



Jersey

# **CRIMINAL PROCEDURE (JERSEY) LAW 2018**

## **Official Consolidated Version**

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Jersey

# CRIMINAL PROCEDURE (JERSEY) LAW 2018

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Jersey

## 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.

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 referred to in Article 43(3) 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” shall be construed in accordance with Article 64;

“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.<sup>1</sup>

(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 19; or
  - (c) the initiation of proceedings in the Royal Court under Article 14.<sup>2</sup>
- (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 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 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.

### **PART 5**

#### **FUNCTIONS AND JURISDICTION OF THE MAGISTRATE**

#### **15 Jurisdiction of Magistrate**

- (1) The Magistrate may exercise the powers given under this Article subject to –
  - (a) the provisions of Parts 2, 3, 6, 10, 11 and 12;
  - (b) the maximum penalties which he or she may impose under Article 16; and
  - (c) the provisions of the Young Offenders Law.
- (2) The Magistrate may sit at any time and in any place, and shall have the power to –
  - (a) hear and determine all criminal proceedings, including proceedings to determine matters ancillary to such criminal proceedings; and



- (b) determine whether to remand a defendant into custody or release him or her from the custody of the Magistrate's Court on bail.

## **16 Maximum penalties which may be imposed by Magistrate**

- (1) Subject to paragraph (2), the maximum penalties which may be imposed by the Magistrate are –
  - (a) a fine of £10,000;
  - (b) imprisonment for a term of 12 months; or
  - (c) both a fine of £10,000 and imprisonment for a term of 12 months.
- (2) If the Magistrate passes a sentence of imprisonment on a defendant, the Magistrate may order that the sentence shall commence at the expiration of any other term of imprisonment to which that defendant has been previously sentenced.
- (3) If a defendant is convicted of more than one offence, the aggregate of the fines or terms of imprisonment imposed by the Magistrate in respect of those offences shall not exceed the maximum fine or term of imprisonment which the Magistrate is empowered by this Article to impose.
- (4) The States may, by Regulations, amend the penalties listed in paragraph (1).

## **PART 6**

### **PROCEEDINGS IN THE MAGISTRATE'S COURT**

## **17 Application of Part 6**

This Part applies in respect of criminal proceedings before the Magistrate's Court and appeals to the Royal Court against a decision of the Magistrate's Court.

## **18 Interpretation of Part 6**

- (1) In this Part –
  - “appellant” means a defendant who has a right of appeal to the Royal Court under Article 33;
  - “designated police station” shall be construed in accordance with Code C, A Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, set out in the Schedule to the [Police Procedures and Criminal Evidence \(Codes of Practice\) \(Jersey\) Order 2004](#);
  - “prison” has the meaning given in Article 1(1) of the [Prison \(Jersey\) Law 1957](#);
  - “Royal Court” means the Inferior Number of the Royal Court.
- (2) In Articles 31, 33 and 34 “order” means –
  - (a) a community service order;
  - (b) a probation order; or
  - (c) an order for the payment of costs.

## **19 Summons**

- (1) This Article applies to a person who is to be charged with an offence and liable to arrest.
- (2) A person to whom this Article applies may, instead of being arrested, be summoned by the Attorney General or, with his or her approval, a prosecutor or a Centenier, to appear before the Magistrate's Court at the time, and on the date notified in the summons.
- (3) Such summons shall contain a statement setting out the following –
  - (a) the specific offence with which the person is to be charged including such particulars as may be necessary for giving reasonable information as to the nature of the charge;
  - (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 to be charged is one created under an enactment, a reference to the provision of the enactment creating the offence.

## **20 Failure to comply with summons**

- (1) If a person summoned, under Article 19, to appear before the Magistrate's Court fails, without reasonable excuse, to comply with the summons, the Court may, upon proof of the service of the summons, order the person's arrest.
- (2) An order under paragraph (1) authorizes every police officer or the Viscount to arrest and detain the person to whom the order relates and to bring that person before the Magistrate's Court.
- (3) Unless the Magistrate grants the person bail under Article 77(2), a person arrested and detained under this Article, shall be brought before the Magistrate's Court within 48 hours of his or her arrest.
- (4) Subject to Article 10(3), the Magistrate may determine a case in the absence of a person who, without reasonable excuse, fails to comply with his or her summons.

