



Jersey

CRIMINAL PROCEDURE (JERSEY) LAW 2018

Official Consolidated Version

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CRIMINAL PROCEDURE (JERSEY) LAW 2018

A LAW prescribing the procedure to be followed in, or in connection with, criminal proceedings; to provide for the quashing of acquittals by the Court of Appeal; to amend the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) in connection with evidence in criminal proceedings; and for connected purposes.

[long title not in force]

Commencement [\[see endnotes\]](#)

PART 1

INTERPRETATION AND APPLICATION

1 Interpretation and application

- (1) In this Law, unless the context indicates otherwise –
- “adjourn” means a decision by the court to suspend or delay the hearing of criminal proceedings until another day;
 - “administration of the States” has the same meaning as in Article 1 of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#);
 - “Assistant Magistrate” shall be construed in accordance with Article 1 of [Loi \(1864\) concernant la charge de Juge d’Instruction](#);
 - “Bail Law” means the [Criminal Procedure \(Bail\) \(Jersey\) Law 2017](#);
 - “Bâtonnier” means the person elected under Article 33 of [The Law Society of Jersey Law 2005](#);
 - “Broadcasting Act” means the Broadcasting Act 1990 of the United Kingdom, as extended to Jersey by the Broadcasting Act 1990 (Jersey) Order 1991 and the Broadcasting Act 1990 (Jersey) (No. 2) Order 1991;
 - “case management powers” shall be construed in accordance with Article 9;
 - “child” means a person who has attained the age of 10 years and has not attained the age of 15 years;
 - “Commissioner” means a person appointed in accordance with Article 10 of the [Royal Court \(Jersey\) Law 1948](#);

“community service order” shall be construed in accordance with Article 4 of the Community Service Orders Law;

“Community Service Orders Law” means the [Criminal Justice \(Community Service Orders\) \(Jersey\) Law 2001](#);

“complainant” means the person against whom an offence is alleged to have been committed;

“court” means the Magistrate’s Court (including the Youth Court) or the Royal Court;

“Criminal Procedure Rules Committee” shall be construed in accordance with Article 111;

“Criminal Procedure Rules” shall be construed in accordance with Article 111(1) and 112;

“criminal proceedings” means proceedings before the court for the determination of a case against a defendant;

“Crown Advocate” means an advocate appointed under Article 1 of the [Crown Advocates \(Jersey\) Law 1987](#);

“defence” means the defendant or a person acting as his or her legal representative;

“defendant” means a person –

- (a) charged with an offence; or
- (b) convicted of an offence and awaiting sentence;

“délégué” has the same meaning as in the Probation Law;

“Greffier Substitute” means an officer of the Judicial Greffe designated in accordance with Article 6 of the [Departments of the Judiciary and the Legislature \(Jersey\) Law 1965](#);

“incapacity” shall be construed in accordance with Article 55 of the Mental Health Law;

“indictment” means the document which formally specifies the offence with which a person is charged and sets out the particulars of the offence;

“juror” means a person selected to serve on a jury in accordance with Article 66;

“jury” shall be construed in accordance with Article 66;

“jury list” shall be construed in accordance with Article 64;

“Magistrate’s Court” includes the Youth Court;

“Mental Health Law” means the [Mental Health \(Jersey\) Law 2016](#);

“offence” includes an alleged offence;

“overriding objective” shall be construed in accordance with Article 2;

“panel list” means the list of persons who may be called upon to serve as jurors as prepared by the Viscount;

“participant” and “party” in relation to criminal proceedings means the prosecution, defence and any such other person as the court may direct, or who otherwise appears to the court to participate in the conduct of the proceedings;

“police officer” includes an officer of the Impôts within the meaning of the [Customs and Excise \(Jersey\) Law 1999](#);

“practice directions” shall be construed in accordance with Article 113;

“prescribed” means prescribed by Criminal Procedure Rules;

“proceedings” means criminal proceedings;

“programme service” has the same meaning as in the Broadcasting Act;

“Probation Law” means the [Loi \(1937\) sur l’atténuation des peines et sur la mise en liberté surveillée](#);

“probation order” means an order under Article 2 of the Probation Law;

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings;

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act;

“rules” means Criminal Procedure Rules, and “rule” shall be construed accordingly;

“Solemn Affirmations Law” means the [Solemn Affirmations \(Jersey\) Law 1963](#);

“trial” means a hearing to determine criminal proceedings and includes a retrial or a hearing, if required under Article 78, to determine facts disputed;

“witness” in relation to criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings;

“young person” means a person who has attained the age of 15 years and has not attained the age of 18 years;

“Young Offenders Law” means the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#);

“Youth Court Panel” shall be construed in accordance with paragraph 1 of the Schedule to the Young Offenders Law.¹

(2) For the purposes of this Law –

(a) “prosecution” means –

- (i) the Attorney General,
- (ii) a prosecutor, or
- (iii) except in relation to proceedings before the Royal Court, or where a reference is made to “prosecution” in Parts 10 and 11, a Centenier;

(b) “prosecutor” –

- (i) means an advocate employed in the Law Officers’ Department authorized by the Attorney General to undertake criminal proceedings on his or her behalf in the Magistrate’s Court or Royal Court; or
- (ii) means a solicitor, or a person admitted –
 - (A) to the degree of the Utter Bar of one of the Inns of Court of England and Wales,
 - (B) as a solicitor of the Senior Courts of England and Wales,
 - (C) as a member of the Faculty of Advocates or as a Solicitor in Scotland,
 - (D) at the Bar of Northern Ireland or as a Solicitor of the Court of Judicature of Northern Ireland, or
 - (E) at the Bar of Guernsey,

employed in the Law Officers' Department and authorized by the Attorney General to undertake criminal proceedings on his or her behalf in the Magistrate's Court, and

(iii) includes a Crown Advocate.

- (3) References in this Law to –
- (a) “functions” in relation to a person shall be construed as if they were references to any powers or duties conferred on a person by or under an enactment, including this Law;
 - (b) “material” are to material of all kinds, and in particular include references to –
 - (i) information, and
 - (ii) objects of all descriptions.
- (4) The expression “enter a plea” in relation to a defendant means where he or she pleads “guilty” or “not guilty” to committing an offence.
- (5) Where this Law requires something to be done or to occur within 48 hours, in determining when the period of 48 hours expires, there shall be disregarded Christmas Day, Good Friday and any Sunday.
- (6) Where bail is grantable under any provision of this Law, the provisions of the Bail Law shall apply –
- (a) unless express provision is made to the contrary;
 - (b) unless alternative or different provision is made by or under this Law; or
 - (c) subject to any modifications to those provisions made by or under this Law.
- (7) In relation to a defendant within the meaning of the Mental Health Law, the provisions of this Law shall, subject to the provisions of Parts 8 and 9 of the Mental Health Law, apply in respect of such a defendant in criminal proceedings.
- (8) Nothing in this Law shall be taken to override the inherent jurisdiction of the Royal Court in relation to criminal proceedings.
- (9) The States may by Regulations amend this Part.

PART 2

THE OVERRIDING OBJECTIVE

2 The overriding objective of the Law

The overriding objective of this Law is to ensure that cases in criminal proceedings are dealt with justly.

3 Implementation of the overriding objective

- (1) For the purposes of satisfying the overriding objective, dealing with cases in criminal proceedings “justly” includes –
- (a) acquitting the innocent and convicting the guilty;
 - (b) dealing fairly with both the prosecution and the defence;
 - (c) recognizing the rights of a defendant, particularly those rights granted under Article 6 of the European Convention on Human Rights (right to a fair trial);

- (d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
 - (e) dealing with the case efficiently and expeditiously; and
 - (f) ensuring that appropriate information is available to the court when bail or sentence is being considered.
- (2) Dealing with a case justly also includes dealing with it in ways that take into account –
 - (a) the gravity of the alleged offence;
 - (b) the complexity of what is in issue;
 - (c) the severity of the consequences for the defendant and for others that are affected;
 - (d) whether the costs of the proceedings are proportionate having regard to the seriousness of the offence; and
 - (e) the needs of other cases.

4 Duties of the participants in criminal proceedings

- (1) A participant in criminal proceedings must –
 - (a) prepare and conduct the case in accordance with the overriding objective;
 - (b) comply with the relevant procedures; and
 - (c) as soon as is reasonably practicable, inform the court and all parties to the proceedings if there is a significant failure (whether or not the participant's) to take a procedural step required by the relevant procedures.
- (2) For the purpose of paragraph (1) –
 - (a) relevant procedures are the procedures prescribed by this Law, Criminal Procedure Rules or practice directions; and
 - (b) a failure is significant if it might hinder the court in furthering the overriding objective.

