a woman or girl to have unlawful carnal connexion with a third person),
    - (iii) Article 1.3 (administering drugs for the purposes of unlawful carnal connexion with a woman or girl),
    - (iv) Article 2 (unlawful carnal knowledge of a girl under the age of 13),

- (v) Article 4.1 (unlawful carnal knowledge of a girl aged 13 but under the age of 16 or a mentally impaired girl or woman), and
  - (vi) Article 5 (permitting girls under the age of 16 to frequent premises for the purposes of prostitution);
  - (c) an offence under Article 2 (indecent photographs or pseudo-photographs of children) of the Protection of Children (Jersey) Law 1994<sup>26</sup>;
  - (d) an offence under any of the following Articles of the Sexual Offences (Jersey) Law 2007<sup>27</sup> –
    - (i) Article 2 (meeting a child following sexual grooming etc.),
    - (ii) Article 3 (abuse of position of trust: sexual activity with a child),
    - (iii) Article 4 (abuse of position of trust: causing or inciting a child to engage in sexual activity),
    - (iv) Article 5 (abuse of position of trust: sexual activity in the presence of a child), and
    - (v) Article 6 (abuse of position of trust: causing a child to watch a sexual act);
  - (e) any sexual offence under Articles 74 to 76 of the Mental Health Law; and
  - (f) any offence (not within any of the preceding sub-paragraphs) which involves an assault on, or injury or a threat of injury to any person.
- (4) The States may, by Regulations, amend this Article for the purposes of amending the offences listed in paragraph (3).

### **105 Order prohibiting defendant in person from cross-examining witness**

- (1) This Article applies in a case where Article 104 does not operate so as to prevent a defendant from cross-examining, in person, a witness.
- (2) In a case to which this Article applies –
  - (a) the prosecutor may make an application to the court for an order under this Article in relation to a witness; or
  - (b) the court may, of its own motion, make an order under this Article in relation to a witness.
- (3) The court may make an order prohibiting the defendant from cross-examining (or further cross-examining), in person, the witness if it appears to the court –
  - (a) that the quality of evidence given by the witness on cross-examination –
    - (i) is likely to be diminished if the cross-examination (or further cross-examination) is conducted by the defendant in person, and
    - (ii) would be likely to be improved if an order were given under this Article; and



- (b) that it would not be contrary to the interests of justice to make such an order.
- (4) In determining whether paragraph (3)(a) applies in the case of a witness, the court must have regard, in particular, to –
  - (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the defendant in person;
  - (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);
  - (c) any behaviour on the part of the defendant at any stage of the proceedings, both generally and in relation to the witness;
  - (d) any relationship (of whatever nature) between the witness and the defendant;
  - (e) whether any person (other than the defendant) is or has at any time been charged in the proceedings with a sexual offence or an offence to which Article 104 applies, and (if so) whether Article 104 operates or would have operated to prevent that person from cross-examining the witness in person; and
  - (f) any order under Article 102 which the court has given, or proposes to give, in relation to the witness.
- (5) For the purposes of this Article –
  - (a) “witness”, in relation to a defendant, does not include any other person who is charged with an offence in the proceedings; and
  - (b) any reference to the quality of a witness’s evidence shall be construed in accordance with Article 101(4).

*Cross-examination on behalf of the defendant*

**106 Defendant’s representative for purposes of cross-examination**

- (1) This Article applies where a defendant is prevented from cross-examining, in person, a witness by virtue of Article 104 or 105.
- (2) Where it appears to the court that this Article applies, it must –
  - (a) invite the defendant to arrange for a legal representative to act for him or her for the purpose of cross-examining the witness; and
  - (b) require the defendant to notify the court, by the end of such period as it may specify, whether a legal representative is to act for him or her for that purpose.
- (3) If by the end of the period mentioned in paragraph (2)(b) either –
  - (a) the defendant has notified the court that no legal representative is to act for him or her for the purpose of cross-examining the witness; or
  - (b) no notification has been received by the court and it appears to the court that no legal representative is to so act,

the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the defendant.

- (4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court must appoint an advocate (chosen by the court) to cross-examine the witness in the interests of the defendant.
- (5) An advocate so appointed shall not be responsible to the defendant.
- (6) Criminal Procedure Rules may make provision –
  - (a) as to the time when, and the manner in which, paragraph (2) is to be complied with;
  - (b) in connection with the appointment, and payment of costs of an advocate under paragraph (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.
- (7) For the purposes of this Article and Article 107, any reference to cross-examination includes (in a case where an order is made under Article 105 after the defendant has begun cross-examining the witness) a reference to further cross-examination.

#### **107 Warning to Jurats or Jury**

Where a defendant before the Royal Court is prevented from cross-examining, in person, a witness by virtue of Article 104 or 105, the Bailiff must give the Jurats or jury (as the case may be) such warning as he or she considers necessary to ensure that the defendant is not prejudiced –

- (a) by any inferences that might be drawn from the fact that the defendant has been prevented from cross-examining the witness;
- (b) where the witness has been cross-examined by a legal representative appointed under Article 106(4), by the fact that the cross-examination was carried out by such a legal representative, and not by a person acting as the defendant's own legal representative.

#### *Intimidation of witnesses and jurors*

#### **108 Intimidation, etc. of witnesses, jurors and others**

- (1) A person commits an offence (“an offender”) if he or she does an act –
  - (a) which intimidates, and is intended to intimidate, another person (“the victim”);
  - (b) knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in criminal proceedings; and
  - (c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.
- (2) An offender commits an offence if –

- 
- (a) he or she does an act –
    - (i) which harms, and is intended to harm, another person, or
    - (ii) intending to cause another person to fear harm, he or she threatens to do an act which would harm that other person;
  - (b) he or she does or threatens to do the said act knowing or believing that the person harmed or threatened to be harmed (“the victim”), or some other person has –
    - (i) assisted in an investigation into an offence,
    - (ii) given evidence or particular evidence in criminal proceedings, or
    - (iii) acted as a juror or concurred in a particular verdict in criminal proceedings; and
  - (c) he or she does or threatens to do that act because of that knowledge or belief.
- (3) For the purposes of paragraphs (1) and (2) it is immaterial that the act is or would be done, or that the threat is made –
- (a) otherwise than in the presence of the victim; or
  - (b) to a person other than the victim.
- (4) The harm that may be done to a person, includes –
- (a) physical harm or an intimidatory act;
  - (b) financial harm;
  - (c) harm to a persons’ property; and
  - (d) threats.
- (5) The intention required by paragraph (1)(c) and the motive required by paragraph (2)(c) need not be the only or the primary intention or motive with which the act is done or, in the case of paragraph (2), threatened.
- (6) If, in proceedings against a person for an offence under paragraph (1), it is proved that he or she did an act falling within paragraph (1)(a) with the knowledge or belief required by paragraph (1)(b), he or she shall be presumed, unless the contrary is proved, to have done the act with the intention required by paragraph (1)(c).
- (7) If, in proceedings against an offender for an offence under paragraph (2), it is proved that within the relevant period –
- (a) he or she did an act which harmed, and was intended to harm, another person; or
  - (b) intending to cause another person fear of harm, he or she threatened to do an act which would harm that other person,
- and that he or she did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by paragraph (2)(b), the offender shall be presumed, unless the contrary is proved, to have done the act or, (as the case may be) threatened to do the act with the motive required by paragraph (2)(c).
- (8) An offender guilty of an offence under this Article shall be liable to imprisonment for a term of 10 years and to a fine.

- (9) In this Article –
- “investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;
- “offence” and “offender” includes a suspected offence or offender;
- “potential”, in relation to a juror, means a person who has been summoned for jury service under Article 64;
- “relevant period” –
- (a) in relation to a witness or juror in any criminal proceedings, means the period beginning with the formal commencement of the proceedings and ending with the first anniversary of the conclusion of the trial, or –
- (i) if there is an appeal under Article 33, the determination or abandonment of the appeal, or
- (ii) where a case is stated under Article 37, the determination of the case in accordance with Article 38;
- (b) in relation to a person who has, or is believed by the offender to have, assisted in an investigation into an offence, but was not also a witness in criminal proceedings, means the period of one year beginning with any act of that person, or any act believed by the offender to be an act of that person assisting in the investigation; and
- (c) in relation to a person who both has, or is believed by the offender to have, assisted in the investigation into an offence and was a witness in criminal proceedings, means the period beginning with any act of that person, or any act believed by the offender to be an act of that person assisting in the investigation and ending with the anniversary mentioned in sub-paragraph (a).
- (10) For the purposes of the definition of the relevant period in paragraph (9) –
- (a) criminal proceedings are formally commenced when a summons is issued under Article 14 or 19;
- (b) a trial is concluded with the occurrence of any of the following –
- (i) the discontinuance of the proceedings under Article 81,
- (ii) the withdrawal of the proceedings under Article 82(1)(a),
- (iii) the discharge of the jury without a verdict under Article 75(8),
- (iv) the acquittal of a defendant or the sentencing of, or other dealing with, a defendant for the offence of which he or she was convicted.
- (11) This Article is in addition to, and not in derogation of, any offence subsisting under customary law.

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**PART 12****WASTED COSTS IN CRIMINAL PROCEEDINGS****109 Provisions as to costs incurred because of act or omission**

- (1) In any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, the court may make an order as to the payment of those costs.
- (2) Criminal Procedure Rules may make further provision regarding costs ordered under this Article.

