

**DRAFT CRIMINAL JUSTICE (EVIDENCE AND PROCEDURE)
(JERSEY) LAW 199**

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Report

This draft Law would address a number of shortcomings in the existing law of criminal evidence in Jersey.

Firstly, there is currently no provision which enables the parties in criminal cases to admit facts which, though they may be important elements of a case, are not in issue. Under Part II of the draft Law, any fact which could be proved in evidence can be admitted either before the trial or during the trial. Obviously, this could reduce substantially the amount of evidence and the number of witnesses who would otherwise need to be called to give oral evidence.

An admission given in accordance with the requirements of Part II would bind the party making it and be conclusive evidence of the facts to which it relates, though an admission may in certain circumstances be withdrawn.

This will apply to all criminal proceedings.

Secondly, a defendant in criminal proceedings before the Royal Court is presently not obliged to give advance warning of an alibi defence. This can mean that the prosecution is taken by surprise at the trial by such a defence which, if it had been informed about in advance, it would have been able to test and, which if it was found to be reliable, might have resulted in the proceedings being discontinued before trial. Equally, being required to give advance notice of an alibi makes it more difficult for a defendant to invent or set-up a false alibi defence.

The provisions of the draft Law dealing with alibis are in Part III. They mirror provisions which were introduced in England and Wales in 1967.

Thirdly, a party to criminal proceedings in the Royal Court is not currently obliged to give notice of any expert witness which he intends to call.

The result is that if, for instance, a defendant calls an expert witness on firearms, the prosecution may have to request an adjournment of the trial to seek its own information in order to cross-examine the expert

and may need to ask the Royal Court to allow it to call its own expert witness in rebuttal.

Part IV of the draft Law would enable the Royal Court to make rules which require the production of expert evidence in advance, enabling the other party to be informed of the evidence and, if necessary, instruct its own expert, whose report would then be disclosed in turn to the other party.

This could avoid adjournments and delays in trials and would prevent the prosecution from being taken by surprise by expert evidence produced by the defence. Additional time and costs savings may result from the provision of the draft Law, allowing reports by expert witnesses in all criminal proceedings to be read as evidence with the leave of the court, making it unnecessary in such cases for the expert to come to court to give evidence.

As with alibi evidence, this provision is based on equivalent rules which were introduced in England and Wales in 1986.

Fourthly, further time and costs savings will be possible under the provisions of Part V of the draft Law, which permits written statements of witnesses to be read as evidence in any criminal proceedings, where the statement has been sent to the opposing party and he has agreed that it can be read.

This will mean that a witness whose evidence is vital to the prosecution or defence can, if it is not going to be challenged, be read out without the necessity of calling the witness to give oral evidence. Much time and expense is wasted at present, when witnesses have to be called to give evidence, even though there is no challenge to that evidence.

All of these provisions were intended to form part of the comprehensive revision of police procedures and criminal evidence which is an on-going project of the Defence Committee, and which will eventually be presented to the States in the form of a substantial draft Law similar to the Police and Criminal Evidence Act 1984 of the United Kingdom.

However, the Legislation Committee, with the concurrence of the Defence Committee, feels that the provisions now included in the draft

Law should not be delayed by the lengthy and complicated gestation of the "Jersey PACE" Law, since they could on their own more speedily lead to significant improvement to the administration of criminal justice in Jersey.

It is not anticipated that any extra costs will be incurred by the implementation of the draft Law. Indeed, as indicated above, the Committee hopes that it will result in considerable costs savings for the courts and the parties to criminal proceedings.

Explanatory Note

This draft Law would amend the law relating to evidence and procedure, in criminal proceedings, in the following ways -

(a) FORMAL ADMISSIONS:

Article 3 provides that, where the conditions in the Article are satisfied, a party in criminal proceedings may admit any fact of which oral evidence may be given. He may do so before or at the hearing.

The principal conditions relate to safeguards for defendants. In particular, any admission out of court must be in writing and, if made by an individual before trial, must be approved by his advocate expressly as a formal admission under the Article.

Article 4 provides that an admission, if properly made, is conclusive evidence against the person concerned of the fact admitted by him, both in the proceedings and in subsequent related proceedings such as an appeal or retrial.

Article 5 provides that an admission may be withdrawn by leave of the court.

These provisions, which are contained in *Part II* of the draft Law, are based on section 10 of the Criminal Justice Act 1967 (which carried into effect recommendations in the Ninth Report of the Criminal Law Revision Committee in 1966 (see Cmnd. 3145)).

