

STATES OF JERSEY



Jersey

DRAFT CRIMINAL PROCEDURE (QUALIFYING OFFENCES) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 9th September 2019
by the Minister for Home Affairs**

STATES GREFFE

REPORT

The Criminal Procedure (Jersey) Law 2018 (“the Law”, *see* [L.25/2018](#)), approved by the States Assembly on 20th March 2018, makes provision for the Court of Appeal to make an order quashing an acquittal and ordering a retrial in respect of very serious offences, where there is new and compelling evidence against the acquitted person, and it is in the interests of justice to do so.

Examples of the use of this power would be in cases where an acquitted defendant had confessed or been found guilty of a very similar offence, or where new DNA evidence had emerged that was not available at the time of trial.

Schedule 2 of the Law makes provision in relation to these matters, and provides that the Assembly will make Regulations to define which offences could qualify for an order to quash an acquittal.

The qualifying offences and their descriptions are listed in the Draft Criminal Procedure (Qualifying Offences) (Jersey) Regulations 201-. The application of Schedule 2 to the Law would extend to historic offences and acquittals, and accordingly, offences that have been abolished or replaced are included in the list.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

EXPLANATORY NOTE

The Draft Criminal Procedure (Qualifying Offences) (Jersey) Regulations 201-, if passed, would specify certain offences in respect of which a person has been acquitted in a trial before the Royal Court, or on appeal against a conviction in the Royal Court, for the purposes of bringing an application to the Court of Appeal for an order to quash that acquittal and to retry the person of the offence. These are known as “qualifying offences”.

Regulation 1 sets out a Table which specifies qualifying offences in respect which a person may be retried under the procedures set out in Schedule 2 (quashing of person’s acquittal and retrial) to the Criminal Procedure (Jersey) Law 2018 (the “Law”).

Regulation 2 is an amendment to paragraph 2(1) (cases that may be retried) to Schedule 2 to the Law which is for the purpose of supplementing paragraph 2(6) of that Schedule, so as put beyond doubt that offences in respect of which a person was tried and acquitted in the Royal Court under the Loi (1864) réglant la Procédure Criminelle, before the repeal of that Law, are qualifying offences for the purposes of these Regulations.

Regulation 3 gives the title by which these Regulations may be cited and provides for their coming into force on 31st October 2019.



Jersey

DRAFT CRIMINAL PROCEDURE (QUALIFYING OFFENCES) (JERSEY) REGULATIONS 201-

Contents

Regulation

1	Qualifying offences.....	9
2	Schedule 2 to the Criminal Procedure (Jersey) Law 2018 amended.....	13
3	Citation and commencement.....	13

ENDNOTES

Table of Endnote References.....	14
----------------------------------	----



Jersey

DRAFT CRIMINAL PROCEDURE (QUALIFYING OFFENCES) (JERSEY) REGULATIONS 201-

Made *[date to be inserted]*

Coming into force *[date to be inserted]*

THE STATES make these Regulations under Article 115 and paragraph 2(8) of Schedule 2 to the Criminal Procedure (Jersey) Law 2018¹ –

1 Qualifying offences

- (1) For the purposes of paragraph 2 of Schedule 2 (quashing of person's acquittal and retrial) to the Criminal Procedure (Jersey) Law 2018², the Table –
- (a) in column 1, specifies offences (with their description) that are qualifying offences; and
 - (b) in column 2 describes any limitation on the scope of the offences specified in column 1,
- as follows –

Table of Qualifying Offences

1 – Offences	2 – limitation on scope of offences
(1) Miscellaneous offences under customary law	
Arson.	
Treason.	
Any offence under customary law not otherwise mentioned in this Table that carries no maximum sentence and for which the sentence is impossible by the Superior Number of the Royal Court.	
(2) Offences against the person under customary law	
Kidnapping.	
Manslaughter.	

1 – Offences	2 – limitation on scope of offences
Murder.	
(3) Sexual offences under customary law	
Indecent assault.	
Gross indecency occurring before 23rd November 2018.	
Incest occurring before 23rd November 2018.	
Rape occurring before 23rd November 2018.	
(4) Offences under the Sexual Offences (Jersey) Law 2018	
Article 5 (rape).	
Article 6 (sexual penetration without consent).	
Article 8 (causing sexual act without consent).	Where the sexual act caused, allegedly involved any penetration described in Article 8(2)(a)(i) to (iv).
Article 9(1) and (2) only (penile penetration or sexual penetration of a young child).	
Article 10 (causing or inciting a sexual act with a young child).	The offence is one of causing engagement in an act and the act allegedly involved any penetration described in Article 10(2)(a)(i) to (iv).
(5) Sexual offences under the Mental Health (Jersey) Law 2016³	
Article 74 (sexual offences: prohibited acts).	The offence of committing a prohibited act described in Article 74(2)(a) or (b) allegedly involved penetration (within the meaning of Article 77(3)).
Article 76 (sexual offences: coercion).	The prohibited act referred to in Article 76 is one described in Article 74(2)(a) or (b) and allegedly involved penetration (within the meaning of Article 77(3)).
(6) Drugs offence under the Customs and Excise (Jersey) Law 1999⁴	
Article 61 (fraudulent evasion of prohibitions and restrictions).	The offence of evasion of prohibition or restriction in connection with alleged importation or exportation having effect by virtue of Article 4 of the Misuse of