**110 Wasted costs against defence or prosecution**

- (1) In criminal proceedings, the court may order the defence or prosecution to meet, the whole of any wasted costs or such part of them as the court may determine.
- (2) The States may, by Regulations, make further provision as to the court's determination of costs for the purposes of an order under paragraph (1), including in relation to cases of a particular description.
- (3) Where an order is made by –
  - (a) the Magistrate under paragraph (1), the defence or prosecution may appeal to the Royal Court; or
  - (b) the Royal Court under paragraph (1), the defence or prosecution may appeal to the Court of Appeal.
- (4) In this Article “wasted costs” means any costs incurred by a party –
  - (a) as a result of any improper, unreasonable or negligent act or omission on the part of the defence or prosecution; or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

**111 Provision for award of costs against third parties**

- (1) The States may by Regulations make provision empowering the court to make a third party costs order if the condition in paragraph (3) is satisfied.
- (2) A “third party costs order” is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings (“the third party”).
- (3) The condition is that –
  - (a) there has been serious misconduct (whether or not constituting a contempt of court) by the third party; and

- 
- (b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against that third party.
  - (4) Regulations under this Article may, in particular –
    - (a) specify types of misconduct in respect of which a third party costs order may not be made;
    - (b) allow the making of a third party costs order at any time;
    - (c) make provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;
    - (d) make provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.
  - (5) Regulations under this Article in relation to the Magistrate or Royal Court must provide that the third party may appeal to –
    - (a) the Royal Court against a third party costs order made by the Magistrate; and
    - (b) the Court of Appeal against a third party costs order made by the Royal Court.

## **PART 13**

### **ESTABLISHMENT AND FUNCTIONS OF THE CRIMINAL PROCEDURE RULES COMMITTEE**

#### **112 Criminal Procedure Rules Committee**

- (1) There are to be rules of court (to be called “Criminal Procedure Rules”) governing the practice and procedure to be followed in criminal proceedings.
- (2) Criminal Procedure Rules are to be made by a committee known as the Criminal Procedure Rules Committee.
- (3) The Criminal Procedure Rules Committee shall be chaired by the Bailiff or, in his or her absence, the Deputy Bailiff, who shall both be members of the Committee.
- (4) The Criminal Procedure Rules Committee shall also consist of the following members –
  - (a) the Attorney General or a person nominated by the Attorney General;
  - (b) the Chief Officer of the States of Jersey Police Force or a person nominated by that Chief Officer;
  - (c) the Judicial Greffier or a person nominated by the Judicial Greffier;
  - (d) the Magistrate or a person nominated by the Magistrate;
  - (e) the person who is the senior délégué or a person nominated by that délégué;

- 
- (f) the Viscount or a person nominated by the Viscount;
  - (g) an advocate nominated by the Bâtonnier who has particular experience of practice in criminal proceedings; and
  - (h) a person nominated by the Chief Minister.
- (5) Before nominating a person under paragraph (4), the Bailiff must first be consulted.
  - (6) A person shall be nominated for such period as may be specified by the person who has nominated him or her.
  - (7) The Criminal Procedure Rules Committee may, subject to a quorum of not less than 5 members, meet for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit.
  - (8) The Criminal Procedure Rules Committee must, before making Criminal Procedure Rules –
    - (a) consult such persons as it considers appropriate; and
    - (b) meet (unless it is inexpedient to do so).
  - (9) Criminal Procedure Rules –
    - (a) must be signed by not less than 5 members of the Criminal Procedure Rules Committee;
    - (b) shall come into force on such day or days as the Criminal Procedure Rules Committee directs; and
    - (c) shall be treated as an enactment to which the Subordinate Legislation (Jersey) Law 1960<sup>28</sup> applies.
  - (10) The States may, by Regulations, amend the members of the Committee listed in paragraph (4).

### **113 Criminal Procedure Rules**

- (1) Criminal Procedure Rules may be made by the Criminal Procedure Rules Committee for any of the following –
  - (a) for regulating and prescribing the procedure and the practice to be followed in any proceedings under this Law (including the procedure and practice to be followed by the Viscount and the Judicial Greffier) and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing) the manner in which, and the time within which, any applications which under this Law or any enactment are to be made to the court shall be made;
  - (b) for regulating the sittings of the court and its judges whether sitting in court or elsewhere;
  - (c) for prescribing the jurisdiction of the Inferior Number and Superior Number in relation to the sentencing of a defendant;
  - (d) for regulating the means or timing of service, or lodging, of any application, indictment, notice, order, order for the arrest of a person, summons or other instrument or document, issued under this Law or under Criminal Procedure Rules;

- (e) for prescribing forms to be used for the purposes of this Law;
  - (f) for regulating any matters relating to the costs of proceedings before the court;
  - (g) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with or at any stage of any proceedings;
  - (h) for prescribing the details of the prosecution's case against a person which, under the provisions of this Law, or in the exercise of case management powers, are to be served on a person who is charged with, or is to be charged with, or in connection with, an offence;
  - (i) for regulating and prescribing the procedure on appeal from the Magistrate's Court, or where a case is stated by the Magistrate;
  - (j) for regulating or making provision with respect to any other matters which may require to be regulated or with respect to which provision may require to be made under this Law.
- (2) The power to make Criminal Procedure Rules –
- (a) is to be exercised with a view to securing that –
    - (i) the criminal justice system is accessible, fair and efficient, and
    - (ii) the rules are both simple and simply expressed; and
  - (b) includes power to –
    - (i) make different provision for different cases, including different provision for a specified court or specified descriptions of proceedings,
    - (ii) make such consequential, incidental, supplementary, transitional, transitory or saving provision which appear to be necessary or expedient for the purposes of the Rules, and
    - (iii) make rules as to proceedings by or against the Crown.

#### 114 Practice directions

- (1) The Bailiff or Magistrate may, from time to time, issue directions as to the practice or procedure to be followed by the participants in criminal proceedings ("practice directions") where either no provision has been made in Criminal Procedure Rules or, subject to paragraph (2), so as to complement any such Rules.
- (2) Practice directions issued under this Article must not be inconsistent with any Criminal Procedure Rules which may otherwise apply.
- (3) Practice directions must be kept under review and, as necessary, must be replaced, revoked or amended.
- (4) Practice directions may be published in such manner or form as the Bailiff or Magistrate considers appropriate.
- (5) Paragraph (6) applies where it appears to the court when conducting criminal proceedings, that –



- (a) a provision of a practice direction; or
  - (b) a failure to comply with a practice direction,
- is relevant to a question arising in those proceedings.
- (6) Where this paragraph applies, the relevant provision or failure must be taken into account in determining the question, but a failure to comply with a practice direction shall not of itself make a person liable to any civil or criminal proceedings.

## **PART 14**

### **MISCELLANEOUS AND CLOSING PROVISIONS**

#### **115 Quashing of acquittal and retrial**

Schedule 2 provides for the procedures to be followed in relation to an application to the Court of Appeal to quash a person's acquittal in respect of an offence, and that person's subsequent retrial.

#### **116 Regulations**

- (1) The States may, by Regulations, amend any enactment, including this Law, for the purpose of making such transitional, consequential, incidental, supplementary or savings provisions as they consider necessary or expedient in consequence of any provision made by or under this Law.
- (2) Any Regulations under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be expedient for the purposes of the Regulations.
- (3) A power to make Regulations under this Law for the purpose of amending a provision of this Law, includes the power to make such transitional, consequential, incidental or supplementary amendments to any other provision of this Law as appears to the States to be necessary or expedient.

#### **117 Police Procedures and Criminal Evidence (Jersey) Law 2003 amended**

Schedule 3 has effect to amend the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>29</sup>.

#### **118 Miscellaneous enactments amended**

Schedule 4 has effect to amend enactments consequentially upon the enactment of this Law.

#### **119 Enactments repealed**

The enactments listed in Schedule 5 are repealed.

**120 Citation and commencement**

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

**SCHEDULE 1**

(Article 95(3))

**OFFENCES IN RESPECT OF WHICH A SPOUSE OR CIVIL PARTNER OF  
A DEFENDANT IS COMPELLABLE TO GIVE EVIDENCE**

- (1) For the purpose of Article 95(3) this Schedule specifies the offences in respect of which the spouse or civil partner of a defendant is compellable to give evidence on behalf of the prosecution or any other defendant charged in the same proceedings.
- (2) Paragraph (7) sets out the offences with which a defendant is charged of having committed against, or in relation to, any person described in paragraph (4).
- (3) Paragraph (8) sets out an offence with which a defendant is charged of having committed in the presence of any such person.
- (4) The persons to whom paragraphs (2) and (3) refer are any of the following –
  - (a) the spouse or civil partner of a defendant;
  - (b) a person who was under the age of 18 at the time the offence was committed; and
  - (c) a person aged 18 or older who –
    - (i) suffers from a mental disorder within the meaning of the Mental Health Law, or
    - (ii) has a significant impairment of intelligence and social functioning.
- (5) In relation to a person described in paragraph (4)(b) or (c), it does not matter whether the defendant knew the person or not at the time the offence was committed.
- (6) Where the age of a person at any time is material for the purposes of paragraph (4)(b), his or her age at the time the offence was committed shall be deemed for the purposes of that paragraph to be the age which the court believes he or she was at that time.
- (7) The offences for the purposes of paragraph (2) are any of the following –
  - (a) the customary law offences of –
    - (i) assault including common assault, grave and criminal assault or indecent assault, or threat of any such assault,
    - (ii) breach of the peace,
    - (iii) breaking and entering and committing an assault, larceny or malicious damage,
    - (iv) demanding money with menaces,
    - (v) false imprisonment,
    - (vi) gross indecency or procuring an act of gross indecency,
    - (vii) incest,

- 
- (viii) indecent exposure,
  - (ix) kidnapping,
  - (x) malicious damage,
  - (xi) manslaughter,
  - (xii) murder or attempted murder,
  - (xiii) perverting or attempting to pervert the course of justice,
  - (xiv) rape, or attempted rape,
  - (xv) sodomy;
- (b) any offence not falling within sub-paragraph (a) which involves injury or threat of injury;
  - (c) attempting or conspiring to commit, or encouraging, assisting, inciting, counselling, procuring an offence described in sub-paragraph (a) or (b);
  - (d) any offence under the Protection of Children (Jersey) Law 1994<sup>30</sup>;
  - (e) an offence under Article 32 or 33 of the Firearms (Jersey) Law 2000<sup>31</sup>;
  - (f) an offence under Article 35 of the Children (Jersey) Law 2002<sup>32</sup>;
  - (g) an offence under Article 51 of the Telecommunications (Jersey) Law 2002<sup>33</sup>;
  - (h) an offence under Article 60 of the Postal Services (Jersey) Law 2004<sup>34</sup>;
  - (i) an offence under Article 2, 3 or 6 of the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008<sup>35</sup>;
  - (j) any offence referred to in Article 104(3)(b), (d) or (e).
- (8) For the purpose of paragraph (3), an offence under Article 4 of the Animal Welfare (Jersey) Law 2004<sup>36</sup>.
  - (9) The States may, by Regulations, amend this Schedule.

