

**DRAFT COURT OF APPEAL (AMENDMENT No. 7)
(JERSEY) LAW 199**

**Lodged au Greffe on 2nd June 1998
by the Legislation Committee**



STATES OF JERSEY

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Report

The Court of Appeal (Jersey) Law 1961 constituted the Court of Appeal with jurisdiction both in civil causes and matters and in criminal and quasi criminal matters. Prior to this reform, appeals were made from the Inferior Number to the Superior Number of the Royal Court and, from there, directly, to the Judicial Committee of the Privy Council. The establishment of a Court of Appeal interposed an appellate jurisdiction similar to that of the Court of Appeal of England and Wales. In many respects, therefore, the Court of Appeal (Jersey) Law 1961 resembled the Criminal Appeal Act 1907 of the United Kingdom in its amended form as at 1961. This meant that, broadly speaking, in relation to criminal proceedings, if the Court of Appeal found that any of the grounds of appeal had been made out, it had power to allow the appeal and quash the appellant's conviction. However, if it considered that no miscarriage of justice had actually occurred, it could apply what has come to be known as "the proviso". The proviso enabled the Court of Appeal, notwithstanding that it might be of opinion that the point raised in the appeal could be decided in favour of the appellant, nonetheless to dismiss the appeal if it considered that no substantial miscarriage of justice had actually occurred.

Thus, when the 1961 Law was enacted, the position as between Jersey and England was broadly similar: an appeal against conviction could be upheld in which case the appellant was acquitted or the appeal could be dismissed in which case the conviction stood. Underlying this was the proviso which enabled the Court at all events to dismiss the appeal if it considered that no substantial miscarriage of justice had actually occurred.

The position in England and Wales was altered by the Criminal Appeal Act 1964 which empowered the Court of Appeal, in very limited circumstances, to order a retrial (in addition to its other powers described above). This power was re-enacted in the Criminal Appeal Act 1968 and applied only where the Court allowed an appeal on the basis of fresh evidence which it had heard. Such cases accounted only for a small fraction of the Court's workload. In Jersey, similar provisions relating to retrials were not enacted. The possibility of ordering a retrial was remote in the English Court and, given the limited

circumstances in which a retrial could be ordered, the possibility in Jersey was all but non-existent.

The Criminal Justice Act 1988 did however introduce an important reform in relation to retrials in England and Wales. It amended the Criminal Appeal Act 1968 so as to empower the Court of Appeal to order retrials not only when the Court allowed an appeal on the basis of fresh evidence which it had heard, but in any case where it appeared to the Court that the interests of justice required a retrial.

The legislation in Jersey relating to the procedure before the Court of Appeal is presently being reviewed by Sir Godfray Le Quesne Q.C. and the Legislation Committee has not wished to bring forward draft legislation which might in any way pre-empt his recommendations. However, in a recent case before the Court of Appeal, the absence of a power in the Jersey Court of Appeal corresponding to that which the English Court of Appeal has possessed since 1988 was the subject of adverse comment. Indeed some disquiet has been expressed that the existing limits of the Court of Appeal's jurisdiction might lead to injustice in a case in which an appeal is upheld and the proviso cannot be applied, but in which, nonetheless, it would be in the interests of justice to order a retrial because, for example, there is good evidence against an accused person. The Legislation Committee believes that this matter is of sufficient concern that remedial legislation should be enacted immediately.

The Legislation Committee is convinced that the proposed amendment is desirable for the good administration of criminal justice in the Island and believes that this reform, which was bound otherwise to have formed part of the review currently being undertaken, ought properly now to be brought forward.

Explanatory Note

The purpose of this draft Law is to empower the Court of Appeal, if it allows an appeal against conviction and it appears that the interests of justice so require, to order the appellant to be retried on a fresh indictment to be brought in the Royal Court within two months or such further period in respect of which the Court may give leave.

Articles 1 and 2 of the draft Law make certain consequential amendments.

Article 3 contains the substantive provision empowering the Court of Appeal to order a retrial and also makes provision for orders for the custody or release on bail of the person ordered to be retried pending his retrial and for certain other ancillary matters.

Article 4 makes detailed provision (by way of inserting a Second Schedule in the 1961 Law) as to the powers of the Royal Court when it retries a person and the procedures to be adopted upon such retrial, including matters relating to the computation of sentence if a person is then convicted, and matters relating to costs if he is acquitted.

