

# STATES OF JERSEY



## **DRAFT COURT OF APPEAL (AMENDMENT No. 8) (JERSEY) LAW 2008 (APPOINTED DAY) ACT 200-**

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**Lodged au Greffe on 4th June 2009  
by the Chief Minister**

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**STATES GREFFE**





Jersey

## **DRAFT COURT OF APPEAL (AMENDMENT No. 8) (JERSEY) LAW 2008 (APPOINTED DAY) ACT 200-**

### **REPORT**

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The Court of Appeal (Amendment No. 8) (Jersey) Law 2008 (“the amending Law”) was adopted by the States on 29th January 2008 and registered by the Royal Court on 16th May 2008. It amends the Court of Appeal (Jersey) Law 1961 (“the 1961 Law”) as described below, and the purpose of this Act is to bring those amendments into force on 3rd August 2009.

The amendments –

- implement some of the last remaining recommendations of Sir Godfray Le Quesne Q.C. in his review of the workings of the 1961 Law undertaken in 2000; and
- effect other extensive reforms unrelated to those recommendations.

The amendments have necessitated the preparation of Rules of Court by the Court of Appeal which have now been finalised and which are due to be made by the Judges of the Court of Appeal on 20th July 2009. The relevant draft Rules are the –

- (i) Court of Appeal (Criminal) (Reference of Points of Law) Rules 2009
- (ii) Court of Appeal (Criminal) (Reference for Review of Sentence) Rules 2009
- (iii) Court of Appeal (Criminal) (Confiscation Order Appeals) Rules 2009
- (iv) Court of Appeal (Criminal) (Amendment) Rules 2009
- (v) Court of Appeal (Civil) (Amendment No. 3) Rules 2009
- (vi) Court of Appeal (Civil) (Judicial Review) (Amendment) Rules 2009.

These Rules of Court are to come into force at the same time as the amending Law.

Here is a summary of the various amendments to the 1961 Law that the States approved on 29th January 2008. They may conveniently be summarized under headings **A** to **F**.

## **A. The Le Quesne recommendations – civil**

### **1. Jurisdiction**

The 1961 Law vests in the Court of Appeal “... *all jurisdiction and powers hitherto vested in the Superior Number of the Royal Court when exercising appellate jurisdiction in any civil cause or matter*”. The amending Law modifies this to confer on the Court of Appeal a general jurisdiction to hear and determine appeals from any judgment or order of the Royal Court when exercising jurisdiction in any civil cause or matter.

### **2. Limitation on appeals**

Under the 1961 Law, leave is required to appeal from any interlocutory order or interlocutory judgment (with certain exceptions). The amending Law provides for a decision of a single judge to grant or refuse leave to appeal to be final, subject to the judge being able to refer an application for leave to the full court.

### **3. Practice and procedure**

The 1961 Law requires jurisdiction as regards procedure and practice ordinarily to be exercised “*as nearly as may be in the same manner as that in which the Superior Number of the Royal Court might hitherto have exercised jurisdiction on an appeal from the Inferior Number thereof*”. The amending Law enables the Court, subject to any relevant statutory provisions, to adopt whatever practice and procedure it considers just and convenient.

### **4. Powers exercisable by a single judge**

The amending Law in this connection clarifies precisely what is meant in the 1961 Law by “... *any appeal pending before the Court of Appeal*”.

## **B. The Le Quesne recommendations – criminal**

### **1. Notice of appeal**

The amending Law makes new provision distinguishing between notice of appeal against conviction and notice of appeal against sentence.

### **2. Judge’s notes and report on appeal**

The amending Law makes new provision enabling, rather than requiring, the presiding Royal Court judge to provide the Court of Appeal with a report on the case; and empowering the Court of Appeal to require the judge to do so.

### **3. Right of appellant to be present**

At present an appellant in custody who is legally represented does not have a right to attend the hearing of the appeal if it involves only a question of law. The amending Law gives an appellant the right to be present when his or her appeal, or application for leave to appeal, is heard irrespective of the grounds on which it is made.

### **4. Admission of appellant to bail**

The 1961 Law empowers the Royal Court to grant bail pending the determination of an appeal to the Court of Appeal. The amending Law makes this power exercisable by a single judge of the Court of Appeal.

5. Shorthand notes of trial

The 1961 Law requires shorthand notes to be taken of a trial. This is amended to make it clear that proceedings may be recorded by electronic means.