(b) ALIBIS:

Article 6 provides that in a criminal trial before the Royal Court, an accused person may not adduce evidence of an alibi unless, within seven days after being committed for trial, he has given notice of the particulars of the alibi. It also provides that he may not call any other person to give alibi evidence unless, in the notice, he gives information as to the whereabouts of that witness. However, the court may give him leave to adduce alibi evidence in any case, and must do so if he has not been informed in the prescribed manner of the requirements of this Article as to notice.

These provisions are contained in Part III of the draft Law and are adapted from section 11 of the Criminal Justice Act 1967.

(c) EXPERT EVIDENCE:

Article 7 provides that the Royal Court may, by rules of court, require any party in criminal proceedings before that court to give prior notice of any expert evidence that he intends to adduce, and prohibit him from adducing it without the leave of the court if he does not give such notice.

Article 8 provides that whether or not an expert is to give oral evidence in any criminal proceedings, his expert report is admissible in evidence in the proceedings. However, if he is not to give oral evidence, admissibility is conditional on the leave of the court. In deciding whether to give leave, the court must consider *inter alia* whether its admission will cause unfairness to an accused person.

These provisions are contained in Part IV of the draft Law. Article 7 follows section 81 of the Police and Criminal Evidence Act 1984 and Article 8 follows section 30 of the Criminal Justice Act 1988, in each case with minor changes.

(d) READING OF STATEMENTS AS EVIDENCE:

Article 9 provides that, where the conditions in the Article are satisfied, a written statement by a person is admissible in evidence in criminal proceedings as if it were oral testimony by that person.

The principal conditions are -

- (a) that the person making the statement must declare in it that he believes it is true and knows that he may be liable to prosecution if it is false; and
- (b) that none of the other parties to the case objects (in other words, that it is admitted by consent).

The draft Law modifies the existing requirements in the “Loi (1864) réglant la procédure criminelle” to the effect that a written statement may not be used in the committal for trial of an accused person unless he is represented by an advocate. The effect of this change will be to restrict that requirement to the case where a person is committed wholly on written statements. The procedural requirements now contained in Article 18B of the Loi will be subsumed under the draft Law. (These amendments to the Loi are contained in Article 18 of the draft Law.)

Article 10 provides that, by consent, a deposition taken from a witness at committal proceedings is admissible in evidence at the subsequent trial as if it were oral evidence.

Article 11 of the draft Law provides that a written statement or deposition that is admitted as evidence under Article 9 or Article 10 must be read aloud at the hearing, unless the court directs otherwise. Where the statement is not read aloud, the court may direct that an account of it is nevertheless to be given orally in court. (As is the case at present under Article 19 of the 1864 Loi, this requirement will not apply at committals that take place entirely on written statements.)

Article 12 provides for the production of exhibits that are identified in such written statements or depositions.

Article 13 provides that whether or not such a written statement or deposition is read in evidence, the party tendering it may call the maker to give oral evidence. The court may in any case, of its own motion or on the application of any other party, require him to do so. (As is also the case under Article 19 of the 1864 Loi, this requirement will not apply at committals entirely on written statements.)

These provisions are contained in Part V of the draft Law. Those relating to written statements under Article 9 are based, with minor modifications, on section 9 of the Criminal Justice Act 1967 (which also gave effect to recommendations made by the Ninth Report of the Criminal Law Revision Committee). Those relating to depositions under Article 10 are adapted from section 13 of the Criminal Justice Act 1925.

Article 14 provides for the excusing from attendance at court (unless otherwise required under Article 13) of persons whose statements or depositions are read in evidence.

(e) OTHER PROVISIONS:

Part I deals with the interpretation and application of the draft Law.

Part VI of the draft Law contains supplementary provisions relating to criminal sanctions for false statements, the service of documents, rules of court and amendments to the 1864 Loi.

The draft Law, if enacted, would come into force on the day following its registration.

**CRIMINAL JUSTICE (EVIDENCE AND PROCEDURE)
(JERSEY) LAW 199**

A LAW to provide in criminal proceedings for formal admissions of facts; for notice of alibis; for matters relating to the admissibility of expert evidence; for the reading of written statements and depositions as evidence; and for connected purposes; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

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

PART I

INTRODUCTORY

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires -

“evidence in support of an alibi” means evidence tending to show that, by reason of the presence of an accused at a particular place or in a particular area at a particular time,

he was not or was unlikely to have been at the place where the offence with which he is charged is alleged to have been committed, at the time of its alleged commission;

“expert report” means a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence;

“maker” means -

- (a) in relation to a written statement to which Article 9 refers, the person by whom the statement is made; and
- (b) in relation to a deposition to which Article 10 refers, the person from whom the deposition is taken;

“party” includes a Connétable or Centenier who presents a person before a Magistrate;

“the prescribed period” means, in Article 6, the period of seven days immediately following committal to the Royal Court for trial (disregarding public holidays, bank holidays and general holidays in the Island);

“rules of court” means rules to which Article 17 refers;

“subsequent criminal proceedings”, in relation to a matter, includes an appeal and a retrial in respect of the matter;

“trial” includes a retrial.