5 The application by the court of the overriding objective

The court must act to ensure the implementation of the overriding objective when it –

- (a) exercises a power given to it by an enactment (including this Law);
- (b) applies Criminal Procedure Rules;
- (c) applies a practice direction; or
- (d) interprets legislation (including this Law), Criminal Procedure Rules or practice directions.

6 Regulations amending Part 2

The States may by Regulations amend this Part.

PART 3

THE ACTIVE MANAGEMENT OF CRIMINAL PROCEEDINGS

7 The duty of the court

- (1) The court must further the overriding objective by actively managing cases in criminal proceedings.
- (2) The active management of cases in criminal proceedings includes –
 - (a) the early identification of the key issues;
 - (b) the early identification of the needs of witnesses;
 - (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
 - (d) monitoring the progress of the case and compliance with any directions given by the court;
 - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
 - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (g) encouraging the participants to co-operate in the progression of the case; and
 - (h) making use of technology.

8 The duty of the parties

- (1) Each party must –
 - (a) actively assist the court in fulfilling its duty under Article 7; and
 - (b) apply for a direction if needed to further the overriding objective.
- (2) Active assistance for the purposes of this Article includes –
 - (a) communication between the prosecution and the defence at the first available opportunity, and in any event no later than the beginning of the day of the first hearing;
 - (b) ongoing communication between the parties and with the court until the conclusion of the case;
 - (c) by such communication establishing, among other things –
 - (i) whether the defendant is likely to plead guilty or not guilty,
 - (ii) what is agreed and what is likely to be disputed,
 - (iii) what information, or other material, is required by one party of another, and why, and
 - (iv) what is to be done, by whom, and when (without, or if necessary with, a direction); and
 - (d) reporting on that communication to the court –
 - (i) at the first hearing, and
 - (ii) after that, as directed by the court.

- (3) For the purposes of paragraph (2)(a), the expression “first available opportunity” includes as soon as a person is –
 - (a) charged;
 - (b) summoned; or
 - (c) notified by the Attorney General that criminal proceedings have, under Article 14, been initiated in respect of that person.

9 The court’s case management powers

- (1) In fulfilling its duty under Article 7 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with any rule made under this Law or provision of this Law or other enactment.
- (2) In particular, the court may –
 - (a) give a direction on its own initiative or on application by a party;
 - (b) ask or allow a party to propose a direction;
 - (c) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
 - (d) give a direction –
 - (i) at a hearing, in public or in private, or
 - (ii) without a hearing;
 - (e) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (f) shorten or extend (even after it has expired) a time limit fixed by a direction (including a practice direction) or Criminal Procedure Rules;
 - (g) require that issues in the case should be –
 - (i) identified in writing, and
 - (ii) determined separately;
 - (h) decide in what order the issues will be determined; and
 - (i) specify the consequences of failing to comply with a direction.
- (3) The Magistrate’s Court may give a direction that will apply in the Royal Court if the case is to continue there.
- (4) The Royal Court may give a direction that will apply in the Magistrate’s Court if the case is to continue there.
- (5) Any power to give a direction includes a power to vary or revoke that direction.
- (6) Unless the Royal Court directs otherwise, the Magistrate’s Court may vary or revoke a direction given by the Royal Court under paragraph (4).
- (7) The Royal Court may vary or revoke a direction given by the Magistrate’s Court under paragraph (3).
- (8) If a party fails to comply with a direction or rule, the court may –
 - (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (b) exercise its powers to make an order as to the payment of costs; and
 - (c) impose such other sanction as may be appropriate, including such sanction as may be specified under any enactment including this Law.

10 Hearings and adjournments

- (1) Where the Magistrate's Court adjourns a hearing in the exercise of case management powers, or under any other provisions of this Law regardless of whether or not the defendant has legal representation, that hearing shall be adjourned for a period not exceeding 30 days.
- (2) Where the Royal Court adjourns a hearing in the exercise of case management powers or under any other provisions of this Law and the defendant has no legal representation, that hearing shall be adjourned for a period not exceeding –
 - (a) 42 days in respect of a defendant in custody; and
 - (b) 60 days in respect of a defendant on bail.
- (3) Subject to Articles 87 and 88, the court may, in the exercise of case management powers, direct that any hearing may be held in the absence of a defendant provided that absence does not conflict with the overriding objective.
- (4) The court may grant a defendant bail for the period of any adjournment.
- (5) An order by the court for proceedings to be "left on file" as referred to in Article 81(2) shall not be taken to be an adjournment for the purposes of this Article.

11 Regulations amending Part 3

The States may by Regulations amend this Part.

PART 4**ROLE OF THE ATTORNEY GENERAL****12 Role of the Attorney General in prosecution of criminal proceedings**

Without prejudice to the powers reserved to a Centenier under Article 3(2) of the [Honorary Police \(Jersey\) Law 1974](#), the prosecution of criminal proceedings may only be conducted by or on behalf of the Attorney General.

13 Consent of the Attorney General before commencing criminal proceedings

- (1) This Article applies if a provision of an enactment or rule of customary law requires the consent of the Attorney General before criminal proceedings may be initiated.
- (2) The Attorney General's consent must be in writing and shall, in so far as is practicable, be given before –
 - (a) a person is charged with an offence;
 - (b) a person is summoned to appear before the Magistrate's Court under Article 9 of the [Magistrate's Court \(Miscellaneous Provisions\) \(Jersey\) Law 1949](#); or
 - (c) the initiation of proceedings in the Royal Court under Article 14.²
- (3) If it is not practicable for consent to be given in accordance with paragraph (2), it must in any event be given before the person's first appearance before the court.
- (4) If, notwithstanding paragraph (3), consent has not been given by the time of the person's first appearance, or it appears to the court that the consent has been defectively given, the court may nevertheless authorize the case to proceed pending

receipt of the Attorney General's consent or properly given consent, as the case may be.

- (5) The Attorney General may delegate the giving of his or her consent to such prosecutor as the Attorney General may, from time to time, designate in writing.
- (6) The States may, by Regulations, amend any enactment (including this Law) for the purpose of removing any provision requiring the consent of the Attorney General before criminal proceedings may be initiated.

14 Attorney General's power to initiate proceedings directly in the Royal Court

- (1) The Attorney General may, if he or she considers it justified, directly initiate criminal proceedings in the Royal Court in respect of a person who is to be indicted [*not in force, the words "and Article 43 applies for the purpose of initiating proceedings"*].
- (2) Paragraph (1) applies notwithstanding any other provisions of this Law or any other enactment or rule of customary law which require the initiation of criminal proceedings in the Magistrate's Court.
- (3) The Attorney General shall summons the person referred to in paragraph (1) to appear before the Royal Court at the time, and on the date notified in the summons, to answer the indictment [*not in force, the words "referred to in Article 43"*].
- (4) Such summons shall contain a statement setting out the following particulars –
 - (a) the specific offence with which the person is charged;
 - (b) a short description of the offence in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence; and
 - (c) if the offence charged is one created under an enactment, a reference to the provision of the enactment creating the offence.
- (5) If it appears to the Attorney General that the person will fail to comply with the summons, the Attorney General may apply to the Bailiff for an order to arrest that person.
- (6) The Bailiff may, upon proof of service of the summons, order the person to be arrested and brought before the Royal Court to answer the indictment.
- (7) Unless the Bailiff grants the person bail under Article 77(2), an order under paragraph (6) authorizes every police officer or the Viscount to arrest and detain the person to whom the order relates and to bring him or her before the Royal Court within 48 hours of his or her arrest.

PARTS 5, 6

[not in force]

PART 7

[heading not in force]

42–47

[not in force]

48 Mode of trial

- (1) Subject to the provisions of this Article, a defendant may be tried either by the Royal Court sitting with a jury, or by the Inferior Number of the Royal Court sitting without a jury.
- (2) A defendant whose indictment only charges an offence which is an offence under customary law, may elect to be tried –
 - (a) by the Royal Court sitting with a jury; or
 - (b) by the Inferior Number of the Royal Court sitting without a jury.
- (3) This paragraph applies where –
 - (a) no election is made under paragraph (2); or
 - (b) a defendant's indictment charges 2 or more offences at least one of which is an offence under customary law and the other an offence under an enactment.
- (4) Where paragraph (3) applies, the Royal Court shall decide, having regard to the nature and gravity of the offence and after hearing any submissions from the defence and the prosecution, the method by which the defendant shall be tried.
- (5) Unless an enactment expressly provides otherwise, a defendant whose indictment only charges an offence which is an offence under an enactment shall be tried by the Inferior Number of the Royal Court sitting without a jury.
- (6) For the purposes of this Article, an "offence under an enactment" includes an offence under an enactment of the United Kingdom which extends or applies to Jersey.