## **21 Offence of failing to comply with summons**

- (1) A person summoned under Article 19 to appear before the Magistrate's Court who, without reasonable excuse, fails to comply with that summons is guilty of an offence.
- (2) It shall be for the person to prove that he or she had a reasonable excuse for his or her failure to comply with the summons.
- (3) A person guilty of an offence under this Article shall be tried summarily and liable to imprisonment for a term not exceeding 12 months and to a fine.<sup>3</sup>

## **22 Error in summons**

- (1) No objection shall be made to a summons issued under Article 19 on the ground that –
  - (a) the summons is defective in substance or form; or
  - (b) there is a variation between the summons and the evidence adduced by or on behalf of the prosecution.

- (2) But, if it appears to the Magistrate that –
  - (a) there is a variation between the summons and the evidence adduced; and
  - (b) the variation has misled the person summoned,the Magistrate shall exercise such case management powers as he or she sees fit.

## **23 Procedure on first appearance**

- (1) When a defendant first appears before the Magistrate's Court –
  - (a) the defendant shall be identified as the person charged with the offence;
  - (b) the particulars of the offence with which the defendant is charged, shall be read out by the Centenier, or with the Centenier's agreement, a prosecutor; and
  - (c) subject to paragraph (3), the defendant shall be asked to enter a plea.
- (2) If the defendant does not enter a plea, whether at a first appearance or at any subsequent stage of the proceedings, the defendant shall be taken to have pleaded "not guilty".
- (3) The Magistrate may direct that the defendant need not enter a plea.

## **24 Amendment of details of offence and further or alternative offences**

- (1) This Article applies once the particulars of the offence have been read out.
- (2) Immediately thereafter or at any subsequent stage of the proceedings, the prosecution may –
  - (a) amend the particulars of the offence;
  - (b) substitute the offence; or
  - (c) add a new or an alternative offence.
- (3) The particulars of the amended, substituted, additional or alternative offence, as the case may be, shall be read out and the defendant asked to enter a plea in respect of that offence.

## **25 Magistrate's determination as to sentencing venue – guilty plea**

- (1) Where a defendant has entered a guilty plea, the Magistrate must, in accordance with this Article, decide whether the case should proceed for sentencing in the Magistrate's Court or the Royal Court.
- (2) The Magistrate's Court shall record the defendant as convicted of the offence in respect of which he or she has entered a guilty plea.
- (3) Subject to paragraph (4), if it appears to the Magistrate that –
  - (a) the gravity of the offence would require the imposition of a penalty in excess of any penalty imposable under Article 16, the Magistrate shall send the defendant to the Royal Court for sentencing;
  - (b) the gravity of the offence would not require the imposition of a penalty in excess of any imposable under Article 16, the Magistrate shall determine that the case should proceed for sentencing in the Magistrate's court; or
  - (c) notwithstanding that the gravity of the offence –

- (i) would not require the imposition of a penalty in excess of any imposable under Article 16, but
  - (ii) it would nevertheless be in the interests of justice to do so,
- the Magistrate shall send the defendant to the Royal Court for sentencing.
- (4) Before making a decision under paragraph (3), the Magistrate must –
  - (a) hear any representations by or on behalf of the prosecutor and defendant; and
  - (b) have regard to all the circumstances of the case including any matters as may appear to be relevant and the defendant's previous convictions, if any.