(2) A reference in this Law to another enactment is a reference to that enactment as amended from time to time.

(3) In this Law -

- (a) a reference to an Article by number only is a reference to an Article in this Law;

- (b) a reference in an Article to a paragraph by number or letter only is a reference to a paragraph in that Article;
- (c) a reference in a paragraph to any subdivision of a paragraph by number or letter only is a reference to a subdivision in that paragraph.

ARTICLE 2

Application

The provisions of this Law apply notwithstanding any requirement in either of Articles 18 and 42 of the “Loi (1864) réglant la procédure criminelle”¹ that a witness shall give evidence orally in criminal proceedings.

PART II

FORMAL ADMISSIONS

ARTICLE 3

Admissions of fact

(1) Where the conditions in this Article are satisfied, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by any party.

(2) An admission under this Article may be made before or during the proceedings.

(3) The conditions to which paragraph (1) of this Article refers are -

¹ Tomes I-III, pages 287 and 294 and Volume 1996-1997, pages 678 and 679.

- (a) in the case of an accused who is an individual, the admission may only be made by him personally, or by his advocate acting on his behalf;
- (b) where it is made by any person otherwise than in court, it shall be in writing;
- (c) where it is made in writing by any individual, it shall purport to be signed by him;
- (d) where it is made in writing by a body corporate, it shall purport to be signed by a director, manager, secretary or other similar officer of the body corporate; and
- (e) where it is made at any stage before the trial, by an accused who is an individual -
 - (i) it shall be approved (whether at the time it is made or subsequently) by his advocate; and
 - (ii) it shall be so approved expressly as a formal admission under this Article.

ARTICLE 4

Effect of admission

(1) An admission of a fact under Article 3 by a party in any criminal proceedings shall be conclusive evidence in those proceedings of that fact, as against that party.

(2) An admission by a party under Article 3, for the purpose of proceedings relating to any matter, shall be treated as an admission by that party for the purpose of any subsequent criminal proceedings relating to that matter.

ARTICLE 5

Withdrawal of admission

With the leave of the court, an admission under Article 3 may be withdrawn -

- (a) in the proceedings for the purpose of which it was made; or
- (b) in any subsequent criminal proceedings relating to the same matter.

PART III

ALIBIS

ARTICLE 6

Notice of alibi

(1) On a trial before the Royal Court, an accused shall not adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) On a trial before the Royal Court, an accused shall not call any other person to give such evidence unless each of the following conditions is satisfied, namely -

- (a) the notice under paragraph (1) includes the name and address of the witness or, if the name or the address is not known to the accused at the time when he gives the notice, any information in his possession that might be of material assistance in finding the witness;
- (b) if the name or the address is not included in the notice, the court is satisfied that before giving the notice the accused took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;

- (c) if the name or the address is not included in the notice, but the accused subsequently discovers the name or address or receives other information that might be of material assistance in finding the witness, he forthwith gives notice of that information; and
- (d) if the accused is notified by or on behalf of the Attorney General that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information that is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) Notwithstanding paragraph (1) or paragraph (2), an accused may in any case adduce evidence in support of an alibi by the leave of the Royal Court.

(4) The Royal Court shall not refuse leave under paragraph (3) if it appears to the Court that the defendant was not informed, in accordance with rules of court, of the requirements of this Article.

(5) Subject to any directions by the Royal Court as to the time when it is to be given, any evidence tendered to disprove an alibi may be given before or after evidence is given in support of the alibi.

(6) A notice purporting to be given under this Article on behalf of an accused by his advocate shall, unless the contrary is proved, be treated as given with the authority of the accused.

- (7) A notice under paragraph (1) shall be given either -
 - (a) in court, during or at the end of the proceedings before the Magistrate at which the accused is committed to the Royal Court for trial; or
 - (b) in writing to the Attorney General.

(8) A notice by or on behalf of the accused under sub-paragraph (c) or sub-paragraph (d) of paragraph (2) shall be given in writing to the Attorney General.

PART IV

EXPERT EVIDENCE

ARTICLE 7

Notice of expert evidence in Royal Court

- (1) Rules of court may make provision for -
 - (a) requiring any party to criminal proceedings before the Royal Court to disclose to the other party or parties any expert evidence that he proposes to adduce in the proceedings; and
 - (b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of sub-paragraph (a) from adducing that evidence without the leave of the court.
- (2) Rules of court for the purposes of this Article -
 - (a) may specify the kind of expert evidence to which they apply; and
 - (b) may exempt facts or matters of any description specified in the rules.