**C. Other amendments – review of unduly lenient sentences**

The amending Law inserts new *Articles 45A to 45C* in the 1961 Law enabling the Attorney General, if he considers that an offender has been sentenced unduly leniently in proceedings in the Royal Court, to refer the case to the Court of Appeal for review of the sentence. This is subject to the Court of Appeal giving leave; and the offence concerned being either –

- (a) an offence for which the defendant was liable to imprisonment for a term of one or more years (whether or not it was one for which he or she was also liable to any other penalty); or
- (b) an offence which the States by Regulations has declared to be one in respect of which the Attorney General may bring such a reference.

Upon such a reference, the Court of Appeal is empowered to quash the sentence passed by the Royal Court and replace it with the sentence it thinks appropriate.<sup>1</sup>

**D. Other amendments – rights of appeal re confiscation orders**

1. The existing position

Confiscation orders may be made<sup>2</sup> by the Royal Court at the request of the Attorney General. But it is not clear whether the person against whom the order is made can appeal to the Court of Appeal (although such an order may form part of the ‘*sentence*’ and, therefore, be appealed against).

Also, should the Royal Court refuse to make a confiscation order, or make an order in an amount less than that applied for, the Attorney General seemingly has no right of appeal.

2. Appeals by defendants

The amending Law inserts in the 1961 Law a definition of ‘*confiscation order*’ and substitutes a new definition of ‘*sentence*’ to make it clear that a person against whom a confiscation order has been made by the Royal Court has a right to appeal to the Court of Appeal.

3. Appeals by the Attorney General

The amending Law inserts new *Articles 45D to 45F* in the 1961 Law enabling the Attorney General – with the leave of the Court of Appeal – to appeal against the making of, or a decision not to make, a confiscation order by the Royal Court. On such appeal, the Court of Appeal is empowered to confirm, quash or vary the confiscation order. And it may itself make a confiscation order or direct the Royal Court to proceed afresh.

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<sup>1</sup> Procedural aspects of references and appeals by the Attorney General are summarised in E.9 below.

<sup>2</sup> Under the Drug Trafficking Offences (Jersey) Law 1988 or under the Proceeds of Crime (Jersey) Law 1999.

## **E. Other amendments – miscellaneous**

### 1. Leave to appeal in civil matters – limitation on appeals

Under the 1961 Law, no appeal lies to the Court of Appeal without leave, except where the value of the matter in dispute is more than £3,000 or the appeal is on a question of law. The amending Law repeals this provision – thereby conferring an unfettered right of civil appeal in all final decisions except those on costs.

### 2. Appeal from the Court of Appeal (civil)

Under the 1961 Law no appeal lies from the Court of Appeal in a civil matter without leave unless the value of the matter is £10,000 or more. The amending Law removes reference to the value of the matter in dispute.

### 3. Criminal appeals – appeals against sentence

A person may, under Article 24(c) of the 1961 Law, with leave, appeal from the Royal Court against “*the sentence passed on the person’s conviction...*”. The amending Law makes it clear that the appeal may be brought whether or not the sentence was passed on conviction or *in subsequent proceedings*.

### 4. Life sentences – mandatory minimum imprisonment

A provision in the 1961 Law enabling the Attorney General to appeal against an order under the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005 has been repealed. It is now subsumed in the Attorney General’s overall right to refer unduly lenient sentences to the Court of Appeal.

### 5. Effect of judgment of the Court of Appeal (criminal)

The amending Law inserts a new *Article 30A* in the 1961 Law to make it clear that an order of the Court of Appeal or Superior Number on an appeal has the same effect and is enforceable as if made by the Royal Court.

### 6. References to capital punishment

The amending Law deletes obsolete references in the 1961 Law to the death sentence.

### 7. Time spent in custody – computation of sentences

Under the 1961 Law, in certain circumstances, periods of time spent in custody pending appeal are disregarded when calculating time served under a sentence of imprisonment. The amending Law provides that time in custody pending appeal is to be taken into account unless the Court of Appeal directs otherwise.

### 8. Prerogative of mercy

In this connection, the amending Law substitutes for references to ‘*the Secretary of State*’ references to the Lieutenant-Governor.

### 9. References and appeals by Attorney General – detailed provisions

The new *Part 4* of the 1961 Law is concerned with references and appeals to the Court of Appeal by the Attorney General. The amending Law inserts new *Articles 46 to 46E* in *Part 4* relating to procedure on such references and appeals.