1 – Offences	2 – limitation on scope of offences
	Drugs Law where the goods were a Class A drug.
(7) Drugs offences under the Misuse of Drugs Law	
Article 5 (restrictions on production and supply of controlled drugs).	The offences under Articles 5, 8(2) and 11B are in respect of a Class A controlled drug allegedly being produced, supplied, offered for supply, carried, concealed or had in possession of.
Article 8(2) (restrictions on possession of controlled drugs).	
Article 11B (use of ships for illicit traffic of drugs).	
(8) Offences under the Loi (1884) sur les matières explosives⁵	
Article 2 (causing by means of any explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property).	
Article 3(1) (doing any act with intent to cause or conspiring to cause by means of any explosive substance, an explosion likely to endanger life or to cause serious injury to property or making, possessing or having control of any explosive substance with the intention of endangering life or causing serious injury to property).	
(9) Offences under the International Criminal Court (Jersey) Law 2014⁶	
Article 45 (genocide, crimes against humanity and war crimes).	
Article 46 (conduct ancillary to genocide, etc. committed outside jurisdiction).	
(10) Offences under the Crime and Security (Jersey) Law 2003⁷	
Article 2 (use etc. of nuclear weapons).	
Article 4 (assisting or inducing certain weapons – related acts overseas).	
(11) Offences under the Terrorism (Jersey) Law 2002⁸	
Article 51 (directing terrorist organization).	
Article 55 (terrorist bombing: jurisdiction).	
(12) Offences under the Firearms (Jersey) Law 2000⁹	

1 – Offences	2 – limitation on scope of offences
Article 38 (possession of firearms with intent to injure).	
Article 39 (use of firearms to resist arrest, etc.).	
(13) Offence under the Torture (Jersey) Law 1990¹⁰	
Article 1 (torture).	
(14) Offences under the Chemical Weapons Act 1996 as extended to Jersey by the Chemical Weapons Act 1996 (Jersey) Order 1998¹¹	
Section 2 (use etc. of chemical weapons).	
Section 11 (premises or equipment for producing chemical weapons).	
(15) Offence under the Taking of Hostages Act 1982 as extended to Jersey by the Taking of Hostages (Jersey) Order 1982¹²	
Section 1 (hostage-taking).	
(16) Offence under the Biological Weapons Act 1974 as extended to Jersey by the Biological Weapons Act 1974 (Jersey) Order 1974¹³	
Section 1 (restriction on development etc. of certain biological agents and toxins and of biological weapons).	
(17) Offence under the Geneva Conventions Act 1957 as extended to Jersey by the Geneva Conventions Act (Jersey) Order 1966¹⁴ subject to the exceptions and modifications applied by the Geneva Conventions (Amendment) Act 1995 as extended to Jersey by the Geneva Conventions Act (Jersey) Order 1999¹⁵	
Section 1 (grave breaches of scheduled conventions).	
(18) Inchoate offences	
Conspiring or attempting to commit an offence which is a qualifying offence.	
Aiding, abetting, counselling, inciting or procuring the commission of an offence which is a qualifying offence.	

- (2) In this Regulation, any reference to –
- (a) “Misuse of Drugs Law” means the Misuse of Drugs (Jersey) Law 1978¹⁶;
 - (b) “Class A drug” means any of the substances and products for the time being specified in Part 1 of Schedule 2 to the Misuse of Drugs Law;

- (c) “controlled drug” has the meaning given in Article 3(1)(a) of the Misuse of Drugs Law;
- (d) “produce” has the meaning given in Article 1(1) of the Misuse of Drugs Law.

2 Schedule 2 to the Criminal Procedure (Jersey) Law 2018 amended

In Schedule 2 to the Criminal Procedure (Jersey) Law 2018¹⁷, after paragraph 2(1)(c) there is inserted –

- “(d) before the Royal Court under the Loi (1864) réglant la Procédure Criminelle¹⁸ including an appeal against a conviction under that Loi, or an appeal from a decision on such an appeal.”.

3 Citation and commencement

These Regulations may be cited as the Criminal Procedure (Qualifying Offences) (Jersey) Regulations 201- and come into force on 31st October 2019.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>L.25/2018</i>
<i>2</i>	<i>L.25/2018</i>
<i>3</i>	<i>L.29/2016</i>
<i>4</i>	<i>chapter 24.660</i>
<i>5</i>	<i>chapter 23.250</i>
<i>6</i>	<i>chapter 17.520</i>
<i>7</i>	<i>chapter 08.110</i>
<i>8</i>	<i>chapter 17.860</i>
<i>9</i>	<i>chapter 23.200</i>
<i>10</i>	<i>chapter 17.875</i>
<i>11</i>	<i>chapter 17.140</i>
<i>12</i>	<i>chapter 17.840</i>
<i>13</i>	<i>chapter 17.105</i>
<i>14</i>	<i>chapter 17.350</i>
<i>15</i>	<i>chapter 17.385</i>
<i>16</i>	<i>chapter 08.680</i>
<i>17</i>	<i>L.25/2018</i>
<i>18</i>	<i>chapter 08.740</i>