ARTICLE 8

Expert reports

(1) An expert report is admissible as evidence in criminal proceedings, whether or not the person making it attends to give evidence orally in those proceedings.

(2) However, if it is proposed that the person making the report shall not give evidence orally, the report is only admissible with the leave of the court.

(3) For the purpose of determining whether to give leave, the court shall have regard -

- (a) to the contents of the report;
- (b) to the reasons why it is proposed that the person making the report shall not give evidence orally;
- (c) to any risk, having regard in particular to whether it is likely to be possible to controvert statements in the report if the person making it does not attend to give evidence orally in the proceedings, that its admission or exclusion will result in unfairness to an accused; and
- (d) to any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making it could have given evidence orally.

PART V

READING OF STATEMENTS AS EVIDENCE

ARTICLE 9

Admissibility of written statements as evidence

(1) Where the conditions in this Article are satisfied, a written statement by any person is admissible as evidence in any criminal proceedings to the same extent as if it were oral evidence to that effect by that person.

(2) In every case -

- (a) the statement shall purport to be signed by the person who has made it;
- (b) the statement shall contain a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
- (c) before the statement is tendered in evidence, a copy shall be served, by or on behalf of the party proposing to tender it, on each of the other parties in the proceedings; and
- (d) none of the other parties or his advocate, within seven days after being served with a copy, shall himself have served on the party proposing to tender the statement a notice in writing that he objects.

(3) Where the statement is made by a person who is under the age of twenty years, it shall give his age.

(4) Where the statement is made by a person who cannot read it -

- (a) it shall have been read to him before he signs it; and
- (b) it shall be accompanied by a declaration, by the person who read the statement to him, that it was read to him before he signed it.

(5) Where the statement refers to any other document as an exhibit, each copy of the statement that is served under this Article on any other party shall be accompanied by -

- (a) a copy of the document; or

- (b) information that will enable that party to inspect the document or a copy of it.

(6) Notwithstanding paragraph (1), the conditions in subparagraphs (c) and (d) of paragraph (2) shall not apply if each party agrees before or during the hearing that the statement may be tendered in evidence.

ARTICLE 10

Admissibility of depositions as evidence

(1) Where any person has been committed to the Royal Court for trial for any offence and the conditions in this Article are satisfied, the deposition of any witness taken down in evidence, and read over to and signed by the witness, under Article 18 of the “Loi (1864) réglant la procédure criminelle”² in the proceedings before the Magistrate is admissible as evidence on the trial of that person to the same extent as if it were oral evidence to that effect by that person at trial.

(2) The deposition is admissible whether the trial is for the offence for which the accused has been committed, or for any other offence arising out of the same transaction or set of circumstances as that offence.

(3) The conditions to which paragraph (1) refers are -

- (a) not later than fourteen days before the date of the trial at which the deposition is to be tendered in evidence, notice in writing of his intention to do so shall be served, by or on behalf of the party proposing to tender it, on each of the other parties in the proceedings; and
- (b) none of the other parties or his advocate, within seven days after being served with that notice, shall himself have served on the party proposing to tender the deposition a notice in writing that he objects.

² Tomes I III, page 287 and Volume 1996-1997, page 678.

(4) Notwithstanding paragraph (1), the conditions in paragraph (3) shall not apply if each party agrees before or during the trial that the deposition may be tendered in evidence.

ARTICLE 11

Reading of statement

(1) Unless the court directs otherwise, a statement or deposition that is admitted in evidence under Article 9 or Article 10 shall be read aloud at the hearing.

(2) An account shall be given orally, if the court so directs, of as much of the statement or deposition as is not read aloud.

(3) This Article does not apply when a statement is tendered in evidence before a Magistrate in proceedings to which the proviso to Article 19 of the “Loi (1864) réglant la procédure criminelle”³ applies.

ARTICLE 12

Admissibility of exhibits

Where a statement or deposition is admitted in evidence under Article 9 or Article 10, and it refers to any document or object as an exhibit and identifies it, the document or object shall be treated as if it had been produced as an exhibit, and identified in court, by the maker of the statement or deposition.

ARTICLE 13

Oral evidence

- (1) A party -
 - (a) who serves, under sub-paragraph (c) of paragraph (2) of Article 9, a copy of a statement; or

³ Tomes I-III, page 288, and Volume 1996-1997, page 168.