The new *Article 46* entitles a defendant to be present at the hearing of a reference for a review of the defendant’s sentence or at the hearing of an appeal in respect of a

confiscation order made against the defendant. The Court may still proceed in the defendant's absence if the defendant does not wish to be present. The defendant is not entitled to attend preliminary or incidental hearings unless the Court grants leave.

Under *Article 46A*, the Attorney General must give notice of a reference/appeal under the new *Part 4* within 28 days of the defendant being sentenced. The Court may grant an extension of time. *Article 46B* sets out the duties of the Judicial Greffier on receiving notice of proceedings from the Attorney General under *Part 4*. Under *Article 46C*, a single judge in proceedings under *Part 4* may exercise the same powers as those exercisable by a single judge in ordinary criminal appeals.

*Article 46D* applies to the new *Part 4* certain provisions of Part 3 of the 1961 Law regulating powers and the procedures of the Court of Appeal in ordinary appeals in criminal and quasi-criminal matters. The provisions applied include Article 40 relating to the power to make rules of court (replacing existing provisions in Article 46 for the making of rules of court under Part 4).

*Article 46E* provides for the interpretation of the new *Part 4*; and, in the case of persons who have been –

- (a) convicted and sentenced by the Inferior Number of the Royal Court; or
- (b) sentenced by the Inferior Number to probation or a community service order,

provides for the reference/appeal to lie to the Superior Number of the Royal Court instead of to the Court of Appeal proper.

*10. Time within which to appeal etc. in criminal matters (28 days)*

The amending Law extends the time for appealing against conviction or sentence from 10 days to 28 days. The period of 28 days for a defendant is the same period as for references/appeals by the Attorney General under the new *Part 4*.

*11. Sittings of the Court of Appeal – which judge to preside*

Under the 1961 Law, if at any sitting neither the Bailiff nor the Deputy Bailiff is able to act, the remaining members of the Court must select another member to preside. This is modified by the amending Law so that the senior ordinary judge will preside unless the remaining members decide otherwise.

*12. Remuneration of judges – determination*

The amending Law provides for the remuneration of ordinary judges of the Court of Appeal to be decided by administrative decision of the Minister for Treasury and Resources, rather than by Order made by the Minister.

***F. Minor drafting (consequential etc.) amendments***

*1. Rights of practice/audience*

Article 8(1) of the 1961 Law governs rights of practice/audience as respects 'any appeal' to the Court of Appeal. The amending Law expands this to include 'any reference' to the Court of Appeal.

*2. Constitution of court*

Under Article 9 of the 1961 Law, a judge of the Court of Appeal may not hear 'an appeal' from a judgment, order *etc.* made by a court of which he or she was a

member. The amending Law expands this to include ‘*a reference*’ from a judgment, order, *etc.*

3. *Infants/minors*

Article 13 of the 1961 Law contains a reference to the custody of ‘*infants*’. The amending Law substitutes for this a reference to the custody of ‘*minors*’.

4. *Clarification of headings*

The amending Law modifies the headings of Articles 19, 39, 40 and 41 of the 1961 Law to make it clear to which Part of the Law (civil or criminal) each Article relates.

5. *Heading to Part 4*

Article 25 of the Law supplies a heading to Part 4 of the 1961 Law (which governs references and appeals to the Court of Appeal by the Attorney General).

**Financial/manpower statement**

There are no financial or manpower implications for the States arising from the adoption of this Draft Act.



## Explanatory Note

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This Act commences the Court of Appeal (Amendment No. 8) (Jersey) Law 2008 on 3rd August 2009. The Law, lodged as P.190/2007, was adopted by the States on 29th January 2008.





Jersey

**DRAFT COURT OF APPEAL (AMENDMENT No. 8)  
(JERSEY) LAW 2008 (APPOINTED DAY) ACT 200-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

THE STATES, in pursuance of Article 31(2) of the Court of Appeal (Amendment No. 8) (Jersey) Law 2008<sup>1</sup>, have made the following Act –

**1 Law commenced**

The Court of Appeal (Amendment No. 8) (Jersey) Law 2008<sup>2</sup> shall come into force on 3rd August 2009.

**2 Citation**

This Act may be cited as the Court of Appeal (Amendment No. 8) (Jersey) Law 2008 (Appointed Day) Act 200-.

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<sup>1</sup> *L.25/2008*  
<sup>2</sup> *L.25/2008*