**COURT OF APPEAL (AMENDMENT No. 7)
(JERSEY) LAW 199**

A LAW to amend further the Court of Appeal (Jersey) Law 1961;
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 -

ARTICLE 1

In Article 5 of the Court of Appeal (Jersey) Law 1961,¹ as
amended (hereinafter referred to as "the principal Law") for the word
"Schedule" there shall be substituted the words "First Schedule".

ARTICLE 2

In Article 25 of the principal Law² -

- (a) in paragraph (1) for the words "On any appeal" there shall
be substituted the words "Subject to the following
provisions on this Part of this Law, on any appeal";

¹ Volume 1961-1962, page 100.

² Volume 1961-1962, page 111.

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- (b) in paragraph (2) for the word “special” there shall be substituted the word “following”.

ARTICLE 3

After Article 26 of the principal Law,³ there shall be inserted the following Article -

“ARTICLE 26A

Power to order retrial

(1) Where the Court of Appeal allows an appeal against conviction and it appears to the Court that the interests of justice so require, it may order the appellant to be retried on a fresh indictment to be brought in the Royal Court within the period of two months of the making of the order or such further period for which it may give leave for the indictment to be brought.

(2) A person shall not under this Article be ordered to be retried for any offence other than -

- (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as mentioned in paragraph (1) of this Article;
- (b) an offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
- (c) an offence charged in an alternative count of the indictment in respect of which the Jurats or the jury, as the case may be, were discharged from giving a verdict in consequence of convicting him of the first-mentioned offence.

³ Volume 1961-1962, page 112.

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(3) The Court of Appeal may, on ordering a retrial, make such orders as appear to it to be necessary or expedient -

- (a) for the custody or release on bail of the person ordered to be retried pending his retrial; or
- (b) for the retention pending the retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

(4) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of an order or direction under the Mental Health (Jersey) Law 1969, as amended, that order or direction shall continue in force pending the retrial as if the appeal had not been allowed and any order made by the Court of Appeal under this Article for his custody or release on bail shall have effect subject to the said order or direction.

(5) The Second Schedule to this Law shall have effect with respect to the procedure in the case of a person ordered to be retried, the sentence which may be passed if the retrial results in his conviction and the order for costs which may be made if he is acquitted.”.

ARTICLE 4

The Schedule to the principal Law⁴ shall be redesignated as the First Schedule thereof and, after the said First Schedule, there shall be inserted the Schedule set out in the Schedule to this Law.

⁴ Volume 1961-1962, page 126.

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ARTICLE 5

This Law may be cited as the Court of Appeal (Amendment No. 7) (Jersey) Law 199 .

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SCHEDULE

(Article 4)

"SECOND SCHEDULE

(Article 26A(5))

Powers, procedure etc. upon retrial

1. On a retrial, a transcript of the record of the evidence given by any witness at the original trial may, with the leave of the Royal Court, be read as evidence -

- (a) by agreement between the parties; or
- (b) if the Royal Court is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or to secure his attendance have been made without success,

and in either case may be so read without further proof if the Royal Court is satisfied that the transcript is a true and accurate record of the witness's evidence at the trial.

2. Where a person ordered to be retried is again convicted on retrial, the Royal Court may pass in respect of the offence any sentence authorized by law, not being a sentence of greater severity than that passed on the original conviction.

3. Without prejudice to its power to impose any other sentence, the Royal Court may pass in respect of the offence any sentence passed in respect of that offence on the original conviction notwithstanding that, on the date of the conviction on retrial, the offender has ceased to be of an age at which such a sentence could otherwise be passed.

4.-(1) Where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence shall begin to run from

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the time when a like sentence passed at the original trial would have begun to run; but in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded -

- (a) any time before his conviction on retrial which would have been disregarded in computing that term or period if the sentence had been passed at the original trial and the original conviction had not been quashed; and
- (b) any time during which he was released on bail under paragraph (3) of Article 26A of this Law.

(2) The Criminal Proceedings (Computation of Sentences) (Jersey) Rules 1968 shall apply to any sentence imposed on conviction on retrial as if it had been imposed on the original conviction.

5. Where a person ordered to be retried is acquitted at his retrial, the costs which may be ordered to be paid out of public funds under the Costs in Criminal Cases (Jersey) Law 1961, as amended, shall include -

- (a) any costs which, at the original trial or prosecution, could have been ordered to be so paid under Article 2 of that Law if he had been acquitted; and
- (b) if no order was made under Article 3 of that Law in respect of his expenses on appeal, any sums for the payment of which such an order could have been made.”.