**SCHEDULE 2**

(Article 115)

**QUASHING OF PERSON'S ACQUITTAL AND RETRIAL****1 Interpretation**

In this Schedule –

“acquittal” and related expressions are to be construed in accordance with paragraph 2(7);

“new evidence” is to be construed in accordance with paragraph 5(2);

“officer”, except in paragraph 10, means a police officer or an officer of the Impôts within the meaning of the Customs and Excise (Jersey) Law 1999<sup>37</sup>;

“qualifying offence” is an offence specified in Regulations made under paragraph 2(8);

“2003 Law” means the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>38</sup>.

**2 Cases that may be retried**

- (1) This Schedule applies where a person has been acquitted of a qualifying offence in proceedings –
  - (a) under Part 7;
  - (b) on appeal against a conviction under Part 7; or
  - (c) on appeal from a decision on such an appeal.
- (2) A person acquitted of an offence in proceedings mentioned in sub-paragraph (1) is treated for the purposes of that sub-paragraph as also acquitted of any qualifying offence of which he or she could have been convicted in the proceedings because of the first-mentioned offence being charged in the indictment, except an offence –
  - (a) of which he or she has been convicted;
  - (b) in respect of which a special verdict has been recorded under Article 72 of the Mental Health Law; or
  - (c) in respect of which, in proceedings under Part 8 of the Mental Health Law in which the person has been found to be incapable of participating in those proceedings, a finding has been made that the person did the act with which he or she is charged.
- (3) References in sub-paragraphs (1) and (2) to a qualifying offence do not include references to an offence which, at the time of the acquittal, was the subject of an order under paragraph 4(1) or (3).
- (4) This Schedule also applies where a person has been acquitted, in proceedings elsewhere than in Jersey, of an offence under the law of the place where the proceedings were held, if the commission of the offence

as alleged would have amounted to or included the commission (in Jersey or elsewhere) of a qualifying offence.

- (5) Conduct punishable under the law in force elsewhere than in Jersey is an offence under that law for the purposes of sub-paragraph (4), however it is described in that law.
- (6) This Schedule applies whether the acquittal was before or after this Law was adopted by the States.
- (7) References in this Schedule to acquittal are to acquittal in circumstances within sub-paragraph (1) or (4).
- (8) The States shall, by Regulations, specify the offences or description of offences that are qualifying offences for the purposes of this paragraph.

### **3 Application to Court of Appeal**

- (1) The Attorney General may apply to the Court of Appeal for an order –
  - (a) quashing a person's acquittal in proceedings within paragraph 2(1); and
  - (b) ordering the person to be retried for the qualifying offence.
- (2) The Attorney General may apply to the Court of Appeal, in the case of a person acquitted elsewhere than in Jersey, for –
  - (a) a determination whether the acquittal is a bar to the person being tried in Jersey for the qualifying offence; and
  - (b) if it is, an order that the acquittal is not to be a bar.
- (3) The Attorney General may only make an application under this paragraph if he or she is satisfied that –
  - (a) there is evidence to show that the requirements of paragraph 5 appear to be met; and
  - (b) it is in the public interest for the application to proceed.
- (4) Not more than one application in relation to an acquittal may be made under sub-paragraph (1) or (2).

### **4 Determination by Court of Appeal**

- (1) On an application under paragraph 3(1), the Court of Appeal –
  - (a) if satisfied that the requirements of paragraphs 5 and 6 are met, must make the order applied for; or
  - (b) otherwise, must dismiss the application.
- (2) Sub-paragraphs (3) and (4) apply to an application under paragraph 3(2).
- (3) Where the Court of Appeal determines that the acquittal is a bar to the person being tried for the qualifying offence, the Court –
  - (a) if satisfied that the requirements of paragraphs 5 and 6 are met, must make the order applied for; or
  - (b) otherwise, must make a declaration to the effect that the acquittal is a bar to the person being tried for the offence.

- (4) Where the Court of Appeal determines that the acquittal is not a bar to the person being tried for the qualifying offence, it must make a declaration to that effect.

## **5 New and compelling evidence**

- (1) The requirements of this paragraph are met if there is new and compelling evidence against the acquitted person in relation to the qualifying offence.
- (2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted (nor, if those were appeal proceedings, in earlier proceedings to which the appeal related).
- (3) Evidence is compelling if –
  - (a) it is reliable; and
  - (b) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.
- (4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.
- (5) For the purposes of this paragraph, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.

## **6 Interests of justice**

- (1) The requirements of this paragraph are met if in all the circumstances it is in the interests of justice for the Court of Appeal to make the order under paragraph 4.
- (2) That question is to be determined having regard in particular to –
  - (a) whether existing circumstances make a fair trial unlikely;
  - (b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;
  - (c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by an officer or by the Attorney General to act with due diligence or expedition; and
  - (d) whether, since those proceedings or, if later, since the commencement of this Schedule, any officer or the Attorney General has failed to act with due diligence or expedition.
- (3) In sub-paragraph (2), references to an officer or the Attorney General include references to a person charged with corresponding duties under the law in force elsewhere than in Jersey.

**7 Procedure and evidence**

- (1) The Attorney General must give notice to the Court of Appeal of an application under paragraph 3(1) or (2).
- (2) Within 7 days beginning with the day on which any such notice is given, notice of the application must be served by the Attorney General on the person to whom the application relates, charging him or her with the offence to which it relates.
- (3) Sub-paragraph (2) applies whether the person to whom the application relates is in Jersey or elsewhere, but the Court of Appeal may, on application by the Attorney General, extend the time for service under that sub-paragraph if it considers it necessary to do so because of that person's absence from Jersey.
- (4) The Court of Appeal must consider the application at a hearing.
- (5) The person to whom the application relates –
  - (a) is entitled to be present at the hearing, although he or she may be in custody, unless he or she is in custody elsewhere than in Jersey; and
  - (b) is entitled to be represented at the hearing, whether he or she is present or not.
- (6) For the purposes of the application, the Court of Appeal may, if it thinks it expedient in the interests of justice –
  - (a) order the production of any document, exhibit or other thing, the production of which appears to the Court to be necessary for the determination of the application; and
  - (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the court.
- (7) The Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.

**8 Appeals**

- (1) An appeal lies to the Judicial Committee of the Privy Council, at the instance of the acquitted person or the Attorney General, from any decision of the Court of Appeal on an application under paragraph 3(1) or (2).
- (2) An appeal under this Article lies only with leave of the Court of Appeal.

**9 Restrictions on publication in the interests of justice**

- (1) Where it appears to the Court of Appeal that the inclusion of any matter in a publication would give rise to a substantial risk of prejudice to the administration of justice in a retrial, the Court may order that the matter is not to be included in any publication while the order has effect.



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- (2) In sub-paragraph (1) “retrial” means the trial of an acquitted person for a qualifying offence pursuant to any order made or that may be made under paragraph 4.
  - (3) The Court may make an order under this paragraph only if it appears to it necessary in the interests of justice to do so.
  - (4) An order under this paragraph may apply to a matter which has been included in a publication published before the order takes effect, but such an order –
    - (a) applies only to the later inclusion of the matter in a publication (whether directly or by inclusion of the earlier publication); and
    - (b) does not otherwise affect the earlier publication.
  - (5) After notice of an application has been given under paragraph 7(1) relating to the acquitted person and the qualifying offence, the Court may make an order under this paragraph only –
    - (a) of its own motion; or
    - (b) on the application of the Attorney General.
  - (6) Before such notice has been given under paragraph 7(1), an order under this paragraph –
    - (a) may be made only on the application of the Attorney General; and
    - (b) may not be made unless, since the acquittal concerned, an investigation of the commission by the acquitted person of the qualifying offence has been commenced by officers.
  - (7) The court may at any time, of its own motion or on an application made by the Attorney General or the acquitted person, vary or revoke an order under this paragraph.
  - (8) Any order made under this paragraph before notice of an application has been given under paragraph 7(1) relating to the acquitted person and the qualifying offence must specify the time when it ceases to have effect.
  - (9) An order under this paragraph which is made or has effect after such notice has been given ceases to have effect, unless it specifies an earlier time –
    - (a) when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application; or
    - (b) if the acquitted person is tried pursuant to such an order, at the conclusion of the trial.
  - (10) Nothing in this paragraph affects any prohibition or restriction by virtue of this Law or any other enactment on the inclusion of any matter in a publication or any power, under an enactment or otherwise, to impose such a prohibition or restriction.
  - (11) In this paragraph –

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant

programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings.

## **10 Offences in connection with publication restrictions**

- (1) This paragraph applies if –
  - (a) an order under paragraph 9 is made; and
  - (b) while the order has effect, any matter is included in a publication, in Jersey or elsewhere, in contravention of the order.
- (2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (3) Where the publication is a relevant programme –
  - (a) any body corporate engaged in providing the programme service in which the programme is included; and
  - (b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,is guilty of an offence.
- (4) In the case of any other publication, any person publishing it is guilty of an offence.
- (5) If an offence under this paragraph committed by a body corporate is proved –
  - (a) to have been committed with the consent or connivance of; or
  - (b) to be attributable to any neglect on the part of,an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In sub-paragraph (5), “officer” means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (7) If the affairs of a body corporate are managed by its members, “director” in sub-paragraph (6) means a member of that body.
- (8) A person guilty of an offence under this paragraph is liable to a fine.
- (9) Proceedings for an offence under this paragraph may not be instituted without the consent of the Attorney General.
- (10) The States may, by Regulations, amend –
  - (a) the types of publication under this paragraph which contravene an order under paragraph 9; or
  - (b) the persons who are guilty of an offence under this paragraph.

## **11 Defence of innocent publication**

- (1) A person is not guilty of an offence under paragraph 10 if at the time of publication (having taken all reasonable care) the person does not know

and has no reason to suspect that an order has been made under paragraph 9.

- (2) The burden of proof of any fact tending to establish a defence afforded by this paragraph to any person lies upon that person.