- (b) who serves, under sub-paragraph (a) of paragraph (3) of Article 10, a notice of his intention to tender a deposition in evidence.

may call the maker of the statement or deposition to give oral evidence.

- (2) The court may -
 - (a) of its own motion; or
 - (b) on the application of any party,

require the maker of the statement or deposition to give oral evidence.

(3) This Article does not apply in proceedings before a Magistrate to which the proviso to Article 19 of the “Loi (1864) réglant la procédure criminelle”⁴ applies, but otherwise applies in all proceedings whether or not the statement or deposition is itself admitted in evidence.

ARTICLE 14

Attendance of witnesses

Notwithstanding either of Articles 17 and 61 of the “Loi (1864) réglant la procédure criminelle”⁵, the maker of a statement or deposition that is tendered in evidence under Article 9 or Article 10 of this Law need not attend the proceedings as a witness unless he is required under Article 13 of this Law to give oral evidence.

⁴ Tomes I III, page 288 and Volume 1996-1997, page 168.

⁵ Tomes I III, pages 287 and 298 and Volume 1988-1989, pages 231 and 233.

PART VI

MISCELLANEOUS

ARTICLE 15

False statements

(1) If any person in a written statement tendered in evidence in criminal proceedings under Article 9 wilfully makes a statement that is material in those proceedings and that he knows to be false or does not believe to be true, he shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine or to both.

(2) Any person who wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under paragraph (1) shall be liable to be dealt with, tried and punished as a principal offender.

ARTICLE 16

Service

(1) A document that is to be served or may be served on any person or party (other than a body corporate) under this Law may be served in any of the following ways -

- (a) by delivering it to him or to his advocate personally;
- (b) by addressing it to him and -
 - (i) leaving it at his usual or last known place of abode or business; or
 - (ii) sending it in a registered letter or by the recorded delivery service, addressed to him at that place of abode or business;
- (c) by addressing it to his advocate and -

- (i) leaving it at the advocate's office; or
 - (ii) sending it in a registered letter or by the recorded delivery service, addressed to the advocate at that office; or
 - (d) by transmitting it to him or to his advocate by electronic means.
- (2) A document that is to be served or may be served on a body corporate under this Law may be served -
- (a) by delivering it to its secretary or clerk at its registered or principal office, or to its advocate personally; or
 - (b) by sending it to its registered or principal office, or to its advocate, in any other manner described in paragraph (1).

ARTICLE 17

Rules of court

The powers of the Superior Number of the Royal Court to make rules under -

- (a) the Royal Court (Jersey) Law 1948;⁶ and
- (b) Article 22 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949,⁷

shall include power to make rules for the purposes of this Law.

⁶ Tome VII, page 502, Volume 1979-1981, page 195, Volume 1984-1985, page 175, Volume 1990-1991, page 113, Volume 1992-1993, page 461 and Volume 1996-1997, pages 147 and 667.

⁷ Tome VII, page 545, Volume 1990-1991, page 133, Volume 1994-1995, pages 15 and 35, and Volume 1996-1997, pages 171, 487 and 959.

ARTICLE 18

Consequential and other amendments

The “Loi (1864) réglant la procédure criminelle”⁸ is amended -

- (a) by repealing Articles 18A and 18B;
- (b) by substituting for the proviso to Article 19 the following proviso -

“Pourvu que, si -

- (a) le témoignage consiste exclusivement en des dépositions par écrit déférées à la Cour d’après les dispositions de l’Article 9 de la Loi dite ‘Criminal Justice (Evidence and Procedure) (Jersey) Law 199’;
- (b) le prévenu est représenté par un avocat; et
- (c) son avocat ne soutient pas que le contenu desdites dépositions manque à fonder une cause *prima facie* contre son client,

le Juge enverra le prévenu devant la Cour Royale sans besoin d’étudier le contenu desdites dépositions.”;

- (c) in Article 21, by substituting for the words “des Articles 18A et 18B” the words “de l’Article 9 de la Loi dite ‘Criminal Justice (Evidence and Procedure) (Jersey) Law 199’ ”;
- (d) by repealing Article 21A;
- (e) in Articles 24, 27, 42 and 60, by substituting for the words “l’Article 18B” in each place where they appear the words

⁸ Tomes I-III, pages 288, 289, 290, 294 and 298 and Volume 1996-1997, pages 167, 168, 169, 678 and 679.

“l’Article 9 de la Loi dite ‘Criminal Justice (Evidence and Procedure) (Jersey) Law 199 ’ ”.

ARTICLE 19

Short title and commencement

This Law may be cited as the Criminal Justice (Evidence and Procedure) (Jersey) Law 199 and shall come into force on the day following its registration.