49–51

[not in force]

PART 8

[not in force]

PART 9

[heading not in force]

63–65

[not in force]

66 Selection of persons for jury service

- (1) A jury shall be constituted of 12 persons.
- (2) The persons who constitute the jury shall be selected in accordance with this Article and Articles 68 and 69.

- (3) Except as provided under paragraph (4), on the day upon which a person has been summoned to attend for jury service, the names of not less than 12 persons appearing on the panel list shall, in open court, be read out by the Judicial Greffier in the order in which the names appear on the list.
- (4) A person whose name appears on the panel list shall not be read out –
 - (a) if that person has, since the compilation of that list, been exempted from jury service [*not in force, the words “under Article 65”*]; or
 - (b) if it appears to the Bailiff that it would be in the interests of justice not to identify that person.
- (5) This paragraph applies where a trial is expected to last for more than 5 days.
- (6) Where paragraph (5) applies, once 12 persons have been selected to serve as jurors, the names of 2 further persons shall, subject to paragraph (4), be read from the list in the order in which their names appear on the list.
- (7) The 2 further persons referred to in paragraph (6) shall, subject to Articles 68 and 69, be the jury’s reserve jurors.
- (8) A reserve juror must be called to serve on the jury if, at any time up to the point that the Bailiff concludes his or her summing up of the case, the number of jurors is reduced.
- (9) The Bailiff –
 - (a) may discharge a reserve juror from jury service if he or she is not required to serve on the jury immediately before the commencement of the Bailiff’s summing up of the case; or
 - (b) must, when the jury retires to consider its verdict, discharge a reserve juror from jury service.

67 Offence of failing to attend or serve as a juror

- (1) A person is guilty of an offence and liable to a fine if, without reasonable excuse, that person –
 - (a) [not in force]
 - (b) having attended for jury service, is not available when selected to serve as a juror; or
 - (c) having been selected to serve as a juror, withdraws from jury service without the permission of the Bailiff.
- (2) It shall be for the person to prove that he or she had a reasonable excuse under paragraph (1).

68 Non-selection of person for jury service - family relationship

- (1) This Article applies where it appears to the Bailiff that a father or mother and a son or daughter; 2 persons married to each other; 2 civil partners in a civil partnership; 2 brothers; 2 sisters; or a brother and a sister are both on the panel list.
- (2) A person who is related to another person by reason of the relationship described in paragraph (1) (“related person”) and whose name appears on the list after the other related person on the list, cannot serve on the same jury and the Bailiff shall discharge him or her from the requirement to attend for jury service on that occasion.

69 Non-selection of person for jury service by reason of successful challenge

- (1) The defence or prosecution may, for good reason, challenge any person whose name is read from the list and that challenge must be made after the person's name has been read out and before he or she is sworn to serve on a jury.
- (2) A challenge shall not be accepted by the Bailiff other than for a legitimate reason, that is to say –
 - (a) a risk of material prejudice to the trial;
 - (b) manifest unsuitability; or
 - (c) in the interests of justice.
- (3) The fact that a person summoned to serve on a jury is not qualified to serve as a juror, or is otherwise not permitted to serve, shall be a ground of challenge for good reason.
- (4) The Bailiff may, of his or her own motion, discharge a person from the requirement to attend for jury service on one or more of the grounds referred to in paragraphs (2) and (3).
- (5) [not in force]

70 Swearing of jurors

- (1) Each juror and reserve juror selected under Article 66 –
 - (a) must take an oath or make a solemn affirmation; and
 - (b) becomes a full jury member until discharged.
- (2) For the purposes of this Article, the States may, by Regulations, prescribe the form of oath which may be taken by a juror.
- (3) The solemn affirmation shall be in the appropriate form set out in the Schedule to the Solemn Affirmations Law.

71 Reduction in number of jurors

- (1) This paragraph applies if, during a trial, a member of the jury –
 - (a) dies;
 - (b) becomes ill or is otherwise indisposed preventing him or her from continuing as a juror; or
 - (c) is discharged by the Court for any other legitimate reason.
- (2) Where paragraph (1) applies, provided the number of jurors is not reduced below 10, the jury shall be deemed to be duly constituted and the proceedings shall continue and a verdict may be delivered accordingly.
- (3) If there is an insufficient number of reserve jurors to constitute a jury of not less than 10 jurors, the Bailiff shall discharge the jury from the proceedings and from the custody of the Viscount (as referred to in Article 72(1)(a)).
- (4) Where paragraph (3) applies, the Attorney General shall, not more than 7 days after the day the jury is discharged, notify the defendant and the Bailiff whether or not there is to be a retrial of the proceedings.
- (5) In determining when the 7 day expires, there shall be disregarded Christmas Day, Good Friday and any Bank Holiday.

- (6) The Bailiff shall adjourn the case pending receipt of the Attorney General's notification, and may remand the defendant in custody or on bail.

72 Conduct of jury

- (1) Except where paragraph (4) applies, from the time when the jury is sworn, until the time the jury delivers its verdict –
- (a) the jury shall remain in the custody of the Viscount throughout the course of the trial; and
 - (b) the jurors are only permitted to communicate with –
 - (i) each other, or
 - (ii) a member of the staff of the Royal Court or Viscount.
- (2) The Viscount shall ensure that the jury does not otherwise communicate with any other person outside the jury room.
- (3) A juror who communicates with another person in contravention of paragraph (1)(b), is guilty of an offence and liable to imprisonment for a term not exceeding 2 years and to a fine.
- (4) The Bailiff may, if he or she thinks fit, permit the jurors, at any time either before or after they have retired to consider their verdict, to leave the custody of the Viscount and to separate, and in such a case the prohibition against communicating with anyone shall only apply to communications concerning the case.
- (5) At the conclusion of the trial the jurors, escorted by the Viscount, shall retire to the jury room to consider their verdict.
- (6) The jurors shall select from one of their number a juror who shall chair the jury's deliberations and deliver the jury's verdict.
- (7) Exhibits or other material relevant to the trial, may be made available to the jury in such manner as may be prescribed.
- (8) The costs incurred by placing the jury in the custody of the Viscount shall be paid out of the annual income of the States.

73 Surrender of communication devices

- (1) The Bailiff may order the members of the jury to surrender, for a period, any form of device which is capable of transmitting or receiving, in any manner, communications in any form.
- (2) An order may be made only if the Bailiff considers that –
- (a) the order is necessary or expedient in the interests of justice; and
 - (b) the terms of the order are a proportionate means of safeguarding those interests.
- (3) An order may only specify a period during which the members of the jury are –
- (a) in the building in which the trial is being heard;
 - (b) in other accommodation provided at the Bailiff's request;
 - (c) visiting a place in accordance with arrangements made by the court; or
 - (d) travelling to or from a place mentioned in sub-paragraph (b) or (c).
- (4) An order may be made subject to exceptions.

- (5) It is a contempt of court for a member of a jury to fail to surrender any form of device in accordance with an order under this Article.

74 Offence: research by jurors

- (1) A juror who, during the period of a trial, researches a case –
- (a) by intentionally searching for information on an electronic database, including by means of the internet; and
 - (b) when doing so, knows or ought reasonably to know that the information is, or may be relevant to the case which is being tried,
- is guilty of an offence and liable to imprisonment for a term not exceeding 2 years and to a fine.
- (2) Information relevant to the case includes information about –
- (a) a person involved in events relevant to the case;
 - (b) the judge presiding at the trial;
 - (c) any other person involved in the trial, whether as a lawyer, a witness or otherwise;
 - (d) the law relating to the case;
 - (e) the law of evidence; and
 - (f) court procedure.
- (3) In this paragraph, the expression “the period of a trial” is the period –
- (a) beginning when the juror is sworn to try the case; and
 - (b) ending when the Bailiff discharges the jury or, if earlier, when he or she discharges the juror.