## **26 Magistrate's determination as to trial venue – not guilty plea**

- (1) Where a defendant has entered a not guilty plea, the Magistrate must, in accordance with this Article, decide whether the case should proceed for trial in the Magistrate's Court or the Royal Court.
- (2) Subject to paragraph (3), if it appears to the Magistrate that –
  - (a) the gravity of the offence, if the defendant were to be found guilty, would require the imposition of a penalty in excess of any penalty imposable under Article 16, the Magistrate shall send the defendant to the Royal Court for trial;
  - (b) the gravity of the offence, if the defendant were to be found guilty, would not require the imposition of a penalty in excess of any imposable under Article 16, the Magistrate shall determine that the case should proceed for trial in the Magistrate's court; or
  - (c) notwithstanding that the gravity of the offence, if the defendant were to be found guilty –
    - (i) would not require the imposition of a penalty in excess of any imposable under Article 16, but
    - (ii) it would nevertheless be in the interests of justice to do so,
- the Magistrate shall send the defendant to the Royal Court for trial.
- (3) Before making a decision under paragraph (2), the Magistrate must –
  - (a) hear any representations by or on behalf of the prosecutor and defendant;
  - (b) have regard to all the circumstances of the case including any matters as may appear to be relevant.
- (4) If, following a determination under paragraph (2)(b), information emerges to show that the gravity of the offence, if the defendant were to be found guilty, would require the imposition of a penalty in excess of any penalty imposable under Article 16, the Magistrate shall send the defendant to the Royal Court for trial instead.

## **27 Magistrate's determination as to sentencing venue following trial**

- (1) If, following a defendant's trial, the Magistrate finds the defendant guilty and, subject to paragraph (2), it appears that –
  - (a) the gravity of the offence would require the imposition of a penalty in excess of any penalty imposable under Article 16, the Magistrate shall send the defendant to the Royal Court for sentencing; or
  - (b) notwithstanding that the gravity of the offence –

- (i) would not require the imposition of a penalty in excess of any imposable under Article 16, but
  - (ii) it would nevertheless be in the interests of justice to do so,
- the Magistrate shall send the defendant to the Royal Court for sentencing.
- (2) Before making a decision under paragraph (1), the Magistrate must –
  - (a) hear any representations by or on behalf of the prosecutor and defendant; and
  - (b) have regard to all the circumstances of the case including any matters as may appear to be relevant including the defendant's previous convictions, if any.

## **28 Magistrate's directions in respect of cases sent to the Royal Court**

- (1) If the Magistrate decides to send a defendant to the Royal Court for sentencing under Article 25 or 27, or trial under Article 26, the Magistrate shall adjourn the case and –
  - (a) if it is practicable to do so, direct that a date is set for the first hearing of that case before the Royal Court; or
  - (b) make such other direction in the exercise of case management powers as are required.
- (2) This paragraph applies where, at any time up to (but not including) the date set for the first hearing of the defendant's case before the Royal Court, it appears to the Magistrate that information has emerged to show that it would be appropriate, after all, for the defendant to be sentenced or tried (as the case may be) in the Magistrate's Court.
- (3) Where paragraph (2) applies, the Magistrate may direct that the defendant's case is remitted to the Magistrate's Court for sentencing or trial (as the case may be).

## **29 Magistrate's determination as to sentencing or trial venue – unconnected offences**

- (1) This Article applies where a defendant is charged with more than one offence and the offences are not connected with each other.
- (2) The Magistrate may direct that any unconnected offences should be considered at the same hearing for the purposes of making a decision under any of Articles 25 to 27.
- (3) If –
  - (a) the Magistrate decides to send a defendant to the Royal Court for sentencing or trial in relation to one offence; and
  - (b) notwithstanding that it appears to the Magistrate that the gravity of another unconnected offence is such as would not require the imposition of a penalty in excess of any maximum penalty imposable under Article 16, it would be in the interests of justice to do so,the Magistrate may direct that the defendant is also sent to the Royal Court for sentencing or trial in relation to that other unconnected offence.
- (4) In this Article and Article 30, in relation to offences, references to "connected" means offences which are connected by reason of being founded on the same facts, or form or are part of a series of offences of the same or similar character, and references to "unconnected" in relation to offences shall be construed accordingly.