## **12 Retrial**

- (1) Where a person –
  - (a) is tried pursuant to an order under paragraph 4(1); or
  - (b) is tried on indictment pursuant to an order under paragraph 4(3),the retrial must be on an indictment before the Royal Court preferred by the Attorney General.
- (2) After the end of 2 months after the date of the order, the person may not be retried under sub-paragraph (1) unless the Court of Appeal gives leave.
- (3) The Court of Appeal must not give leave unless satisfied that –
  - (a) the Attorney General has acted with due expedition; and
  - (b) there is a good and sufficient cause for retrial despite the lapse of time since the order under paragraph 4.
- (4) Where the person may not be indicted without leave, he or she may apply to the Court of Appeal to set aside the order and –
  - (a) for any direction required for restoring an earlier judgment and verdict of acquittal of the qualifying offence; or
  - (b) in the case of a person acquitted elsewhere than in Jersey, for a declaration to the effect that the acquittal is a bar to his or her being tried for the qualifying offence.
- (5) An indictment under sub-paragraph (1) may relate to more than one offence, or more than one person, and may relate to an offence which, or a person who, is not the subject of an order or declaration under paragraph 4.
- (6) Evidence given at a retrial pursuant to an order under paragraph 4(1) or (3) must be given orally if it was given orally at the original trial, unless –
  - (a) all the parties to the retrial agree otherwise;
  - (b) Article 65 of the 2003 Law applies; or
  - (c) the witness is unavailable to give evidence (otherwise than by reason of any of the 5 conditions in Article 65(2) of the 2003 Law being satisfied) and Article 64(1)(d) of that Law applies.

## **13 Authorization of investigations**

- (1) This paragraph applies to the investigation of the commission of a qualifying offence by a person –
  - (a) acquitted in proceedings within paragraph 2(1) of the qualifying offence; or

- 
- (b) acquitted elsewhere than in Jersey of an offence the commission of which as alleged would have amounted to or included the commission (in Jersey or elsewhere) of the qualifying offence.
  - (2) Subject to paragraph 14, an officer may not do anything within sub-paragraph (3) for the purposes of such an investigation unless the Attorney General –
    - (a) has certified that in his or her opinion the acquittal would not be a bar to the trial of the acquitted person in Jersey for the qualifying offence; or
    - (b) has given his or her written consent to the investigation (whether before or after the start of the investigation).
  - (3) The officer may not, either with or without the consent of the acquitted person –
    - (a) arrest or question him or her;
    - (b) search him or her or premises owned or occupied by him or her;
    - (c) search a vehicle owned by him or her or anything in or on such a vehicle;
    - (d) seize anything in his or her possession; or
    - (e) take his or her fingerprints or take a sample from him or her.
  - (4) The Attorney General may only give his or her consent to a written application, and such an application may be made only by an officer who is of the rank of chief inspector or above.
  - (5) An officer may make an application under sub-paragraph (4) only if –
    - (a) he or she is satisfied that new evidence has been obtained which would be relevant to an application under paragraph 3(1) or (2) in respect of the qualifying offence to which the investigation relates; or
    - (b) he or she has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
  - (6) The Attorney General may not give his or her consent unless satisfied that –
    - (a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation; and
    - (b) it is in the public interest for the investigation to proceed.

#### **14 Urgent investigative steps**

- (1) Paragraph 13 does not prevent an officer from taking any action for the purposes of an investigation if –
  - (a) the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced;
  - (b) the requirements of sub-paragraph (2) are met; and
  - (c) either –
    - (i) the action is authorized under sub-paragraph (3), or

- (ii) the requirements of sub-paragraph (5) are met.
- (2) The requirements of this sub-paragraph are met if –
  - (a) there has been no undue delay in applying for consent under paragraph 13(4);
  - (b) that consent has not been refused; and
  - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that consent before taking the action.
- (3) An officer of the rank of chief inspector or above may authorize the action if –
  - (a) he or she is satisfied that new evidence has been obtained which would be relevant to an application under paragraph 3(1) or (2) in respect of the qualifying offence to which the investigation relates; or
  - (b) he or she has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
- (4) An authorization under sub-paragraph (3) must –
  - (a) if reasonably practicable, be given in writing;
  - (b) otherwise, be recorded in writing by the officer giving it as soon as is reasonably practicable.
- (5) The requirements of this sub-paragraph are met if –
  - (a) there has been no undue delay in applying for authorization under sub-paragraph (3);
  - (b) that authorization has not been refused; and
  - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorization before taking the action.
- (6) Where the requirements of sub-paragraph (5) are met, the action is nevertheless to be treated as having been unlawful unless, as soon as reasonably practicable after the action is taken, an officer of the rank of chief inspector certifies in writing that he or she is satisfied that, when the action was taken –
  - (a) new evidence had been obtained which would be relevant to an application under paragraph 3(1) or (2) in respect of the qualifying offence to which the investigation relates; or
  - (b) the officer who took the action had reasonable grounds for believing that such new evidence was likely to be obtained as a result of the investigation.

## **15 Regulations conferring supplementary powers**

- (1) The States may, by Regulations, amend this Schedule so as to make provision for or in connection with, the following –
  - (a) to confer upon the Royal Court, or Court of the Appeal, the power to summons, or order the arrest of, a person who is the subject of –
    - (i) an application under paragraph 3,

- (ii) an order under paragraph 4, or
    - (iii) an investigation under paragraph 13 or 14;
  - (b) the detention of, or grant of bail to, a person summoned or arrested pursuant to the exercise of powers referred to in clause (a).
- (2) Regulations for the purposes of sub-paragraph (1)(b) may provide for the grant of bail in accordance with the Bail Law, or subject to such modification of the provisions of the Bail Law as the Regulations may provide.

## **16 Rules of court**

- (1) The power to make rules of court under Article 40 of the Court of Appeal (Jersey) Law 1961<sup>39</sup> includes the power to make rules for the purposes of this Schedule.
- (2) Without limiting sub-paragraph (1), rules of court may in particular make provision as to procedures to be applied in connection with paragraphs 3 to 9 and 12.
- (3) Nothing in this paragraph is to be taken as affecting the generality of any enactment (including under Part 13 of this Law) conferring power to make rules of court.

**SCHEDULE 3**

(Article 117)

**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 2003<sup>40</sup>.

**2 Long title of principal Law amended**

In the long title of the principal Law, for the words “, criminal evidence and the conduct of criminal proceedings” there are substituted the words “and criminal evidence”.

**3 Article 1 amended**

In Article 1(1) of the principal Law –

- (a) after the definition “confession” there are inserted the following definitions –
- “ ‘court’ means the Magistrate’s Court, Royal Court or Youth Court;
  - ‘Criminal Procedure Law’ means the Criminal Procedure (Jersey) Law 201-<sup>41</sup>;
  - ‘Criminal Procedure Rules’ shall be construed in accordance with Article 112(1) and 113 of the Criminal Procedure Law;
  - ‘criminal proceedings’ means proceedings before the court for the determination of a case against a defendant;”;
- (b) after the definition “custody officer” there is inserted the following definition –
- “ ‘defendant’ means a person –
    - (a) charged with an offence; or
    - (b) convicted of an offence and awaiting sentence;”;
- (c) in the definition “prescribed”, for the words “Rules made by the Royal Court” there are substituted the words “Criminal Procedure Rules”;
- (d) after the definition “prescribed” there is inserted the following definition –
- “ ‘proceedings’ means criminal proceedings;”;
- (e) after the definition “prohibited article” there is inserted the following definition –

“ ‘prosecution’ means the Attorney General or a prosecutor within the meaning of Article 1(2)(b) of the Criminal Procedure Law;”;

- (f) after the definition “relevant time” there is inserted the following definition –

“ ‘rules’ means Criminal Procedure Rules, and ‘rule’ shall be construed accordingly;”.

#### **4 Article 29A substituted**

For Article 29A of the principal Law there is substituted the following Article –

##### **“29A Interpretation of Part 5**

In this Part, 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.”.

#### **5 Article 48A substituted**

For Article 48A of the principal Law there is substituted the following Article –

##### **“48A Criminal Procedure Rules for purposes of Part 5**

The power to make Criminal Procedure Rules under Article 113 of the Criminal Procedure Law includes the power to make rules for the purposes of this Part.”.

#### **6 Articles 63 to 67 substituted**

For Articles 63 to 67 of the principal Law there are substituted the following Articles –

##### **“63 Interpretation of Part 8**

In this Part –

‘copy’ in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

‘matter stated’ in relation to a statement, means where the purpose, or one of the purposes, of the person making the statement appears to the court to have been –

- (a) to cause another person to believe the matter; or
- (b) to cause another person to act or a machine to operate on the basis that the matter is as stated;



‘statement’ means any representation of fact or opinion made by a person by whatever means including a representation made in a sketch, photofit or other pictorial form.

#### **64 Admissibility of statement not made in oral evidence**

- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if –
  - (a) any provision of this Part or any other provision of an enactment makes it admissible;
  - (b) any rule of customary law referred to in Article 64A makes it admissible;
  - (c) all parties to the proceedings agree to it being admissible; or
  - (d) the court is satisfied that it is in the interests of justice for it to be admissible.
- (2) In deciding whether a statement not made in oral evidence should be admitted under paragraph (1)(d), the court must have regard to the following factors (and to any others it considers relevant) –
  - (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
  - (b) what other evidence has been, or can be, given on the matter or evidence mentioned in sub-paragraph (a);
  - (c) how important the matter or evidence mentioned in sub-paragraph (a) is in the context of the case as a whole;
  - (d) the circumstances in which the statement was made;
  - (e) how reliable the maker of the statement appears to be;
  - (f) how reliable the evidence of the making of the statement appears to be;
  - (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
  - (h) the amount of difficulty involved in challenging the statement; and
  - (i) the extent to which that difficulty would be likely to prejudice the party facing it.
- (3) Nothing in this Part affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

#### **64A Admissibility of statement under rules of customary law**

For the purposes of Article 64(1)(b), any rule of customary law in respect of the following –

- (a) public information, including any rule under which –
  - (i) published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them,
  - (ii) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them,
  - (iii) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them, or
  - (iv) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter;
- (b) *res gestae*;
- (c) confessions;
- (d) admissions by agents;
- (e) common enterprise; and
- (f) expert evidence.