75 Verdicts

- (1) If a verdict cannot be delivered on the same day as the jury retires to consider its verdict, the proceedings shall be adjourned to the following day, and from day to day if necessary, until the verdict has been delivered.
- (2) The jury must deliver a unanimous verdict unless the Bailiff directs that the jury may deliver a majority verdict.
- (3) A majority verdict is delivered if a jury is constituted of –
- (a) 12 jurors and at least 10 of them agree on the verdict; or
 - (b) less than 12 jurors and at least 9 of them agree on the verdict.
- (4) The Judicial Greffier must ask the juror selected under Article 72(6) –
- (a) when the jury is ready to deliver its verdict, whether the defendant is guilty or not guilty of the offence (or each offence, if more than one) charged in the indictment;
 - (b) when the verdict has been delivered in respect of the offence (or each offence) –
 - (i) if the Bailiff has invited the Judicial Greffier to do so, whether the jury is ready to deliver a verdict in respect of an alternative or lesser offence than that charged in the indictment,

- (ii) whether the jury's verdict was agreed unanimously or by a majority, and
 - (iii) in the case of a majority guilty verdict, how many jurors were in favour of convicting and how many jurors were in favour of acquitting the defendant.
- (5) In the case of a guilty verdict the defendant shall stand convicted of the offence and sentenced accordingly.
- (6) In the case of a not guilty verdict the defendant shall be acquitted of the offence and, provided the defendant is not convicted of another offence charged in the indictment, he or she shall be discharged from the proceedings.
- (7) The Judicial Greffier shall make a record of every verdict.
- (8) If, following such period of time for deliberation as the Bailiff thinks reasonable having regard to the nature and complexity of the case, the jury is unable to deliver a verdict upon which the majority of jurors are agreed, the Bailiff shall discharge –
 - (a) the jury from the proceedings and from the custody of the Viscount; and
 - (b) the defendant from the proceedings provided he or she is not convicted of another offence charged in the indictment.
- (9) The Bailiff may, upon formally discharging the defendant from the proceedings, make such other orders or directions as may be required in relation to the discharged proceedings, or in relation to any other criminal proceedings pending before the Royal Court in respect of that defendant.
- (10) No judgment after the verdict shall be liable to be set aside by reason of a failure to comply with the requirements of this Law as regards the summoning or empanelling of jurors or the incapacity of a person to serve as a juror.

PART 10

MISCELLANEOUS PROCEDURES IN MAGISTRATE'S COURT AND ROYAL COURT

Application

76 Application and general interpretation of Part 10

- (1) This Part applies to criminal proceedings before the Magistrate's Court and the Royal Court.
- (2) In this Part –
 - “defence case statement” shall be construed in accordance with Article 84;
 - “witness notice” shall be construed in accordance with Article 85.

Arrest order with bail

77 Arrest order with bail

- (1) This Article applies where the court, in the exercise of powers under this Law or under any other enactment, orders the arrest of a person.

- (2) Where this Article applies, the court may grant the person bail by endorsing the order with a direction in accordance with paragraph (3).
- (3) A direction endorsed on an order under paragraph (2), may state that the person arrested is to be released on bail –
 - (a) subject to a duty to appear before the court at the time and on the date notified by the court; or
 - (b) on condition that the person provides a security for his or her appearance before the court at the time and on the date notified by the court.
- (4) The security referred to in paragraph (3)(b) –
 - (a) shall be of such an amount as the court directs to be specified in the endorsement;
 - (b) must be deposited with the Viscount before the person is released on bail; and
 - (c) may be provided by the person, or on his or her behalf.
- (5) If a person granted bail subject to a security under this Article fails, without reasonable excuse, to appear before the court as notified under paragraph (3)(a), the security shall be forfeited in accordance with Article 13 of the Bail Law.
- (6) A person granted bail under this Article who, without reasonable excuse, fails to appear before the court as notified under paragraph (3)(a), shall be guilty of an offence and Article 20 of the Bail Law shall apply for the purposes of that offence.

Determination of disputed facts where guilty plea entered

78 Guilty plea - procedure to determine facts disputed

- (1) This Article applies where a defendant pleads guilty but disputes the facts of the offence alleged by the prosecution.
- (2) Where agreement as to the facts disputed is not reached between the defendant and the prosecution, unless the court directs otherwise, the following procedure shall be followed –
 - (a) the defendant's basis of his or her plea must be set out in writing, identifying what is in dispute and must be signed by the defendant;
 - (b) the court may invite the parties to make representations about whether the dispute is material to sentence; and
 - (c) if the court decides that it is a material dispute, the court shall invite such further representations or evidence as it may require.
- (3) Where agreement as to the facts disputed is reached between the defendant and the prosecution, the court may, notwithstanding such agreement, of its own motion require that evidence relevant to the facts disputed shall be heard.
- (4) In proceedings before the Royal Court, representations or evidence under this Article shall be given before the Inferior Number.

*Withdrawal of guilty plea, discontinuance or continuation of proceedings***79 Withdrawal of guilty plea**

- (1) A defendant who has entered a guilty plea may at any time, with leave of the court, withdraw that plea.
- (2) Where the court grants a defendant leave to withdraw his or her guilty plea, the court shall give directions as to the future conduct of the proceedings.

80 Discontinuance of proceedings

- (1) In this Article –
“preliminary stage” in relation to proceedings for an offence does not include any stage of the proceedings after the Magistrate’s Court or Royal Court has begun to hear evidence for the prosecution;
“authorized prosecutor” means a prosecutor who is authorized in writing by the Attorney General to give a notice under paragraph (2).
- (2) The Attorney General or an authorized prosecutor may, at any time during the preliminary stages of the proceedings, give notice that he or she does not want the proceedings to continue in relation to an offence specified in the notice (“specified offence”).
- (3) The proceedings in respect of the specified offence shall be discontinued with effect from the giving of that notice to the Magistrate’s Court or Judicial Greffier, as the case may be, and a record shall be made to that effect.
- (4) The Attorney General or authorized prosecutor shall, in any notice given under paragraph (2) –
 - (a) state whether the reason for discontinuing the proceedings –
 - (i) is that it would not be in the public interest to proceed with the prosecution of the defendant for the specified offence, or
 - (ii) is that there is insufficient evidence to support the prosecution of the defendant for the specified offence; and
 - (b) inform the defendant of his or her right to apply for the proceedings in respect of the specified offence to continue.
- (5) A defendant who, under paragraph (4)(b), wants the proceedings to continue, must serve the Magistrate’s Court or Royal Court (as the case may be) with a notice to that effect not more than 14 days after the notice given under paragraph (2).
- (6) If the defendant serves a notice under paragraph (5) –
 - (a) the Magistrate or Judicial Greffier must notify the Attorney General or authorized prosecutor; and
 - (b) the proceedings shall continue as if no notice had been given under paragraph (2).
- (7) The discontinuance of any proceedings under this Article shall not prevent the Attorney General from instituting fresh proceedings in respect of the same offence, provided that where the reason for discontinuing the original proceedings –
 - (a) was under paragraph (4)(a)(i), the Attorney General is of the opinion that there are exceptional circumstances justifying the institution of fresh proceedings in respect of that offence; or

- (b) was under paragraph (4)(a)(ii) –
 - (i) further evidence has come to light,
 - (ii) the original decision to discontinue the proceedings was incorrect, or
 - (iii) the original decision to discontinue the proceedings would have been different in the light of a change in circumstances, or new information since the original decision was made.
- (8) Criminal Procedure Rules may make provision as to the form, content and service of any notices given under this Article.

81 Continuation of previous proceedings

- (1) The Attorney General may, at any time, with leave of the court or Court of Appeal progress previously halted criminal proceedings.
- (2) The reference to halted criminal proceedings is a reference to proceedings in relation to offences which the court has, at the request of the prosecution, ordered to be “left on file”.
- (3) Where leave is sought from a court other than the Court of Appeal, unless the court which made the order halting the previous proceedings has expressly ordered otherwise, nothing in this Article shall be taken to prevent the Attorney General from applying for leave of a court other than the one which made the order halting the previous proceedings.

Disclosure

82 Duty of prosecution to disclose unused material

- (1) Subject to paragraph (3), the prosecution must –
 - (a) disclose to the defendant any unused prosecution material which has not previously been disclosed to the defendant and which might reasonably be considered capable of undermining the case for the prosecution against the defendant, or of assisting the case for the defendant; and
 - (b) give to the defendant a written statement confirming –
 - (i) that all unused prosecution material of a description mentioned sub-paragraph (a) has been disclosed to the defendant, or
 - (ii) that the prosecution holds no material of such a description.
- (2) In this Article, “unused prosecution material” is material which is in the prosecution’s possession, and came into its possession in connection with the case for the prosecution against the defendant.
- (3) Unused prosecution material must not be disclosed under this Article where, on an application by the prosecution, it appears to the Magistrate or the Bailiff that it is not in the public interest to disclose it, and he or she makes an order to that effect.
- (4) The prosecution must disclose any unused prosecution material after the defendant has first entered a not guilty plea and in accordance with any directions given by the court as to service of that material.
- (5) The prosecution shall be under a continuing duty to disclose any unused prosecution material, including material relevant to any matters set out in the defendant’s defence

case statement, until the trial of the defendant's case is concluded either by way of the defendant's acquittal or conviction, or the proceedings having otherwise been –

- (a) discontinued under Article 80; or
- (b) halted by the court.