**30 Magistrate's determination as to sentencing or trial venue – multiple defendants, including child or young person**

- (1) This Article applies where the Magistrate is to make a decision under any of Articles 25 to 27 in respect of more than one defendant charged with offences which appear to be connected.
- (2) If the Magistrate considers the offences to be sufficiently connected, a decision taken under any of Articles 25 to 27 shall be taken having regard to the general principle that it is desirable for defendants charged with connected offences to be tried or sentenced together in the Magistrate's Court or Royal Court, as the case may be.
- (3) This paragraph applies where, pursuant to Article 26(1)(a) or (b) of the Young Offenders Law, a child or young person appears before the Magistrate's Court and –
  - (a) pleads not guilty to committing a connected offence; and
  - (b) another defendant (who has attained the age of 18), with whom the child or young person is jointly charged with committing a connected offence, is to be sent to the Royal Court for sentencing or trial, as the case may be.
- (4) Where paragraph (3) applies, the Magistrate shall direct that the child or young person is tried in the Youth Court unless –
  - (a) it appears to the Magistrate that if the child or young person were to be found guilty, the gravity of the offence would require the imposition of an order or sentence in excess of any order or sentence imposable by the Youth Court; or
  - (b) it is in the interests of justice that the child or young person and the other defendant are jointly sentenced or tried, as the case may be,in which case the Magistrate shall send the child or young person to the Royal Court for trial.

**31 Magistrate's power to rectify mistakes**

- (1) Subject to paragraph (3), the Magistrate may, within 28 days of passing a sentence or making an order in respect of a defendant, amend or rescind that sentence or order, if it appears to the Magistrate that it would further the overriding objective to do so.
- (2) The power of the Magistrate under paragraph (1) includes the power –
  - (a) to replace a sentence or order that appears to the Magistrate to be invalid with a sentence or order that the Magistrate has the power to impose or make; or
  - (b) provided no injustice would be caused, to correct errors which have resulted in a defendant having pleaded guilty to, or been convicted of, an incorrectly charged offence.
- (3) The Magistrate may, in exceptional circumstances, amend or rescind a sentence or order under paragraph (1) after the 28 day period has expired.
- (4) If the Magistrate amends a sentence or order, the amended sentence or order takes effect from the time the original sentence or order took effect unless the Magistrate otherwise directs.

**32 Proceedings in Royal Court remitted to Magistrate's Court**

- (1) This Article applies where, under Article 47, the Royal Court remits a case to the Magistrate's Court.

- (2) The Magistrate's Court shall proceed to sentence or try the defendant as if the defendant had never been sent to the Royal Court for sentencing or trial in the first instance.

### **33 Right of appeal**

- (1) A defendant convicted by the Magistrate's Court may appeal to the Royal Court in the circumstances set out in paragraph (2).
- (2) If the defendant –
  - (a) pleaded guilty or admitted the facts, he or she may appeal against the sentence or order;
  - (b) pleaded not guilty, he or she may appeal against the conviction, sentence or order; or
  - (c) pleaded not guilty and was sent to the Royal Court for sentencing under Article 27, he or she may appeal against the conviction.

### **34 Notice of appeal**

- (1) An appeal under Article 33 shall be commenced by the appellant giving notice of appeal to the Judicial Greffier not more than 7 days after the day on which the appellant was convicted, sentenced or the order was made.
- (2) A notice of appeal shall be in writing and shall state the general grounds of appeal.
- (3) Where it appears to the Royal Court, on application made in accordance with paragraph (4), that an appellant has failed to give the notice of appeal within the period of 7 days prescribed by paragraph (1), the Royal Court may, if it thinks fit, direct that –
  - (a) any such notice of appeal given by the appellant after the expiration of the said 7 day period shall be treated as if given within that period; or
  - (b) any such notice of appeal may be given by the appellant within such further period as may be specified in the direction and shall be treated as if given within the said 7 day period.
- (4) An application for a direction under paragraph (3) shall be made in writing to the Judicial Greffier.
- (5) In determining when the 7 day expires, there shall be disregarded Christmas Day, Good Friday and any Bank Holiday.

