

STATES OF JERSEY



DRAFT CRIMINAL PROCEDURE (CONSEQUENTIAL AND SUPPLEMENTARY AMENDMENTS) (JERSEY) REGULATIONS 202- (P.59/2021): COMMENTS

**Presented to the States on 16th July 2021
by the Children, Education and Home Affairs Scrutiny Panel
Earliest date for debate: 20th July 2021**

STATES GREFFE

COMMENTS

P.59/2021 [Draft Criminal Procedure \(Consequential and Supplementary Amendments\) \(Jersey\) Regulations 202-](#) (hereafter the ‘draft Regulations’) was lodged by the Minister for Home Affairs on 8th June 2021 and are lodged as a consequence of necessary changes to the [Criminal Procedure \(Jersey\) Law 2018](#) (the ‘2018 Law’). It should be noted that the draft Regulations have been lodged alongside two other propositions that relate to the 2018 Law, namely, P.57/2021 [Draft Criminal Procedure \(Juries – Triage\) \(Jersey\) Regulations 202-](#) and P.68/2021 [Draft Criminal Procedure \(Jersey\) Law 2018 \(Appointed Day\) \(No.4\) Act 202-](#). As a whole, the three propositions would give effect and bring into force certain aspects of the 2018 Law. The Children, Education and Home Affairs Panel (hereafter ‘the Panel’) is satisfied with the rationale in relation to P.57/2021 and P.68/2021 and what is brought into effect by them, however, following two briefings on Monday 12th July and Thursday 15th July 2021, it was agreed that it would produce comments in relation to the draft Regulations for the benefit of States Members ahead of the debate.

As outlined in the report accompanying the proposition, the draft Regulations have two purposes. Firstly, they are intended to ensure that the Criminal Procedure Rules Committee can make the necessary rules to manage the operation of courts in respect of other legislation which refers to the old method of the Superior Number making rules, and secondly to clear up obsolete references and to make minor amendments to other legislation to align it with the 2018 Law.

As stated previously, the Panel received two briefings in relation to the draft Regulations, alongside the other two pieces of legislation relating to the Criminal Procedure (Jersey) Law 2018. Whilst no concerns were raised in relation to P.57/2021 and P.68/2021, the Panel asked a number of questions, the response to which it was felt should be shared with Members ahead of the debate. The following section details the questions raised and responses received from Officers during the briefing.

Regulation 7(3)

The Panel notes that the wording in Regulation 7(3) is as follows:

In Article 75(10) (verdicts) for “No judgment after the verdict shall be liable” there is substituted “After a verdict is delivered, that verdict is not liable”.

The Panel questioned the intention of this change in wording from judgement to verdict. It was explained that the current wording within the 2018 Law which used the term ‘judgement’ was not clear and that replacing it with verdict gave absolute clarity over the intention that any verdict delivered by a Jury was not liable by reason of a failure to comply with the Law in respect of summoning or empanelling jurors or the incapacity of a person to serve as a juror. It is noted that the change in wording does not change the intent of the Article within the 2018 Law and gives similar effect, albeit with clearer language as to its intention.

Regulation 7(4)

Regulation 10

The Panel note that the amended wording for this Regulation is as follows:

In Article 3(2)(a) (interpretation of Convention rights) of the Human Rights (Jersey) Law 200046 after “made by the Royal Court” there is inserted “or by the Criminal Procedure Rules Committee”.

The Panel questioned the membership of the Criminal Procedures Rules Committee (CPRC) raising concern that any changes to the rules of court should involved the Royal Court itself. It was explained that the membership of the CPRC was set out in Part 13 (Articles 112 – 114) of

the 2018 Law and that this proposed change was an improvement to the current position whereby the Rules of Court were made by the Superior Number of the Royal Court at the direction of the Bailiff as Chief Justice. It was further explained that as the Bailiff sat as Chair of the CPRC, any changes put forward to the Rules that were rejected by the Superior Number would be in direct contravention of the decision of the Bailiff, who also oversees the Rules of Court. It was explained that this was, therefore, an unlikely situation and, given the expanded membership of the CPRC, this would cover all bases in terms of discussions surrounding the Rules of Court.

Regulation 11

The Panel notes that the wording surrounding Regulation 11 is as follows with the draft Regulations:

In Article 7(2) of the Inquests and Post-Mortem Examinations (Jersey) Law 1995 - (jury) – (a) for “is capable of serving” there is substituted “is eligible to serve;

The Panel questioned the reason for changing the terminology from ‘capable of serving’ to ‘is eligible to serve’. It was explained that the term capable, and in turn capacity, was an outdated term in the context of current legislation (the Mental Health Capacity Law was cited as one example) and therefore it was deemed necessary to incorporate the term eligible in order to modernise the definition.

Regulation 15(1)(b)

This particular Regulation is cited as follows within the draft Regulations:

in Article 76(2)(b) (exclusion of unfair evidence) “or proceedings pursuant to Article 19 of the Loi (1864) réglant la procédure criminelle” is deleted.

The Panel questioned what was meant by the term unfair evidence. It was explained that this related primarily to the introduction of evidence by the prosecution that could affect the fairness of the trial in relation to the defendant. It was also noted that the reference within the 1864 Law related specifically to committal proceedings which were being removed by the 2018 Law in any event.

Regulation 17

The Panel questioned the substitution of ‘by or with the approval of’ in relation to this change in respect of the Proceeds of Crime (Jersey) Law 1999.

in Article 1(3) (interpretation) – (i) in sub-paragraph (c) for “at the instance of” there is substituted “by or with the approval of”,

It was noted that within the primary law this related to the Attorney General who, at present, can instigate proceedings for an offence in relation to the forfeiture and confiscation of the proceeds of crime. It was questioned who else could be involved in the confiscation of funds with the approval of the Attorney General. An example of the Jersey Financial Services Commission was given by Officers, however, it was noted that the Court could also direct for the confiscation of funds.

Regulation 18

The Panel questioned why the draft Regulation put forward the deletion of the term magistrate in the Protection of Children (Jersey) Law 1994 and whether this had been changed to another term. It was confirmed that the definition of the term magistrate was updated in the 2018 Law

and that this required updating in this piece of legislation so that it was in line with the definition in the 2018 Law.

Generally, the Panel is satisfied with the draft Regulations, however, given the complexity of the number of Laws amended it would highlight that this may prove to be a difficult piece of legislation for States Members to cross reference with the affected Laws. This has been raised with officials for reference in future pieces of legislation of this complexity.

For clarity, the Panel has provided links below to two documents which it feels will be of use to Members ahead of the debate in order to signpost them better during the debate.

[Criminal Procedure \(Law\) 2018 \(proposition P.118/2017\)](#) – an overview of the contents of the 2018 Law is provided from page 5

[Draft Criminal Procedure \(Law\) 2018 Comments – Education and Home Affairs Panel – lodged 16th March 2018](#)

Statement under Standing Order 37A [Presentation of a Comment relating to a proposition]

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Order 37A due to the States Meeting at which they were due to be presented being moved forward to Monday 19th July which in turn affected the final lodging deadline for Comments. The Panel had planned to receive a follow up briefing to clarify a number of points

in relation to its comments with officials on Thursday 15th July prior to the deadline changing and it was not possible to reschedule.