#### **65 Cases where a witness is unavailable**

- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if –
  - (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;
  - (b) the person who made the statement (the relevant person) is identified to the court's satisfaction; and
  - (c) any condition listed in paragraph (2) is satisfied.
- (2) The conditions are –
  - (a) that the relevant person is dead;
  - (b) that the relevant person is unfit to be a witness because of his or her bodily or mental condition;
  - (c) that the relevant person is outside Jersey and it is not reasonably practicable to secure his or her attendance;
  - (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him or her have been taken;
  - (e) that through fear, the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

- (3) For the purposes of paragraph (2)(e) ‘fear’ is to be widely construed and, for example, includes fear of the death or injury of another person or financial loss.
- (4) Leave may be given under paragraph (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard –
  - (a) to the statement’s contents;
  - (b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence);
  - (c) in appropriate cases, whether special measures for the giving of evidence by fearful witnesses could be made in relation to the relevant person; and
  - (d) to any other relevant circumstances.
- (5) Any condition set out in paragraph (2) which is in fact satisfied, is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused –
  - (a) by the person in support of whose case it is sought to give the statement in evidence; or
  - (b) by a person acting on the above mentioned person’s behalf, in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).

## **66 Business and other documents**

- (1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if –
  - (a) oral evidence given in the proceedings would be admissible as evidence of that matter;
  - (b) the requirements of paragraph (2) are satisfied; and
  - (c) the additional requirements of paragraph (5) are satisfied, in a case where paragraph (4) applies.
- (2) The requirements of this paragraph are satisfied if –
  - (a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office;
  - (b) the person who supplied the information contained in the statement (the relevant person) had or may reasonably be supposed to have had personal knowledge of the matters dealt with; and
  - (c) each person (if any) through whom the information was supplied from the relevant person to the person referred to in sub-paragraph (a) received the information in the course of a

trade, business, profession or other occupation, or as the holder of a paid or unpaid office.

(3) The persons mentioned in paragraph (2)(a) and (b) may be the same person.

(4) If the statement –

(a) was prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation; but

(b) was not obtained pursuant to a request under Article 4 of the Criminal Justice (International Co-operation) (Jersey) Law 2001<sup>42</sup>,

the additional requirements of paragraph (5) must be satisfied.

(5) Where paragraph (4) applies, the additional requirements of this paragraph are satisfied if –

(a) any condition listed in Article 65(2) is satisfied; or

(b) the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since he or she supplied the information and all other circumstances).

(6) A statement is not admissible under this Article if the court makes a direction to that effect under paragraph (7).

(7) The court may make a direction under this paragraph if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of –

(a) its contents;

(b) the source of the information contained in it;

(c) the way in which, or the circumstances in which, the information was supplied or received; or

(d) the way in which, or the circumstances in which, the document concerned was created or received.

## **67 Inconsistent statements**

(1) If, in criminal proceedings a person gives oral evidence and –

(a) the person admits making a previous inconsistent statement; or

(b) a previous inconsistent statement made by the person is proved by virtue of Article 78, 79 or 80,

the inconsistent statement is admissible as evidence of any matter stated of which oral evidence by the person would be admissible.

(2) If in criminal proceedings evidence of an inconsistent statement by any person is given under Article 67E(2)(c), the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

**67A Other previous statements of witnesses**

- (1) This Article applies where a person (the witness) is called to give evidence in criminal proceedings.
- (2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his or her oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.
- (3) A statement made by the witness in a document –
  - (a) which is used by the witness to refresh his or her memory while giving evidence;
  - (b) on which the witness is cross-examined; and
  - (c) which as a consequence is received in evidence in the proceedings,is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.
- (4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him or her would be admissible, if –
  - (a) any of the 3 conditions set out in paragraphs (5) to (7) is satisfied; and
  - (b) while giving evidence the witness indicates that to the best of his or her belief he or she made the statement, and that to the best of that witness' belief it states the truth.
- (5) The 1st condition is that the statement identifies or describes a person, object or place.
- (6) The 2nd condition is that the statement was made by the witness when the matters stated were fresh in his or her memory but he or she does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.
- (7) The 3rd condition is that –
  - (a) the witness claims to be a person against whom an offence has been committed;
  - (b) the offence is one to which the proceedings relate;
  - (c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence;
  - (d) the complaint was not made as a result of a threat or a promise; and
  - (e) before the statement is adduced the witness gives oral evidence in connection with its subject matter.

- (8) For the purposes of paragraph (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

**67B Additional requirement for admissibility of multiple statements not made in oral evidence**

A statement not made in oral evidence is not admissible to prove the fact that an earlier statement not made in oral evidence was made unless –

- (a) either of the statements is admissible under Article 66, 67 or 67A;
- (b) all parties to the proceedings so agree; or
- (c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

**67C Documents produced as exhibits**

- (1) This Article applies if on a trial for an offence before the Royal Court sitting with a jury –
  - (a) a statement made in a document is admitted in evidence under Article 67 or 67A; and
  - (b) the document or a copy of it is produced as an exhibit.
- (2) The exhibit must not accompany the jury when it retires to consider its verdict unless –
  - (a) the Bailiff considers it appropriate; or
  - (b) all the parties to the proceedings agree that it should accompany the jury.

**67D Capability to make statement**

- (1) Nothing in Article 65, 67 or 67A makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when he or she made the statement.
- (2) Nothing in Article 66 makes a statement admissible as evidence if any person who, in order for the requirements of Article 66(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned –
  - (a) did not have the required capability at that time; or
  - (b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.
- (3) For the purposes of this Article a person has the required capability if he or she is capable of –
  - (a) understanding questions put to him or her about the matters stated; and

- (b) giving answers to such questions which can be understood.
- (4) Where by reason of this Article there is an issue as to whether a person had the required capability when he or she made a statement –
  - (a) proceedings held for the determination of the issue must take place in the absence of the jury (if there is one);
  - (b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;
  - (c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.

#### **67E Credibility**

- (1) This Article applies if, in criminal proceedings –
  - (a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated; and
  - (b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.
- (2) In such a case –
  - (a) any evidence which (if the maker of the statement had given such evidence) would have been admissible as relevant to his or her credibility as a witness is so admissible in the proceedings;
  - (b) evidence may, with the court's leave, be given of any matter which (if the maker of the statement had given such evidence) could have been put to him or her in cross-examination as relevant to his or her credibility as a witness but which could not have been adduced by the cross-examining party;
  - (c) evidence tending to prove that the maker of the statement made (at whatever time) any other statement, inconsistent with the statement admitted as evidence, is admissible for the purpose of showing that he or she contradicted himself or herself.
- (3) If, as a result of evidence admitted under this Article, an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.
- (4) In the case of a statement in a document which is admitted as evidence under Article 66, each person who, in order for the statement to be admissible, must have –
  - (a) supplied or received the information concerned; or

- (b) created or received the document or part of the document concerned,

is to be treated as the maker of the statement for the purposes of paragraphs (1) to (3).

#### **67F Stopping proceedings where evidence is unconvincing**

- (1) If, on a defendant's trial for an offence before the Royal Court, the Court is satisfied at any time after the close of the case for the prosecution that –

- (a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and
- (b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his or her conviction of the offence would be unsafe,

the Royal Court must either acquit the defendant of the offence or, if it considers that there ought to be a retrial, the Bailiff must, if the trial is before the Royal Court sitting with a jury, discharge the jury.

- (2) Where –

- (a) under paragraph (1) the Royal Court acquits a defendant of an offence; and
- (b) the circumstances are such that, apart from this paragraph, the defendant could, if acquitted of that offence, be found guilty of another offence,

the defendant may not be found guilty of that other offence if the Royal Court is satisfied as mentioned in paragraph (1) in respect of it.

- (3) If –

- (a) in a case where Article 58(3)(ii) of the Mental Health (Jersey) Law 2016<sup>43</sup> applies and, where under Article 59(1) of that Law, the Royal Court finds that the defendant did in fact do the act with which he or she is charged; and
- (b) the court is satisfied, as mentioned in paragraph (1), at any time after the close of the case for the prosecution that –
  - (i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and
  - (ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that he or she did the act or made the omission would be unsafe,

the Royal Court must either acquit the defendant of the offence or, if it considers that there ought to be a rehearing and the trial is before the Royal Court sitting with a jury, the Bailiff must discharge the jury.



- (4) This paragraph does not prejudice any other power of the Royal Court to acquit a person of an offence or to discharge a jury.

#### **67G Confessions**

Nothing in this Part makes a confession by a defendant admissible if it is not admissible under Article 74 or 74A.

#### **67H Representations other than by a person**

- (1) Where a representation of any fact –
  - (a) is made otherwise than by a person; but
  - (b) depends for its accuracy on information supplied (directly or indirectly) by a person,the representation is not admissible in criminal proceedings as evidence of the fact unless it is proved that the information was accurate.
- (2) Paragraph (1) does not affect the operation of the presumption under customary law that a mechanical device has been properly set or calibrated.

#### **67I Criminal Procedure Rules for purposes of Part 8 and effect of failure to comply with rules**

- (1) The power to make Criminal Procedure Rules under Article 113 of the Criminal Procedure Law includes the power to make rules for the purposes of this Part.
- (2) Notwithstanding the generality of the power referred to in paragraph (1), rules for the purposes of this Part may –
  - (a) make provision about the procedure to be followed and other conditions to be fulfilled by a party proposing to tender a statement in evidence under any provision of this Part; or
  - (b) require a party proposing to tender the evidence to serve on each party to the proceedings such notice, and such particulars of, or relating to, the evidence, as may be prescribed.
- (3) The rules may provide that the evidence is to be treated as admissible by agreement of the parties if –
  - (a) a notice has been served in accordance with provision made under paragraph (2)(b); and
  - (b) no counter-notice in the prescribed form objecting to the admission of the evidence has been served by a party.
- (4) If a party proposing to tender evidence fails to comply with a prescribed requirement applicable to it –
  - (a) the evidence is not admissible except with the court's leave;

- (b) where leave is given, the court or jury may draw such inferences from the failure as appear proper; and
  - (c) the failure may be taken into account by the court in considering the exercise of its powers with respect to costs.
- (5) In considering whether or how to exercise any of its powers under paragraph (4) the court shall have regard to whether there is any justification for the failure to comply with the requirement.
- (6) A person shall not be convicted of an offence solely on an inference drawn under paragraph (4)(b).
- (7) Rules under this Article may –
- (a) limit the application of any provision of the rules to prescribed circumstances;
  - (b) subject any provision of the rules to prescribed exceptions; or
  - (c) make different provision for different cases or circumstances.