### **35 Abandonment of appeal**

- (1) An appellant may abandon an appeal under Article 33 by giving notice in writing to the Judicial Greffier, not later than the 3rd working day before the day fixed for the hearing of the appeal.
- (2) An appellant who has not given notice by the day mentioned in paragraph (1) may apply at any time up to, and including the day before the day fixed for the hearing of the appeal, to the Royal Court for leave to abandon his or her appeal.
- (3) Where notice to abandon an appeal has been given under paragraph (1) –

- (a) subject to anything already suffered or done by the appellant under the decision from which the appeal is made, such decision shall be enforceable forthwith by due process of law;
  - (b) the Magistrate's Court may, on the application of the prosecutor, order the appellant to pay to the prosecutor such costs as appear to the Magistrate's Court to be just and reasonable in respect of expenses properly incurred by the prosecutor in connection with the appeal before notice of the abandonment was given.
- (4) Criminal Procedure Rules may make provision as to the hearing of an application under paragraph (3)(b).

### **36 Determination of appeals**

- (1) On any appeal under Article 33, the Royal Court may –
  - (a) confirm, reverse or vary the decision of the Magistrate's Court;
  - (b) remit the matter to the Magistrate's Court with its opinion;
  - (c) make such other order as it thinks just, and may by such order exercise any power which the Magistrate's Court might have exercised.
- (2) Any order made under paragraph (1)(c) shall have the like effect and may be enforced in like manner as if it had been made by the Magistrate's Court.
- (3) The powers of the Royal Court under paragraph (1) shall be construed as including power to impose any penalty, whether more or less severe than that imposed by the Magistrate or which the Magistrate could have imposed under Article 16.
- (4) If, at any stage of the proceedings, the Royal Court is of opinion that the appeal is frivolous or vexatious or brought for the purpose of delay, it may forthwith dismiss the appeal.
- (5) The Royal Court may –
  - (a) direct that witnesses shall be heard before it at the hearing of any appeal under Article 33 in relation to any matter or thing relevant to the appeal; or
  - (b) require the production of a transcript of the trial.
- (6) On any appeal under Article 33 –
  - (a) if the appeal is successful, the Royal Court may order the payment out of public funds of such sums as appear to the Court reasonably sufficient to compensate the appellant for any expenses properly incurred –
    - (i) in the prosecution of the appeal, and
    - (ii) in the proceedings in the Magistrate's Court; or
  - (b) if the appeal is unsuccessful, the Royal Court may order the appellant to pay the whole or any part of the costs of the appeal.

### **37 Application to Magistrate to state a case**

- (1) Subject to paragraph (2), any party who is aggrieved by the conviction, order, determination or other proceeding of the Magistrate's Court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Magistrate to state a case for the opinion of the Royal Court on the question of law or jurisdiction involved.



- (2) A party shall not make an application under this Article in respect of a decision which by virtue of any enactment is final.
- (3) An application under paragraph (1) shall be made not later than 7 days after the day on which the decision of the Magistrate's Court was given.
- (4) If a defendant has a right of appeal under Article 33 but makes an application under this Article, he or she shall no longer have a right of appeal under Article 33.
- (5) If the Magistrate is of opinion that an application under this Article is frivolous, the Magistrate may refuse to state a case and, if the applicant so requires, shall give the applicant a certificate stating that the application has been refused.
- (6) The Magistrate shall not refuse to state a case if the application is made by or under the direction of the Attorney General.
- (7) Where the Magistrate refuses to state a case, the Royal Court may, on the application of the party who applied for the case to be stated, make an order requiring the Magistrate to state a case and it shall be the duty of the Magistrate to comply with the order.
- (8) For the purposes of an application under this Article, "order" means –
  - (a) any order of the Magistrate in the exercise of case management powers;
  - (b) a community service order;
  - (c) a probation order;
  - (d) an order for the payment of costs; or
  - (e) an order made under any enactment in respect of which the Magistrate has no discretion as to the making of the order or its terms.

