

**DRAFT MAGISTRATE'S COURT (MISCELLANEOUS  
PROVISIONS) (AMENDMENT No. 7) (JERSEY) LAW 199**

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**Lodged au Greffe on 3rd November 1998  
by the Legislation Committee**

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## Report

On 17th March 1998 the Legislation Committee presented to the States the Report of the Working Party on the practice and procedures of the Magistrate's Court (R.C.7).

In particular the Report highlighted the difficulties faced by the Magistrate in the absence of any public prosecutor in the Magistrate's Court to conduct the case against the defendant. The Magistrate has to undertake some tasks which do not normally fall upon a Judge who is trying a criminal case. He has to examine the witnesses for the prosecution (for which purpose he is provided with copies of their written statements) in order to draw out the relevant facts and, if the defendant elects to give evidence or calls witnesses, he has to question the defendant and the witness and, in effect, cross-examine them in order to test their evidence and form an opinion as to its reliability. Another consequence of the absence of a prosecutor is that there is nobody to make submissions to the Magistrate on behalf of the public on the issues of law and fact that arise.

The lack of representation of the prosecution has been the subject of comment by the Royal Court. In the case of *Tracy* (19th December 1996), the Court referred to "the difficult, if not impossible, position in which the Magistrate is often placed". The Court went on to observe that -

"[The Magistrate] was faced with an application persuasively made by experienced counsel for the respondent. Who was there to put the other side of the argument and to place the relevant law before him? The answer is no-one. The reason of course is that the Magistrate in Jersey is a *Juge d'Instruction*. He is not a *Juge d'Instruction* in the sense that that term is understood in France. But equally he is not a magistrate as that term is understood in England. He has a hybrid function which, although no doubt apt for the nineteenth century, has become for several reasons quite inappropriate for the process of criminal justice which has developed in recent years. The deficiencies were laid bare by the report of the Judicial and Legal Services Review Committee under the chairmanship of Sir Godfray Le Quesne, Q.C. as long ago as 1990. The system cries out for legislative reform."

The Report presented to the States in March 1998 addressed the question of whether such a prosecutor should be a qualified Jersey advocate. Paragraph 8.2 contains the following passage -

“It has historically proved difficult to attract Jersey qualified lawyers in the Attorney General’s Chambers from the private sector and there would be no guarantee that persons with the necessary local legal qualifications could necessarily be found. Indeed the present police legal adviser is an English solicitor experienced in prosecuting criminal cases in England. We are of the view that a prosecutor should be a person employed by the Attorney General’s Chambers approved by the Attorney General to appear on his behalf in the Magistrate’s Court. We suggest that the qualifications are those contained in Article 4 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1997 which permits a legally qualified prosecutor to appear in cases where the victim is a child.”.

It was noted that the recommendation would require the appointment of one additional prosecutor and support staff to be employed in the Law Officers’ Department. In the event, agreement has yet to be reached with the Establishment Committee as to the creation of an extra post. However, the enactment of a short amendment to the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 need not be delayed on this account.

In one respect the draft Law differs slightly from the Criminal Justice (Evidence and Procedure) (Jersey) Law 1997 which provides that Jersey solicitors as well as advocates should be able to appear for the prosecution even though not in the employ of the Law Officers’ Department. Jersey solicitors do not ordinarily have a right of audience in the Magistrate’s Court and the draft Law therefore would provide that only a solicitor employed in the Law Officers’ Department should gain a right of audience for the purposes of this Law.

### **Explanatory Note**

This draft Law amends the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 to enable the conduct of proceedings, with the approval of the Attorney General, to be undertaken on behalf of the prosecution by -

- (a) an advocate; or
- (b) a solicitor (*écrivain*), barrister or English solicitor who is employed in the Law Officers Department.

In proceedings in which such a legally qualified prosecutor appears, the Magistrate will perform only a judicial rôle, as does the Bailiff when he presides over the Royal Court.

**MAGISTRATE'S COURT (MISCELLANEOUS PROVISIONS)  
(AMENDMENT No. 7) (JERSEY) LAW 199**

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**A LAW** to amend further the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949; sanctioned by Order of Her Majesty in Council of the

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(Registered on the      day of      199 )

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**STATES OF JERSEY**

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The      day of      199

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

**ARTICLE 1**

After Part III of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949, as amended,<sup>1</sup> there shall be inserted the following Part -

*"PART IIIA.*

**PROSECUTION OF PROCEEDINGS.**

**ARTICLE 12A.**

**PROCEEDINGS BY A LEGALLY QUALIFIED PROSECUTOR.**

The conduct of proceedings in the Magistrate's Court may, with the approval of the Attorney General, be undertaken on behalf of the prosecution by -

<sup>1</sup> Tome VII, page 548, Volume 1979-1981, page 205, and Volume 1996-1997, page 489.

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*(Jersey) Law 199*

- (a) an advocate; or
- (b) a solicitor or a person who has been admitted -
  - (i) to the degree of the Utter Bar of one of the Inns of Court of England and Wales; or
  - (ii) as a solicitor of the Supreme Court of Judicature of England and Wales,and who is employed in the Law Officers Department.

ARTICLE 12B.

RÔLE OF THE MAGISTRATE.

In proceedings conducted in accordance with Article 12A of this Law, the Magistrate shall perform only a judicial rôle.”.

ARTICLE 2

Article 4 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1997<sup>2</sup> is repealed.

ARTICLE 3

This Law may be cited as the Magistrate's Court (Miscellaneous Provisions) (Amendment No. 7) (Jersey) Law 199 .

<sup>2</sup> Volume 1996-1997, page 614.