#### **67J Proof of statements in documents**

Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either –

- (a) the document; or
- (b) a copy of the document or of the material part of it (whether or not the document exists),

authenticated in whatever way the court may approve.”.

#### **7 Articles 68, 69 and 70 repealed**

Articles 68 to 70 of the principal Law are repealed.

#### **8 Article 74A inserted**

After Article 74 of the principal Law there is inserted the following Article –

##### **“74A Confessions may be given in evidence for co-accused**

- (1) In any criminal proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a ‘co-accused’) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this Article.
- (2) If, in criminal proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained –
  - (a) by oppression of the person who made the confession; or

- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by the accused person, the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that the confession (notwithstanding that it may be true) was not so obtained.
- (3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in criminal proceedings, the court may of its own motion require the fact that the confession was not obtained as described in paragraph (2) to be proved on the balance of probabilities.
- (4) The fact that a confession is wholly or partly excluded under this Article shall not affect the admissibility in evidence –
- (a) of any facts discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself or herself in a particular way, of so much of the confession as is necessary to show that he or she does so.
- (5) This paragraph applies –
- (a) to any fact discovered as a result of a confession which is wholly excluded under this Article; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.
- (6) Evidence that a fact to which paragraph (5) applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by that person, or on his or her behalf.
- (7) In this Article ‘oppression’ carries the same meaning as in Article 74(8).”.

## 9 Part 9A inserted

After Article 82 of the principal Law there is inserted the following Part –

### **“PART 9A** EVIDENCE OF BAD CHARACTER

*Interpretation and general provisions*

#### **82A Interpretation of Part 9A**

- (1) In this Part –

‘bad character’ is to be construed in accordance with Article 82C;

‘co-defendant’, in relation to a defendant, means a person charged with an offence in the same proceedings;

‘important matter’ means a matter of substantial importance in the context of the case as a whole;

‘misconduct’ means the commission of an offence or other reprehensible behaviour;

‘probative value’, and ‘relevant’ (in relation to an item of evidence), are to be read in accordance with Article 82B;

‘prosecution evidence’ means evidence which is to be (or has been) adduced by the prosecution, or which a witness is to be invited to give (or has given) in cross-examination by the prosecution.

- (2) Where a defendant is charged with two or more offences in the same criminal proceedings, the provisions of this Part (except Article 82E(2)) have effect as if each offence were charged in separate proceedings, and references to the offence with which the defendant is charged are to be construed accordingly.
- (3) Nothing in this Part affects the exclusion of evidence –
  - (a) under the rule, in Article 78, against a party impeaching the credit of their own witness by general evidence of bad character; or
  - (b) on grounds other than the fact that it is evidence of a person’s bad character.

#### **82B Assumption of truth in assessment of relevance or probative value**

- (1) Subject to paragraph (2), a reference in this Part to the relevance or probative value of evidence, is a reference to its relevance or probative value on the assumption that it is true.
- (2) In assessing the relevance or probative value of an item of evidence for any purpose of this Part, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence it decides to hear on the matter), that no court or jury could reasonably find it to be true.

#### **82C Bad character**

References in this Part to evidence of a person’s ‘bad character’ are to evidence of, or of a disposition towards, misconduct on his or her part, other than evidence which –

- (a) has to do with the alleged facts of the offence with which the defendant is charged; or
- (b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

**82D Abolition of customary law rules in relation to bad character evidence**

Any rule of customary law governing the admissibility of evidence of bad character in criminal proceedings is abolished.

*Evidence of bad character***82E Defendant's bad character – admissibility of evidence**

- (1) In criminal proceedings, evidence of the defendant's bad character is admissible if, but only if –
  - (a) all parties to the proceedings agree to the evidence being admissible;
  - (b) the evidence is adduced by the defendant himself or herself or is given in answer to a question asked by him or her in cross-examination and intended to elicit it;
  - (c) it is important explanatory evidence; or
  - (d) it is admissible under any of Articles 82F to 82I.
- (2) The court must not admit evidence under Article 82F or Article 82G if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.
- (3) On an application to exclude evidence under paragraph (2) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.
- (4) In proceedings for an offence committed, or alleged to have been committed, by a defendant who has attained the age of 21, evidence of his or her conviction for an offence when under the age of 15 is not admissible unless the court is satisfied that the interests of justice require the evidence to be admissible.
- (5) For the purposes of paragraph (1)(c), evidence is important explanatory evidence if –
  - (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case; and
  - (b) its value for understanding the case as a whole is substantial.

**82F Matter in issue between the defendant and the prosecution**

- (1) Subject to paragraph (2), evidence of a defendant's bad character is admissible if it is relevant to an important matter in issue between the defendant and the prosecution which includes –
  - (a) the question whether the defendant has a propensity to commit offences of the kind with which he or she is charged,

- except where the defendant having such a propensity makes it no more likely that he or she is guilty of the offence; or
- (b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.
- (2) Only prosecution evidence is admissible under this Article.
- (3) Where paragraph (1)(a) applies, a defendant's propensity to commit offences of the kind with which he or she is charged may (without prejudice to any other way of doing so) be established by evidence that the defendant has been convicted of –
- (a) an offence of the same description as the one with which he or she is charged; or
- (b) an offence of a similar nature or type as the one with which he or she is charged.
- (4) Paragraph (3) does not apply in the case of a particular defendant if the court is satisfied that, by reason of the length of time since the conviction or for any other reason, it would be unjust for it to apply in his or her case.
- (5) For the purposes of paragraph (3)(a), 2 offences are of the same description as each other if the statement of the offence in a summons under Article 14 or 19 of the Criminal Procedure Law, or indictment under Article 43 of that Law, would, in each case, be in the same terms.
- (6) For the purposes of paragraph (3)(b), the States may, by Regulations, make provision as to what constitutes 2 offences as being of a similar nature or type as each other.
- (7) Where –
- (a) a defendant has been convicted of an offence under the law of any country other than Jersey ('the previous offence'); and
- (b) the previous offence would constitute an offence under the law of Jersey ('the corresponding offence') if it were committed in Jersey at the time of the trial for the offence with which the defendant is now charged ('the current offence'),
- paragraph (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or of a similar nature or type.
- (8) For the purpose of making the determination referred to in paragraph (7) –
- (a) the previous offence is of the same description as the current offence if the corresponding offence is of that same description as defined under paragraph (5); or
- (b) the previous offence is of a similar nature or type as the current offence if the current offence and the corresponding

offence are of a similar nature or type as provided under the Regulations referred to in paragraph (6).

### **82G Attack on another person's character**

- (1) Evidence of a defendant's bad character is admissible if it is evidence that the defendant has made an attack on another person's character.
- (2) Only prosecution evidence is admissible under this Article.
- (3) A defendant makes an attack on another person's character if –
  - (a) he or she adduces evidence attacking the other person's character;
  - (b) he or she (or any legal representative appointed to cross-examine a witness in the defendant's interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so; or
  - (c) evidence is given of an imputation about the other person made by the defendant –
    - (i) on being questioned under caution, before charge, about the offence with which he or she is charged, or
    - (ii) on being charged with the offence or officially informed that he or she might be prosecuted for it.
- (4) In paragraph (3)(a) 'evidence attacking the other person's character' means evidence to the effect that the other person –
  - (a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one); or
  - (b) has behaved, or is disposed to behave, in a reprehensible way.
- (5) In paragraph (3)(c), 'imputation about the other person' means an assertion to that effect.

### **82H Matter in issue between the defendant and a co-defendant**

- (1) Evidence of a defendant's bad character is admissible if it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant.
- (2) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible only if the nature or conduct of his or her defence is such as to undermine the co-defendant's defence.
- (3) Only evidence –
  - (a) which is to be (or has been) adduced by the co-defendant; or
  - (b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,

is admissible under this Article.

### **82I Evidence to correct a false impression**

- (1) Evidence of a defendant's bad character is admissible if it is evidence to correct a false impression given by the defendant.
- (2) The defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant.
- (3) Evidence to correct such an impression is evidence which has probative value in correcting it.
- (4) Only prosecution evidence is admissible under this Article and provided it goes no further than is necessary to correct the false impression.
- (5) A defendant is treated as being responsible for the making of an assertion if –
  - (a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him or her);
  - (b) the assertion was made by the defendant –
    - (i) on being questioned under caution, before charge, about the offence with which he or she is charged, or
    - (ii) on being charged with the offence or officially informed that he or she might be prosecuted for it,and evidence of the assertion is to be given in the proceedings;
  - (c) the assertion is made by a witness called by the defendant;
  - (d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so; or
  - (e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.
- (6) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he or she withdraws it or disassociates himself or herself from it.
- (7) Where it appears to the court that a defendant, by means of his or her conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself or herself that is false or misleading, the court may, if it appears just to do so, treat the defendant as being responsible for the making of an assertion which is apt to give that impression.
- (8) In paragraph (7), 'conduct' includes appearance or dress.



**82J Non-defendant's bad character**

- (1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if –
  - (a) it is important explanatory evidence;
  - (b) it has substantial probative value in relation to a matter which –
    - (i) is a matter in issue in the proceedings, and
    - (ii) is of substantial importance in the context of the case as a whole; or
  - (c) all parties to the proceedings agree to the evidence being admissible.
- (2) For the purposes of paragraph (1)(a) evidence is important explanatory evidence if –
  - (a) without it, the court or jury would find it impossible or difficult, properly to understand other evidence in the case; and
  - (b) its value for understanding the case as a whole is substantial.
- (3) In assessing the probative value of evidence for the purposes of paragraph (1)(b) the court must have regard to the following factors (and to any others it considers relevant) –
  - (a) the nature and number of the events, or other things, to which the evidence relates;
  - (b) when those events or things are alleged to have happened or existed;
  - (c) where –
    - (i) the evidence is evidence of a person's misconduct, and
    - (ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,  
the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct; and
  - (d) where –
    - (i) the evidence is evidence of a person's misconduct,
    - (ii) it is suggested that that person is also responsible for the misconduct charged, and
    - (iii) the identity of the person responsible for the misconduct charged is disputed,  
the extent to which the evidence shows or tends to show that the same person was responsible each time.
- (4) Except where paragraph (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.