83 Duty to give defence case statement

- (1) Where –
 - (a) the prosecution has served on the defendant a copy of the set of documents containing the evidence which is the basis of the charge; and
 - (b) the unused prosecution material has been disclosed in accordance with Article 82(3),the defendant must, subject to paragraph (3), give a defence case statement to the court and the prosecution.
- (2) The defence case statement shall –
 - (a) be in the prescribed form;
 - (b) be signed by the defendant, or if he or she is unable to sign it personally, by the defendant's legal representative on his or her behalf;
 - (c) contain the particulars set out in Article 84; and
 - (d) be served in accordance with the court's directions.
- (3) If the defendant has no legal representative the court may, on the application of the defendant or of the court's own motion, dispense with the requirement to give a defence case statement.
- (4) If it appears to the Magistrate or Bailiff that the defendant has failed to comply fully with this Article so that there is a possibility of comment being made or inferences drawn under Article 86(2), he or she shall warn the defendant accordingly.
- (5) If it appears to the Magistrate or Bailiff that the defendant has not given a defence case statement in accordance with paragraph (1), or one which complies with the requirements set out in paragraph (2), the Magistrate or Bailiff (as the case may be) may order that –
 - (a) the defendant's legal representatives; or
 - (b) a defendant in person (where he or she is unrepresented),pay such of the prosecution's costs as are attributable to the defendant's failure to comply with paragraph (1) or (2).
- (6) A determination under paragraph (5) shall be made as soon as practicable after the date directed by the court, under paragraph (2)(d), for service of the defence case statement has expired.
- (7) Any costs ordered to be paid under paragraph (5) shall be enforced as a civil debt without further order of the court.
- (8) The defendant shall be under a continuing duty to disclose any material change to any matters set out in the defendant's defence case statement, or change in the defence relied upon, until the trial of the defendant's case is concluded either by way of the defendant's acquittal or conviction, or the proceedings having otherwise been –
 - (a) discontinued under Article 80; or

- (b) halted by the court.

84 Content of defence case statement

- (1) A defence case statement is a written statement which –
 - (a) sets out the nature of the defence, including any particular defences on which the defendant intends to rely;
 - (b) indicates the matters of fact on which the defendant takes issue with the prosecution;
 - (c) sets out, in the case of each such matter of fact, why the defendant takes issue with the prosecution;
 - (d) sets out particulars of the matters of fact on which the defendant intends to rely for the purposes of his or her defence; and
 - (e) indicates any point of law (including any point as to the admissibility of evidence or an abuse of process) which the defendant wishes to take, and any authority on which he or she intends to rely for that purpose.
- (2) A defence case statement that discloses an alibi must give particulars of it, including –
 - (a) the name, address and date of birth of any witness the defendant believes is able to give evidence in support of the alibi (that is, evidence that the defendant was in a particular place or area and at a particular time which is not consistent with the defendant having committed the alleged offence at a particular place and time), or as many of those details as are known to the defendant when the defence case statement is given; and
 - (b) any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the personal details mentioned in paragraph (a) are not known to the defendant when the defence case statement is given.
- (3) Where a defendant's legal representative has signed the defence case statement on the defendant's behalf, the statement shall be treated as if signed by the defendant.
- (4) For the purposes of fulfilling the continuing duty referred to in Article 83(8), a defence case statement shall be amended in such form or manner as may be prescribed.

85 Notification of intention to call defence witnesses

- (1) The defendant must give to the court and the prosecution a notice indicating whether he or she intends to call any persons (other than himself or herself), including a person mentioned in Article 84(2), as witnesses at his or her trial and, if so, such a notice ("witness notice") shall include the following particulars –
 - (a) the name, address and date of birth of each such proposed witness, or as many of those details as are known to the defendant when the notice is given; and
 - (b) any information in the defendant's possession which might be of material assistance in identifying or finding any such proposed witness in whose case any of the personal details mentioned in paragraph (a) are not known to the defendant when the notice is given.
- (2) The particulars mentioned in paragraph (1) do not have to be given under this Article to the extent that they have already been given under Article 84(2).

- (3) The defendant must give a witness notice under this Article within such period as may be prescribed.
- (4) If, following the giving of a witness notice, the defendant –
 - (a) decides to call a person (other than himself or herself) who is not included in that notice as a proposed witness, or decides not to call a person who is so included; or
 - (b) discovers any information which, under paragraph (1), he or she would have had to include in the notice if he or she had been aware of it when giving the notice,the defendant must give an appropriately amended witness notice to the court and the prosecution.

86 Non-compliant defence case statement or witness notice

- (1) This Article applies where a defendant –
 - (a) fails to give a defence case statement as required by Article 83(1);
 - (b) fails to serve a defence case statement in accordance with directions given under Article 83(2)(d);
 - (c) fails to serve a defence case statement containing the particulars required under Article 84;
 - (d) sets out inconsistent defences in the defence case statement;
 - (e) at his or her trial –
 - (i) puts forward a defence which was not mentioned in his or her defence case statement or is different from any defence set out in that statement,
 - (ii) relies on a matter or any particular of any matter of fact which was not mentioned in his or her defence case statement,
 - (iii) adduces evidence in support of an alibi without having given particulars of the alibi in his or her defence case statement, or
 - (iv) calls a witness to give evidence in support of an alibi without having complied with Article 84(2) as regards the witness in his or her defence case statement; or
 - (f) at his or her trial calls a witness (other than himself or herself) not included, or not adequately identified, in a witness notice.
- (2) Where this Article applies –
 - (a) the court or any other party may make such comment as appears appropriate;
 - (b) the Magistrate's Court or the Royal Court sitting with Jurats or a jury may draw such inferences as appear proper in deciding whether the defendant is guilty of the offence concerned.
- (3) A defendant shall not be convicted of an offence solely on an inference drawn under paragraph (2)(b).
- (4) Where the defendant puts forward a defence which is different from any defence set out in his or her defence case statement, in doing anything under paragraph (2) or in deciding whether to do anything under it, the court shall have regard –
 - (a) to the extent of the difference in the defences; and
 - (b) to whether there is any justification for it.

- (5) Where the defendant calls a witness whom he or she has failed to include, or to identify adequately in a witness notice, in doing anything under paragraph (2) or in deciding whether to do anything under it, the court shall have regard as to whether there is any justification for the failure.

Attendance of defendant before a court

87 Power to hear the defendant through television link

- (1) In any criminal proceedings, the court may, with the consent of the defendant, direct that the defendant shall be treated as being present at the proceedings if, during the proceedings, either by way of a live television link or by another means, he or she is able to see and hear the court and he or she is able also to be seen and heard by the court.
- (2) Notwithstanding paragraph (1), in any hearing, other than the trial hearing itself, the court may, after hearing representations from the parties and without requiring the consent of the defendant, direct that the defendant shall be treated as being present in the court if, during that hearing, either by way of a live television link or otherwise, the defendant is able to see and hear the court and to be seen and heard by the court.

88 Defendant's duty to attend trial and trial in defendant's absence

- (1) Unless the court excuses a defendant from attending his or her trial, a defendant is otherwise required to be present at court throughout his or her trial.
- (2) The court may, subject to paragraph (3), proceed to try the defendant in his or her absence if that defendant chooses not to exercise his or her right to be present at his or her trial by voluntarily absenting himself or herself from the court at the beginning of, or during his or her trial.
- (3) Before the court decides to proceed to try a defendant in his or her absence, the court shall have due regard to the interests of justice which shall include consideration of such of the following factors as appear to the court to be relevant –
- (a) the conduct of the defendant;
 - (b) the disadvantage to the defendant;
 - (c) the public interest that will weigh in favour of commencing or continuing the trial taking account of the inconvenience and hardship –
 - (i) to witnesses and especially to any complainant, of a delay to the trial,
 - (ii) to witnesses who have attended court and are ready to give evidence;
 - (d) the effect of any delay;
 - (e) whether the defendant is off the Island;
 - (f) whether the attendance of the defendant could be secured at a later hearing;
 - (g) the likely outcome if the defendant is found guilty,
- as well as any other factors which also appear to the court to be relevant.
- (4) If a defendant is convicted in his or her absence, the court shall endeavour to secure that he or she is present at any sentencing hearing and, so far as is reasonably practicable, arrange for the defendant to be legally represented at that hearing.

