

STATES OF JERSEY



Jersey

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

**Lodged au Greffe on 5th July 2021
by the Minister for Home Affairs
Earliest date for debate: 20th July 2021**

STATES GREFFE

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

PAGE 10, REGULATION 7 –

After Regulation 7(11) insert –

“(12) In Schedule 2 paragraph 12(2) for “retried” there is substituted
“indicted”.”.

MINISTER FOR HOME AFFAIRS

REPORT

The [Draft Criminal Procedure \(Consequential and Supplementary Amendments\) \(Jersey\) Regulations 202-](#) (the “Regulations”) are intended to ensure that the necessary Rules of Court can be made to facilitate the operation of the [Criminal Procedure \(Jersey\) Law 2018 \(P.118/2017\)](#) (the “Criminal Procedure Law”), to clear up obsolete references, and to make minor amendments to other legislation to align it with the Criminal Procedure Law.

These amending Regulations (the “Amendment”) will make a single minor addition to those Regulations to add in an extra change to the Criminal Procedure Law. The need for this change was identified during the final pre-implementation review of the Criminal Procedure Law and was not included in the original set of changes in the Regulations.

The Criminal Procedure Law allows the Court of Appeal to order the retrial of a person who has previously been acquitted of a serious offence, but only on the very narrow grounds of ‘new and compelling evidence’ having arisen, that was not presented in the original trial and is both reliable and ‘highly probative’ of the case against the acquitted person. Furthermore the Court of Appeal may only make such an order where it is in the interests of justice to do so, having regard to factors such as whether there could be a fair trial in light of the length of time since the alleged offence was committed.

The rule here is broadly the same as is in force in England and Wales, where it has been in place since 2005, following a recommendation of the Macpherson report on the murder of Steven Lawrence and the Auld report on criminal justice.

This power is primarily intended to deal with issues where new technology has revealed evidence that was not previously available. Historically, in jurisdictions where this provision exists it has primarily been used to re-try people acquitted for very serious offences such as rape and murder where new DNA evidence has emerged some time after the original trial.

When the Criminal Procedure Law was developed, it was intended that a person should be ‘indicted’ (i.e. where specifics of the alleged offence are formally put to that person) within a maximum of 2 months of the order for a retrial being made. However, as drafted, the provision is currently capable of being read to suggest that the retrial itself may need to take place within 2 months of the order. Aside from such a reading being entirely impracticable, the fact that it is inconsistent with other provisions which refer to the need for the person to be indicted (not tried) within 2 months demonstrates that it is not the correct one.

This Amendment would improve the wording by substituting ‘indicted’ for the current wording of ‘retried’ in the relevant paragraph. This is consistent with the equivalent English legislation on which these provisions were modelled.

Financial and manpower implications

There would be no financial and manpower implications arising from the adoption of this amendment.