**82K Criminal Procedure Rules for purposes of Part 9A**

- (1) The power to make Criminal Procedure Rules under Article 113 of the Criminal Procedure Law includes the power to make rules for the purposes of this Part.
- (2) Notwithstanding the generality of the power referred to in paragraph (1), rules for the purposes of this Part may, and, where the party in question is the prosecution, must, contain provision requiring a party who –
  - (a) proposes to adduce evidence of a defendant’s bad character; or
  - (b) proposes to cross-examine a witness with a view to eliciting such evidence,to serve on the defendant such notice, and such particulars of, or relating to, the evidence, as may be prescribed.
- (3) The rules may provide that the court or the defendant may, in such circumstances as may be prescribed, dispense with a requirement imposed by virtue of paragraph (2).
- (4) In considering the exercise of its powers with respect to costs, the court may take into account any failure by a party to comply with a requirement imposed by virtue of paragraph (2) and not dispensed with by virtue of paragraph (3).
- (5) Rules under this Article may –
  - (a) limit the application of any provision of the rules to prescribed circumstances;
  - (b) subject any provision of the rules to prescribed exceptions; or
  - (c) make different provision for different cases or circumstances.”.

**10 Parts 10 and 12 and Schedule 4 repealed**

Parts 10 and 12 of, and Schedule 4 to, the principal Law are repealed.

**SCHEDULE 4**

(Article 118)

**ENACTMENTS CONSEQUENTIALLY AMENDED****1 Loi (1908) au sujet des témoins et informateurs amended**In the Loi (1908) au sujet des témoins et informateurs<sup>44</sup> –

- (a) in the long title the words “, Criminelles” are deleted;
- (b) in the recital the words “, criminelles” are deleted;
- (c) Article 2 is repealed;
- (d) in Article 3 the words “, criminelles” are deleted;
- (e) in Article 4 the words “, criminelle” are deleted;
- (f) in Article 5 the words “, criminelles” are deleted;
- (g) in Article 8 the for the words “civiles et à toute poursuite criminelle soit pour crime, délit ou contravention” there are substituted the words “soit civiles ou mixtes”.

**2 Royal Court (Jersey) Law 1948 amended**In the Royal Court (Jersey) Law 1948<sup>45</sup> –

- (a) Article 10(10) is repealed;
- (b) in Article 13 –
  - (i) paragraph (1), immediately before the words commencing “Rules of Court” there are inserted the words “For the purposes of all civil causes and matters,”,
  - (ii) in paragraph (1)(a) the words “in all causes and matters whatsoever in or with respect to which the Court has for the time being jurisdiction” are deleted,
  - (iii) in paragraph (2), for the words “all proceedings” there are substituted the words “all civil proceedings”;
- (c) in Article 15 –
  - (i) in paragraph (1), for the words “In all causes” there are substituted the words “Except as provided in paragraph (1AA), in all causes”,
  - (ii) after paragraph (1) there is inserted the following paragraph –
 

“(1AA) Where Article 15A(2) applies, the Bailiff shall also be a judge of fact.”,
  - (iii) after Article 15 there is inserted the following Article –

**“15A Quorum of the Inferior number**

- (1) Subject to paragraph (2), the Inferior Number of the Royal Court shall be composed only of the Bailiff and 2 Jurats.

- (2) If, in a criminal cause one of the Jurats dies or is otherwise indisposed, for the purposes of hearing and determining that particular cause, the Inferior Number of the Royal Court shall be composed only of the Bailiff and one Jurat.”;
- (d) in Article 16(2)(a), for the words “Article 7 of the Loi (1864) réglant la procédure criminelle” there are substituted the words “Article 49 of the Criminal Procedure (Jersey) Law 201-<sup>46</sup>”.

### 3 Court of Appeal (Jersey) Law 1961 amended

In the Court of Appeal (Jersey) Law 1961<sup>47</sup> –

- (a) in Article 1, after the words “by this Law” there are inserted the words “or the Criminal Procedure (Jersey) Law 201-<sup>48</sup>”;
- (b) after Article 1 there is inserted the following Article –

#### “1A Interpretation of Part 1

In this Part, ‘quashing application’ means an application under paragraph 3(1) or (2) of Schedule 2 to the Criminal Procedure (Jersey) Law 201-<sup>49</sup>”.

- (c) in Article 8 –
  - (i) in paragraph (1), for the words “any appeal or reference to the Court of Appeal and any proceedings preliminary or incidental to such an appeal or reference” there are substituted the words “any appeal, quashing application or reference to the Court of Appeal and any proceedings preliminary or incidental to such an appeal, quashing application or reference”;
  - (ii) in the proviso to paragraph (1), for the words “such appeal or proceedings” there are substituted the words “such appeal, quashing application, reference or preliminary proceedings”;
  - (iii) in paragraph (2), for the words “any such appeals, references” there are substituted the words “any such appeals, quashing applications, references”;
  - (iv) for paragraph (3) there is substituted the following paragraph –
 

“(3) Subject as provided by rules of court, it shall be lawful for a party to a quashing application, an appeal under Part 2 or, for an appellant under Part 3, notwithstanding the foregoing provisions of this Article, to address the Court of Appeal or any single judge thereof both on the hearing of the appeal or quashing application and in any proceedings preliminary or incidental to the appeal or quashing application, and to do in any such office or to transact with any such officer as is mentioned in paragraph (2) any act or thing required or necessary to be done in connection with any such appeal, quashing application or proceedings.”;
- (d) in Article 9(1B)(a) and (b), for the words “appeal or reference” there are substituted the words “appeal, quashing application or reference”;

- (e) in Schedule 2, for paragraph 1 there is substituted the following paragraph –

“1 Evidence given at a retrial must be given orally if it was given orally at the original trial, unless –

- (a) all the parties to the retrial agree otherwise;
- (b) Article 65 of the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>50</sup> (‘Police Procedures Law’) applies; or
- (c) the witness is unavailable to give evidence (otherwise than by reason of any of the 5 conditions in Article 65(2) of the Police Procedures Law being satisfied) and Article 64(1)(d) of that Law applies.”.

#### 4 Costs in Criminal Cases (Jersey) Law 1961 amended

In the Costs in Criminal Cases (Jersey) Law 1961<sup>51</sup> –

- (a) for Article 1(1) there is substituted the following paragraph –

“(1) In this Law –

‘Criminal Procedure Law’ means the Criminal Procedure (Jersey) Law 201-<sup>52</sup>;

‘Criminal Procedure Rules’ shall be construed in accordance with Article 112(1) and 113 of the Criminal Procedure Law;

‘public fund’ means money of the States.”;

- (b) for Article 2(7), there is substituted the following paragraph –

“(7) Subject to Article 5A, the amount of costs ordered to be paid under this Article shall be determined by the Magistrate or the Royal Court by way of summary assessment.”;

- (c) in Article 2(9), for the words “committed by the Magistrate’s Court to the Inferior Number of the Royal Court under Article 4 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949”, there are substituted the words “sent by the Magistrate’s Court to the Royal Court under Part 6 of the Criminal Procedure Law”;

- (d) for Article 3(2), there are substituted the following paragraphs –

“(2) This paragraph applies where –

- (a) the Superior Number of the Royal Court allows an appeal against a sentence; or
- (b) the Court of Appeal allows an appeal against a conviction or a sentence.

(2A) Where paragraph (2) applies, the Royal Court or Court of Appeal (as the case may be) may order the payment out of public funds of such sums as appear to the court reasonably sufficient to compensate the appellant for any expenses properly incurred in the prosecution of the appellant’s appeal, including any proceedings preliminary or incidental thereto, or in carrying on the appellant’s defence.

- (2B) Subject to Article 5A, the amount of costs that the Royal Court or Court of Appeal has ordered to be paid under paragraph (2A) shall be determined by way of summary assessment by the court which determines the appeal.”
- (e) in Article 4 for the words “costs ordered or allowed under this Law to be paid out of public funds has been ascertained” there are substituted the words “costs ordered or allowed under this Law or under Criminal Procedure Rules, to be paid out of public funds has been assessed”;
- (f) in Article 5(1) after the words “orders the payment of costs by the accused under this Law” there are added the words “or under Criminal Procedure Rules”;
- (g) for Article 5(3) there is substituted the following paragraph –
- “(3) Where the Magistrate’s Court orders the payment of costs by the accused under this Law or under Criminal Procedure Rules, the payment shall be enforced as a civil debt without further order of the Court.”;
- (h) in Article 5(5) –
- (i) for the colon at the end there is substituted full stop;
- (ii) the paragraph commencing with the words “Provided that” and ending with the words “Magistrate’s Court” is deleted.”
- (i) after Article 5 there is inserted the following Article –

**“5A Assessment of costs**

- (1) Where costs are assessed under Articles 2 and 3 and if the court to which those Articles apply makes an order for the payment of such costs, the amount awarded must be reasonably sufficient to compensate the recipient for costs –
- (a) actually, reasonably and properly incurred; and
- (b) which are reasonable in amount.
- (2) The court may order the payment of any of the following –
- (a) a proportion of the amount assessed;
- (b) a stated amount less than that amount;
- (c) costs from or until a certain date only;
- (d) costs relating only to particular steps taken; or
- (e) costs relating only to a distinct part of the case.”.

**5 Solemn Affirmations (Jersey) Law 1963 amended**

In the Solemn Affirmations (Jersey) Law 1963<sup>53</sup> –

- (a) for Article 1(1) to (3) there are substituted the following words –
- “A person who objects to taking an oath shall make a solemn affirmation instead in all places and for all purposes where an oath is required either

by customary law or under any enactment, whether passed before or after the commencement of this Law.”;

- (b) after Article 2 there is inserted the following Article –

**“2A Regulations**

The States may, by Regulations, amend the Schedule so as to provide for different forms of affirmation for specified categories, classes or descriptions of person.”.