*Reporting of criminal proceedings***89 Contemporary reports of criminal proceedings**

- (1) In criminal proceedings, the court may, where it appears to the court to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other criminal proceedings pending or imminent, order that publication in Jersey of the proceedings or of any part of the proceedings, be postponed for any period that the court thinks necessary for that purpose.
- (2) A court may make an order under paragraph (1) of its own motion or on application by any of the parties and, where a court makes an order under paragraph (1), it may give any directions that appear to the court to be necessary for the purposes of the order.
- (3) A person aggrieved by an order under paragraph (1) may appeal in the case of an order made by the Magistrate's Court, to the Inferior Number of the Royal Court or in the case of an order made by the Youth Court, to the Youth Appeal Court or in the case of an order made by the Royal Court, to the Court of Appeal, and the decision of the court hearing that appeal shall be final.
- (4) On the hearing of an appeal under paragraph (3) the court may do any of the following –
 - (a) stay any proceedings in any other court until after the appeal is disposed of;
 - (b) confirm, reverse or vary the order complained of; and
 - (c) make an order as to costs.
- (5) Where a court has made an order under paragraph (1), if a report is included in a publication or relevant programme in contravention of that order the following shall be guilty of an offence and liable to a fine –
 - (a) where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
 - (b) where the publication is a relevant programme, any body corporate which provides the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;
 - (c) in the case of any other publication, the person who publishes it.
- (6) This Article shall be in addition to, and not in derogation from, any other enactment or rule of customary law with respect to the publication of reports and proceedings of any court.

90 Defence of innocent publication

- (1) A person is not guilty of an offence under Article 89(5) if at the time of publication (having taken all reasonable care) the person does not know and has no reason to suspect that an order has been made under Article 89(1).
- (2) The burden of proof of any fact tending to establish a defence afforded by this Article to any person lies upon that person.

PARTS 11, 12

[not in force]

PART 13**ESTABLISHMENT AND FUNCTIONS OF THE CRIMINAL PROCEDURE RULES COMMITTEE****111 Criminal Procedure Rules Committee**

- (1) There are to be rules of court (to be called “Criminal Procedure Rules”) governing the practice and procedure to be followed in criminal proceedings.
- (2) Criminal Procedure Rules are to be made by a committee known as the Criminal Procedure Rules Committee.
- (3) The Criminal Procedure Rules Committee shall be chaired by the Bailiff or, in his or her absence, the Deputy Bailiff, who shall both be members of the Committee.
- (4) The Criminal Procedure Rules Committee shall also consist of the following members –
 - (a) the Attorney General or a person nominated by the Attorney General;
 - (b) the Chief Officer of the States of Jersey Police Force or a person nominated by that Chief Officer;
 - (c) the Judicial Greffier or a person nominated by the Judicial Greffier;
 - (d) the Magistrate or a person nominated by the Magistrate;
 - (e) the person who is the senior délégué or a person nominated by that délégué;
 - (f) the Viscount or a person nominated by the Viscount;
 - (g) an advocate nominated by the Bâtonnier who has particular experience of practice in criminal proceedings; and
 - (h) a person nominated by the Chief Minister.
- (5) Before nominating a person under paragraph (4), the Bailiff must first be consulted.
- (6) A person shall be nominated for such period as may be specified by the person who has nominated him or her.
- (7) The Criminal Procedure Rules Committee may, subject to a quorum of not less than 5 members, meet for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (8) The Criminal Procedure Rules Committee must, before making Criminal Procedure Rules –
 - (a) consult such persons as it considers appropriate; and
 - (b) meet (unless it is inexpedient to do so).
- (9) Criminal Procedure Rules –
 - (a) must be signed by not less than 5 members of the Criminal Procedure Rules Committee;
 - (b) shall come into force on such day or days as the Criminal Procedure Rules Committee directs; and
 - (c) shall be treated as an enactment to which the [Subordinate Legislation \(Jersey\) Law 1960](#) applies.

- (10) The States may, by Regulations, amend the members of the Committee listed in paragraph (4).

112 Criminal Procedure Rules

- (1) Criminal Procedure Rules may be made by the Criminal Procedure Rules Committee for any of the following –
- (a) for regulating and prescribing the procedure and the practice to be followed in any proceedings under this Law (including the procedure and practice to be followed by the Viscount and the Judicial Greffier) and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing) the manner in which, and the time within which, any applications which under this Law or any enactment are to be made to the court shall be made;
 - (b) for regulating the sittings of the court and its judges whether sitting in court or elsewhere;
 - (c) for prescribing the jurisdiction of the Inferior Number and Superior Number in relation to the sentencing of a defendant;
 - (d) for regulating the means or timing of service, or lodging, of any application, indictment, notice, order, order for the arrest of a person, summons or other instrument or document, issued under this Law or under Criminal Procedure Rules;
 - (e) for prescribing forms to be used for the purposes of this Law;
 - (f) for regulating any matters relating to the costs of proceedings before the court;
 - (g) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with or at any stage of any proceedings;
 - (h) for prescribing the details of the prosecution's case against a person which, under the provisions of this Law, or in the exercise of case management powers, are to be served on a person who is charged with, or is to be charged with, or in connection with, an offence;
 - (i) for regulating and prescribing the procedure on appeal from the Magistrate's Court, or where a case is stated by the Magistrate;
 - (j) for regulating or making provision with respect to any other matters which may require to be regulated or with respect to which provision may require to be made under this Law.
- (2) The power to make Criminal Procedure Rules –
- (a) is to be exercised with a view to securing that –
 - (i) the criminal justice system is accessible, fair and efficient, and
 - (ii) the rules are both simple and simply expressed; and
 - (b) includes power to –
 - (i) make different provision for different cases, including different provision for a specified court or specified descriptions of proceedings,
 - (ii) make such consequential, incidental, supplementary, transitional, transitory or saving provision which appear to be necessary or expedient for the purposes of the Rules, and

- (iii) make rules as to proceedings by or against the Crown.

113 Practice directions

- (1) The Bailiff or Magistrate may, from time to time, issue directions as to the practice or procedure to be followed by the participants in criminal proceedings (“practice directions”) where either no provision has been made in Criminal Procedure Rules or, subject to paragraph (2), so as to complement any such Rules.
- (2) Practice directions issued under this Article must not be inconsistent with any Criminal Procedure Rules which may otherwise apply.
- (3) Practice directions must be kept under review and, as necessary, must be replaced, revoked or amended.
- (4) Practice directions may be published in such manner or form as the Bailiff or Magistrate considers appropriate.
- (5) Paragraph (6) applies where it appears to the court when conducting criminal proceedings, that –
 - (a) a provision of a practice direction; or
 - (b) a failure to comply with a practice direction,is relevant to a question arising in those proceedings.
- (6) Where this paragraph applies, the relevant provision or failure must be taken into account in determining the question, but a failure to comply with a practice direction shall not of itself make a person liable to any civil or criminal proceedings.

PART 14

[heading not in force]

114 Quashing of acquittal and retrial

Schedule 2 provides for the procedures to be followed in relation to an application to the Court of Appeal to quash a person’s acquittal in respect of an offence, and that person’s subsequent retrial.

115 Regulations

- (1) The States may, by Regulations, amend any enactment, including this Law, for the purpose of making such transitional, consequential, incidental, supplementary or savings provisions as they consider necessary or expedient in consequence of any provision made by or under this Law.
- (2) Any Regulations under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be expedient for the purposes of the Regulations.
- (3) A power to make Regulations under this Law for the purpose of amending a provision of this Law, includes the power to make such transitional, consequential, incidental or supplementary amendments to any other provision of this Law as appears to the States to be necessary or expedient.

116 [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) amended

Schedule 3 has effect to amend the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#). *[not in force – parts of Schedule 3]*

117 Miscellaneous enactments amended

Schedule 4 has effect to amend enactments consequentially upon the enactment of this Law. *[not in force – parts of Schedule 4]*

118 Enactments repealed

The enactments listed in Schedule 5 are repealed. *[not in force – parts of Schedule 5]*

119 Citation and commencement

This Law may be cited as the Criminal Procedure (Jersey) Law 2018 and shall come into force on such day or days as the States may by Act appoint.

SCHEDULE 1

[not in force]

SCHEDULE 2³

(Article 114)

QUASHING OF PERSON'S ACQUITTAL AND RETRIAL**1 Interpretation**

In this Schedule –

“acquittal” and related expressions are to be construed in accordance with paragraph 2(7);

“new evidence” is to be construed in accordance with paragraph 5(2);

“officer”, except in paragraph 10, means a police officer or an officer of the Impôts within the meaning of the [Customs and Excise \(Jersey\) Law 1999](#);

“qualifying offence” is an offence specified in Regulations made under paragraph 2(8);

“2003 Law” means the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#).

2 Cases that may be retried

- (1) This Schedule applies where a person has been acquitted of a qualifying offence in proceedings –
 - (a) under Part 7;
 - (b) on appeal against a conviction under Part 7;
 - (c) on appeal from a decision on such an appeal; or
 - (d) before the Royal Court under the [Loi \(1864\) réglant la Procédure Criminelle](#) including an appeal against a conviction under that Loi, or an appeal from a decision on such an appeal.
- (2) A person acquitted of an offence in proceedings mentioned in sub-paragraph (1) is treated for the purposes of that sub-paragraph as also acquitted of any qualifying offence of which he or she could have been convicted in the proceedings because of the first-mentioned offence being charged in the indictment, except an offence –
 - (a) of which he or she has been convicted;
 - (b) in respect of which a special verdict has been recorded under Article 72 of the Mental Health Law; or
 - (c) in respect of which, in proceedings under Part 8 of the Mental Health Law in which the person has been found to be incapable of participating in those proceedings, a finding has been made that the person did the act with which he or she is charged.
- (3) References in sub-paragraphs (1) and (2) to a qualifying offence do not include references to an offence which, at the time of the acquittal, was the subject of an order under paragraph 4(1) or (3).
- (4) This Schedule also applies where a person has been acquitted, in proceedings elsewhere than in Jersey, of an offence under the law of the place where the proceedings were held, if the commission of the offence as alleged would have amounted to or included the commission (in Jersey or elsewhere) of a qualifying offence.

- (5) Conduct punishable under the law in force elsewhere than in Jersey is an offence under that law for the purposes of sub-paragraph (4), however it is described in that law.
- (6) This Schedule applies whether the acquittal was before or after this Law was adopted by the States.
- (7) References in this Schedule to acquittal are to acquittal in circumstances within sub-paragraph (1) or (4).
- (8) The States shall, by Regulations, specify the offences or description of offences that are qualifying offences for the purposes of this paragraph.

3 Application to Court of Appeal

- (1) The Attorney General may apply to the Court of Appeal for an order –
 - (a) quashing a person's acquittal in proceedings within paragraph 2(1); and
 - (b) ordering the person to be retried for the qualifying offence.
- (2) The Attorney General may apply to the Court of Appeal, in the case of a person acquitted elsewhere than in Jersey, for –
 - (a) a determination whether the acquittal is a bar to the person being tried in Jersey for the qualifying offence; and
 - (b) if it is, an order that the acquittal is not to be a bar.
- (3) The Attorney General may only make an application under this paragraph if he or she is satisfied that –
 - (a) there is evidence to show that the requirements of paragraph 5 appear to be met; and
 - (b) it is in the public interest for the application to proceed.
- (4) Not more than one application in relation to an acquittal may be made under sub-paragraph (1) or (2).

4 Determination by Court of Appeal

- (1) On an application under paragraph 3(1), the Court of Appeal –
 - (a) if satisfied that the requirements of paragraphs 5 and 6 are met, must make the order applied for; or
 - (b) otherwise, must dismiss the application.
- (2) Sub-paragraphs (3) and (4) apply to an application under paragraph 3(2).
- (3) Where the Court of Appeal determines that the acquittal is a bar to the person being tried for the qualifying offence, the Court –
 - (a) if satisfied that the requirements of paragraphs 5 and 6 are met, must make the order applied for; or
 - (b) otherwise, must make a declaration to the effect that the acquittal is a bar to the person being tried for the offence.
- (4) Where the Court of Appeal determines that the acquittal is not a bar to the person being tried for the qualifying offence, it must make a declaration to that effect.

5 New and compelling evidence

- (1) The requirements of this paragraph are met if there is new and compelling evidence against the acquitted person in relation to the qualifying offence.
- (2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted (nor, if those were appeal proceedings, in earlier proceedings to which the appeal related).
- (3) Evidence is compelling if –
 - (a) it is reliable; and
 - (b) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.
- (4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.
- (5) For the purposes of this paragraph, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.

6 Interests of justice

- (1) The requirements of this paragraph are met if in all the circumstances it is in the interests of justice for the Court of Appeal to make the order under paragraph 4.
- (2) That question is to be determined having regard in particular to –
 - (a) whether existing circumstances make a fair trial unlikely;
 - (b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;
 - (c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by an officer or by the Attorney General to act with due diligence or expedition; and
 - (d) whether, since those proceedings or, if later, since the commencement of this Schedule, any officer or the Attorney General has failed to act with due diligence or expedition.
- (3) In sub-paragraph (2), references to an officer or the Attorney General include references to a person charged with corresponding duties under the law in force elsewhere than in Jersey.

7 Procedure and evidence

- (1) The Attorney General must give notice to the Court of Appeal of an application under paragraph 3(1) or (2).
- (2) Within 7 days beginning with the day on which any such notice is given, notice of the application must be served by the Attorney General on the person to whom the application relates, charging him or her with the offence to which it relates.
- (3) Sub-paragraph (2) applies whether the person to whom the application relates is in Jersey or elsewhere, but the Court of Appeal may, on application by the Attorney General, extend the time for service under that sub-paragraph if it considers it necessary to do so because of that person's absence from Jersey.
- (4) The Court of Appeal must consider the application at a hearing.

- (5) The person to whom the application relates –
 - (a) is entitled to be present at the hearing, although he or she may be in custody, unless he or she is in custody elsewhere than in Jersey; and
 - (b) is entitled to be represented at the hearing, whether he or she is present or not.
- (6) For the purposes of the application, the Court of Appeal may, if it thinks it expedient in the interests of justice –
 - (a) order the production of any document, exhibit or other thing, the production of which appears to the Court to be necessary for the determination of the application; and
 - (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the court.
- (7) The Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.

8 Appeals

- (1) An appeal lies to the Judicial Committee of the Privy Council, at the instance of the acquitted person or the Attorney General, from any decision of the Court of Appeal on an application under paragraph 3(1) or (2).
- (2) An appeal under this Article lies only with leave of the Court of Appeal.

9 Restrictions on publication in the interests of justice

- (1) Where it appears to the Court of Appeal that the inclusion of any matter in a publication would give rise to a substantial risk of prejudice to the administration of justice in a retrial, the Court may order that the matter is not to be included in any publication while the order has effect.
- (2) In sub-paragraph (1) “retrial” means the trial of an acquitted person for a qualifying offence pursuant to any order made or that may be made under paragraph 4.
- (3) The Court may make an order under this paragraph only if it appears to it necessary in the interests of justice to do so.
- (4) An order under this paragraph may apply to a matter which has been included in a publication published before the order takes effect, but such an order –
 - (a) applies only to the later inclusion of the matter in a publication (whether directly or by inclusion of the earlier publication); and
 - (b) does not otherwise affect the earlier publication.
- (5) After notice of an application has been given under paragraph 7(1) relating to the acquitted person and the qualifying offence, the Court may make an order under this paragraph only –
 - (a) of its own motion; or
 - (b) on the application of the Attorney General.
- (6) Before such notice has been given under paragraph 7(1), an order under this paragraph –
 - (a) may be made only on the application of the Attorney General; and

- (b) may not be made unless, since the acquittal concerned, an investigation of the commission by the acquitted person of the qualifying offence has been commenced by officers.
- (7) The court may at any time, of its own motion or on an application made by the Attorney General or the acquitted person, vary or revoke an order under this paragraph.
- (8) Any order made under this paragraph before notice of an application has been given under paragraph 7(1) relating to the acquitted person and the qualifying offence must specify the time when it ceases to have effect.
- (9) An order under this paragraph which is made or has effect after such notice has been given ceases to have effect, unless it specifies an earlier time –
 - (a) when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application; or
 - (b) if the acquitted person is tried pursuant to such an order, at the conclusion of the trial.
- (10) Nothing in this paragraph affects any prohibition or restriction by virtue of this Law or any other enactment on the inclusion of any matter in a publication or any power, under an enactment or otherwise, to impose such a prohibition or restriction.
- (11) In this paragraph –

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings.