**6 Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 amended**

In the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998<sup>54</sup> –

- (a) in the long title, the words “for notice of alibis;” and “and depositions” are deleted;
- (b) in Article 1 –
- (i) for the definition “evidence in support of an alibi” there is substituted the following definition –
- “ ‘Criminal Procedure Law’ means the Criminal Procedure (Jersey) Law 201-<sup>55</sup>;”,
- (ii) for the definition “maker” there is substituted the following definition –
- “ ‘maker’ means in relation to a written statement to which Article 9 refers, the person by whom the statement is made;”,
- (iii) the definition “rules of court” is deleted;
- (c) for Article 2 there is substituted the following Article –

**“2 Application**

The provisions of this Law apply notwithstanding Article 96 of the Criminal Procedure Law as to the giving of oral evidence on oath by a competent witness in criminal proceedings.”;

- (d) Part 3 is repealed;
- (e) Article 10 is repealed;
- (f) in Article 11 –
- (i) in paragraph (1) the words “or deposition” and “or 10” are deleted,
- (ii) in paragraph (2) the words “or deposition” are deleted,
- (iii) paragraph (3) is repealed;
- (g) in Article 12 the words –
- (i) “or deposition”, in both places where they occur, are deleted,
- (ii) “or 10” are deleted;
- (h) in Article 13 –
- (i) for paragraph (1) there is substituted the following paragraph –

- “(1) A party who serves, under Article 9(2)(c), a copy of a statement, may call the maker of the statement to give oral evidence.”,
- (ii) in paragraph (2) the words “or deposition” are deleted,
- (iii) paragraph (3) is repealed;
- (i) for Article 14 there is substituted the following Article –

**“14 Attendance of witnesses**

Where a statement is tendered as evidence under Article 9, the maker of the statement need not attend the proceedings as a witness unless the maker of the statement is –

- (a) warned, under Article 98 of the Criminal Procedure Law, to attend before the court to give oral evidence; or
- (b) is required, under Article 13, to give oral evidence.”;
- (j) Article 14B(4) is repealed;
- (k) for Article 17 there is substituted the following Article –

**“17 Criminal Procedure Rules**

The power to make Criminal Procedure Rules under Article 113 of the Criminal Procedure Law includes the power to make rules for the purposes of this Law.”.

**7 Criminal Justice (Evidence of Children) (Jersey) Law 2002 amended**

In Article 8(4) of the Criminal Justice (Evidence of Children) (Jersey) Law 2002<sup>56</sup>, for the words “with imprisonment” there are substituted the words “with a fine of level 1 on the standard scale”.

**8 Criminal Justice (Young Offenders) (Jersey) Law 2014 amended**

In the Criminal Justice (Young Offenders) (Jersey) Law 2014<sup>57</sup> –

- (a) in Article 1(1), after the definition “community service order” there is inserted the following definition –
  - “ ‘Criminal Procedure Law’ means the Criminal Procedure (Jersey) Law 201-<sup>58</sup>.”;
- (b) Article 13 is repealed;
- (c) for Article 26(3) there is substituted the following paragraph –
  - “(3) For the avoidance of doubt, it is declared that, in respect of a person to whom this Part applies, Articles 25 to 27 of the Criminal Procedure Law (concerning the sending of a defendant for sentencing or trial before the Royal Court) shall apply as if the reference in those Articles to the Magistrate, were to the Youth Court.”;



- (d) for paragraph 2(4) of the Schedule there is substituted the following sub-paragraph –

“(4) The Youth Court may be duly constituted by the chairman sitting alone for the purposes of –

- (a) dealing with the remand of a defendant, the adjournment of any matter, or any application for, or in connection with, bail; or
- (b) exercising any function under the Criminal Procedure Law which does not involve –
  - (i) any determination under Articles 25 to 27 of the Criminal Procedure Law (concerning the sending of a defendant for sentencing or trial before the Royal Court),
  - (ii) the hearing of a defendant’s trial (including a hearing, if required, under Article 79 of that Law to determine facts disputed), or
  - (iii) the sentencing of a defendant.”.

## 9 Criminal Procedure (Bail) (Jersey) Law 2017 amended

In the Criminal Procedure (Bail) (Jersey) Law 2017<sup>59</sup> –

- (a) in Article 1(1) –
  - (i) for the definition “1949 Law” there is substituted the following definition –
 

“ ‘Criminal Procedure Law’ means the Criminal Procedure (Jersey) Law 201-<sup>60</sup>;”
  - (ii) immediately before the definition “criminal proceedings” there is inserted the following definition –
 

“ ‘Criminal Procedure Rules’ shall be construed in accordance with Articles 112(1) and 113 of the Criminal Procedure Law;”
  - (iii) the definition “offence” is deleted,
  - (iv) in the definition “prescribed” for the words “rules of court referred to in Article 21(4)” there are substituted the words “Criminal Procedure Rules”,
  - (v) for the definition “prosecutor” there is substituted the following definition –
 

“ ‘prosecutor’ in criminal proceedings –

    - (a) before the Magistrate’s Court, Royal Court and Youth Court, has the meaning given in Article 1(2)(b) of the Criminal Procedure Law;
    - (b) before the Magistrate’s Court and Youth Court, includes a Centenier, and

the expression “prosecution” shall be construed accordingly;”
- (b) in Article 3 –

- 
- (i) in paragraph (c) after the semi-colon at the end there is added the word “or”,
  - (ii) in paragraph (d) for the semi-colon at the end there is substituted a full stop,
  - (iii) paragraphs (e) and (f) are repealed;
- (c) for Article 5(2) there is substituted the following paragraph –
- “(2) This Law does not apply to bail grantable under the Court of Appeal (Jersey) Law 1961<sup>61</sup>.”;
- (d) in Article 20(7) for the words “Rules of court referred to in Article 21(4)” there are substituted the words “Criminal Procedure Rules”;
- (e) in Article 21 –
- (i) in the title, for the words “rules of court” there are substituted the words “Criminal Procedure Rules”,
  - (ii) for paragraph (4) there is substituted the following paragraph –
- “(4) The power to make Criminal Procedure Rules under Article 113 of the Criminal Procedure Law includes the power to make rules for the purposes of this Law.”.

**SCHEDULE 5**

(Article 119)

**ENACTMENTS REPEALED**

The following enactments are repealed –

- (1) Loi (1835) sur la procédure devant la Cour Royale<sup>62</sup>;
- (2) Loi (1853) établissant la Cour pour la répression des moindres délits<sup>63</sup>;
- (3) Loi (1862) sur la procédure devant la Cour Royale<sup>64</sup>;
- (4) Loi (1864) réglant la Procédure Criminelle<sup>65</sup>;
- (5) Loi (1912) sur la Procédure devant la Cour Royale (Jours Fériés, Assises Criminelles, etc.<sup>66</sup>);
- (6) Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949<sup>67</sup>;
- (7) Criminal Procedure (Alibis) (Jersey) Rules 1999<sup>68</sup>;
- (8) Police Procedures and Criminal Evidence (Preparatory Hearings) Rules 2003<sup>69</sup>.

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1	<i>chapter 16.325</i>
2	<i>chapter 07.525</i>
3	<i>L.20/2017</i>
4	<i>chapter 07.570</i>
5	<i>chapter 06.018</i>
6	<i>chapter 06.036</i>
7	<i>chapter 07.770</i>
8	<i>chapter 08.180</i>
9	<i>chapter 07.280</i>
10	<i>chapter 16.300</i>
11	<i>L.29/2016</i>
12	<i>chapter 24.660</i>
13	<i>chapter 08.020</i>
14	<i>chapter 07.875</i>
15	<i>chapter 08.380</i>
16	<i>chapter 23.220</i>
17	<i>chapter 23.750.20</i>
18	<i>chapter 23.775</i>
19	<i>chapter 07.770</i>
20	<i>chapter 07.245</i>
21	<i>chapter 16.600</i>
22	<i>chapter 16.300</i>
23	<i>L.30/2016</i>
24	<i>chapter 08.240</i>
25	<i>chapter 08.540</i>
26	<i>chapter 08.790</i>
27	<i>chapter 08.860</i>
28	<i>chapter 15.720</i>
29	<i>chapter 23.750</i>
30	<i>chapter 08.790</i>
31	<i>chapter 23.200</i>
32	<i>chapter 12.200</i>
33	<i>chapter 06.288</i>
34	<i>chapter 06.145</i>
35	<i>chapter 08.115</i>
36	<i>chapter 02.050</i>
37	<i>chapter 24.660</i>
38	<i>chapter 23.750</i>
39	<i>chapter 07.245</i>
40	<i>chapter 23.750</i>
41	<i>P.118/2017</i>
42	<i>chapter 08.300</i>
43	<i>L.29/2016</i>
44	<i>chapter 07.910</i>
45	<i>chapter 07.770</i>
46	<i>P.118/2017</i>
47	<i>chapter 07.245</i>
48	<i>P.118/2017</i>
49	<i>P.118/2017</i>
50	<i>chapter 23.750</i>
51	<i>chapter 08.100</i>
52	<i>P.118/2017</i>
53	<i>chapter 07.875</i>

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54	<i>chapter 08.240</i>
55	<i>P.118/2017</i>
56	<i>chapter 08.250</i>
57	<i>chapter 08.380</i>
58	<i>P.118/2017</i>
59	<i>L.20/2017</i>
60	<i>P.118/2017</i>
61	<i>chapter 07.245</i>
62	<i>L.2/1835 (chapter 07.630)</i>
63	<i>L.3/1853 (chapter 07.140)</i>
64	<i>L.7/1862 (chapter 07.665)</i>
65	<i>L.1/1864 (chapter 08.740)</i>
66	<i>L.1/1912 (chapter 07.700)</i>
67	<i>L.7/1949 (chapter 07.595)</i>
68	<i>R&amp;O.9490 (chapter 07.595.25)</i>
69	<i>R&amp;O.60/2003 (chapter 23.750.35)</i>