10 Offences in connection with publication restrictions

- (1) This paragraph applies if –
 - (a) an order under paragraph 9 is made; and
 - (b) while the order has effect, any matter is included in a publication, in Jersey or elsewhere, in contravention of the order.
- (2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (3) Where the publication is a relevant programme –
 - (a) any body corporate engaged in providing the programme service in which the programme is included; and
 - (b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,is guilty of an offence.
- (4) In the case of any other publication, any person publishing it is guilty of an offence.
- (5) If an offence under this paragraph committed by a body corporate is proved –
 - (a) to have been committed with the consent or connivance of; or
 - (b) to be attributable to any neglect on the part of,an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

- (6) In sub-paragraph (5), “officer” means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (7) If the affairs of a body corporate are managed by its members, “director” in sub-paragraph (6) means a member of that body.
- (8) A person guilty of an offence under this paragraph is liable to a fine.
- (9) Proceedings for an offence under this paragraph may not be instituted without the consent of the Attorney General.
- (10) The States may, by Regulations, amend –
 - (a) the types of publication under this paragraph which contravene an order under paragraph 9; or
 - (b) the persons who are guilty of an offence under this paragraph.

11 Defence of innocent publication

- (1) A person is not guilty of an offence under paragraph 10 if at the time of publication (having taken all reasonable care) the person does not know and has no reason to suspect that an order has been made under paragraph 9.
- (2) The burden of proof of any fact tending to establish a defence afforded by this paragraph to any person lies upon that person.

12 Retrial

- (1) Where a person –
 - (a) is tried pursuant to an order under paragraph 4(1); or
 - (b) is tried on indictment pursuant to an order under paragraph 4(3),the retrial must be on an indictment before the Royal Court preferred by the Attorney General.
- (2) After the end of 2 months after the date of the order, the person may not be retried under sub-paragraph (1) unless the Court of Appeal gives leave.
- (3) The Court of Appeal must not give leave unless satisfied that –
 - (a) the Attorney General has acted with due expedition; and
 - (b) there is a good and sufficient cause for retrial despite the lapse of time since the order under paragraph 4.
- (4) Where the person may not be indicted without leave, he or she may apply to the Court of Appeal to set aside the order and –
 - (a) for any direction required for restoring an earlier judgment and verdict of acquittal of the qualifying offence; or
 - (b) in the case of a person acquitted elsewhere than in Jersey, for a declaration to the effect that the acquittal is a bar to his or her being tried for the qualifying offence.
- (5) An indictment under sub-paragraph (1) may relate to more than one offence, or more than one person, and may relate to an offence which, or a person who, is not the subject of an order or declaration under paragraph 4.
- (6) Evidence given at a retrial pursuant to an order under paragraph 4(1) or (3) must be given orally if it was given orally at the original trial, unless –

- (a) all the parties to the retrial agree otherwise;
- (b) Article 65 of the 2003 Law applies; or
- (c) the witness is unavailable to give evidence (otherwise than by reason of any of the 5 conditions in Article 65(2) of the 2003 Law being satisfied) and Article 64(1)(d) of that Law applies.

13 Authorization of investigations

- (1) This paragraph applies to the investigation of the commission of a qualifying offence by a person –
 - (a) acquitted in proceedings within paragraph 2(1) of the qualifying offence; or
 - (b) acquitted elsewhere than in Jersey of an offence the commission of which as alleged would have amounted to or included the commission (in Jersey or elsewhere) of the qualifying offence.
- (2) Subject to paragraph 14, an officer may not do anything within sub-paragraph (3) for the purposes of such an investigation unless the Attorney General –
 - (a) has certified that in his or her opinion the acquittal would not be a bar to the trial of the acquitted person in Jersey for the qualifying offence; or
 - (b) has given his or her written consent to the investigation (whether before or after the start of the investigation).
- (3) The officer may not, either with or without the consent of the acquitted person –
 - (a) arrest or question him or her;
 - (b) search him or her or premises owned or occupied by him or her;
 - (c) search a vehicle owned by him or her or anything in or on such a vehicle;
 - (d) seize anything in his or her possession; or
 - (e) take his or her fingerprints or take a sample from him or her.
- (4) The Attorney General may only give his or her consent to a written application, and such an application may be made only by an officer who is of the rank of chief inspector or above.
- (5) An officer may make an application under sub-paragraph (4) only if –
 - (a) he or she is satisfied that new evidence has been obtained which would be relevant to an application under paragraph 3(1) or (2) in respect of the qualifying offence to which the investigation relates; or
 - (b) he or she has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
- (6) The Attorney General may not give his or her consent unless satisfied that –
 - (a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation; and
 - (b) it is in the public interest for the investigation to proceed.

14 Urgent investigative steps

- (1) Paragraph 13 does not prevent an officer from taking any action for the purposes of an investigation if –

- (a) the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced;
 - (b) the requirements of sub-paragraph (2) are met; and
 - (c) either –
 - (i) the action is authorized under sub-paragraph (3), or
 - (ii) the requirements of sub-paragraph (5) are met.
- (2) The requirements of this sub-paragraph are met if –
 - (a) there has been no undue delay in applying for consent under paragraph 13(4);
 - (b) that consent has not been refused; and
 - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that consent before taking the action.
- (3) An officer of the rank of chief inspector or above may authorize the action if –
 - (a) he or she is satisfied that new evidence has been obtained which would be relevant to an application under paragraph 3(1) or (2) in respect of the qualifying offence to which the investigation relates; or
 - (b) he or she has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
- (4) An authorization under sub-paragraph (3) must –
 - (a) if reasonably practicable, be given in writing;
 - (b) otherwise, be recorded in writing by the officer giving it as soon as is reasonably practicable.
- (5) The requirements of this sub-paragraph are met if –
 - (a) there has been no undue delay in applying for authorization under sub-paragraph (3);
 - (b) that authorization has not been refused; and
 - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorization before taking the action.
- (6) Where the requirements of sub-paragraph (5) are met, the action is nevertheless to be treated as having been unlawful unless, as soon as reasonably practicable after the action is taken, an officer of the rank of chief inspector certifies in writing that he or she is satisfied that, when the action was taken –
 - (a) new evidence had been obtained which would be relevant to an application under paragraph 3(1) or (2) in respect of the qualifying offence to which the investigation relates; or
 - (b) the officer who took the action had reasonable grounds for believing that such new evidence was likely to be obtained as a result of the investigation.

15 Regulations conferring supplementary powers

- (1) The States may, by Regulations, amend this Schedule so as to make provision for or in connection with, the following –
 - (a) to confer upon the Royal Court, or Court of the Appeal, the power to summons, or order the arrest of, a person who is the subject of –
 - (i) an application under paragraph 3,

- (ii) an order under paragraph 4, or
 - (iii) an investigation under paragraph 13 or 14;
- (b) the detention of, or grant of bail to, a person summoned or arrested pursuant to the exercise of powers referred to in clause (a).
- (2) Regulations for the purposes of sub-paragraph (1)(b) may provide for the grant of bail in accordance with the Bail Law, or subject to such modification of the provisions of the Bail Law as the Regulations may provide.

16 Rules of court

- (1) The power to make rules of court under Article 40 of the [Court of Appeal \(Jersey\) Law 1961](#) includes the power to make rules for the purposes of this Schedule.
- (2) Without limiting sub-paragraph (1), rules of court may in particular make provision as to procedures to be applied in connection with paragraphs 3 to 9 and 12.
- (3) Nothing in this paragraph is to be taken as affecting the generality of any enactment (including under Part 13 of this Law) conferring power to make rules of court.

SCHEDULE 3⁴

[partially not in force]

SCHEDULE 4⁵

[partially not in force]

SCHEDULE 5⁶

[partially not in force]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	°Projet No (where applicable)
Criminal Procedure (Jersey) Law 2018	L.25/2018	18 July 2019 – Part 1, Article 48, Part 13, Article 115, Article 118 to the extent that Article 1 of the Loi (1864) réglant la Procédure Criminelle (listed in Schedule 5 at paragraph (4)) is repealed, Article 119 (R&O.61/2019) 31 October 2019 – various provisions (R&O.110/2019) Not in force – various provisions	P.118/2017
Criminal Procedure (Transitional Provisions) (Jersey) Regulations 2019	R&O.111/2019	31 October 2019 – temporary amendments commenced Not in force – cessation of temporary amendments	P.96/2019
Criminal Procedure (Qualifying Offences) (Jersey) Regulations 2019	R&O.112/2019	31 October 2019	P.97/2019

°Projets available at www.statesassembly.gov.je

Table of Endnote References

- ¹ Article 1(1) *editorial change definition of “juror”, “mean” deleted, “means” inserted instead, amended by R&O.111/2019*
- ² Article 13(2) *amended by R&O.111/2019*
- ³ Schedule 2 *amended by R&O.112/2019, editorial change in paragraph 2(1), “or” moved from end of clause (b) to end of clause (c)*
- ⁴ Schedule 3 *spent provisions omitted, amended by R&O.111/2019*
- ⁵ Schedule 4 *spent provisions omitted*
- ⁶ Schedule 5 *spent provisions omitted*