### **38 Royal Court determination of a case stated**

- (1) Where the Magistrate states a case under Article 37, the Royal Court shall hear and determine the question or questions of law arising on the case and may –
  - (a) reverse, affirm or amend the determination in respect of which the case has been stated;
  - (b) remit the matter to the Magistrate's Court, with its opinion thereon; or
  - (c) make such other order in relation to the matter, including such order as to costs, as may seem fit.
- (2) The Royal Court shall also have power, if it thinks fit, to cause the case to be remitted to the Magistrate's Court for amendment upon which the case shall be amended accordingly, and judgment delivered.
- (3) Any conviction, order, determination or other proceeding of the Magistrate's Court varied by the Royal Court under this Article, and any judgment or order of the Royal Court under this Article, may be enforced as if it were a decision of the Magistrate's Court.

### **39 Bail on appeal or case stated**

- (1) This Article applies where a defendant has given notice of appeal under Article 34 or has applied for a case to be stated under Article 37.
- (2) Where this Article applies, the defendant may be granted bail but the right of a defendant to be granted bail under Article 7(2) of the Bail Law shall not apply.

- (3) A defendant granted bail under this Article must immediately surrender himself or herself to the custody of a police officer or the Viscount, if he or she subsequently wishes to abandon his or her –
  - (a) appeal in accordance with Article 35;
  - (b) appeal after the appeal proceedings have commenced in the Royal Court; or
  - (c) application to the Magistrate to state a case.
- (4) A defendant who, without reasonable excuse, fails to surrender himself or herself as required under paragraph (3) shall –
  - (a) be guilty of an offence and shall be convicted summarily and liable to imprisonment for a term not exceeding 12 months and to a fine; and
  - (b) be required to pay the costs of the prosecution.
- (5) The Magistrate or Royal Court, as the case may be, may order the arrest of a defendant who, without reasonable excuse, fails to surrender himself or herself as required under paragraph (3).
- (6) An order under paragraph (5) authorizes every police officer or the Viscount to arrest and detain the defendant to whom the order relates, and to place him or her in custody at the designated police station pending the defendant's transfer to prison.
- (7) Article 77 shall not apply for the purposes of an order under paragraph (5).

#### **40 Operation of certain orders pending appeal or case stated**

Where notice of appeal is given under Article 34, or an application for a case to be stated is made under Article 37, in respect of a decision which includes either of the following –

- (a) an order the effect of which is to suspend or withdraw a licence or other permit, the Magistrate may, unless otherwise provided by the enactment under which the licence or permit was granted, direct that the order be stayed pending the disposal of the appeal or application;
- (b) an order for the confiscation of goods, the goods shall be confiscated pending the disposal of the appeal or application.

#### **41 Miscellaneous provisions**

- (1) Any appeal or application under this Part may be heard and determined by the Royal Court either in term or in vacation.
- (2) Any judgment or order of the Royal Court under this Part shall be final and conclusive.
- (3) Costs ordered to be paid under this Part to the prosecution shall be enforced as a civil debt without further order of the Court.
- (4) Costs ordered to be paid under this Part shall be subject to such rates or scales of payment of any costs payable out of public funds or by the defendant as are provided for by Regulations made under Article 6 of the [Costs in Criminal Cases \(Jersey\) Law 1961](#).<sup>4</sup>

## PART 7

### PROCEEDINGS IN THE ROYAL COURT

#### 42 Application of Part 7

This Part applies in respect of criminal proceedings before the Royal Court.

#### 43 Notice of proceedings and lodging of indictment

- (1) In the case of a defendant who has been sent by the Magistrate's Court to the Royal Court for sentencing or trial, as the case may be, that defendant shall first appear before the Royal Court –
  - (a) on the date directed by the Magistrate under Article 28(1)(a); or
  - (b) on such date as may otherwise be directed by the Royal Court.
- (2) Where paragraph (1)(b) applies, the Royal Court shall give the parties 7 days, or more, notice of the hearing date.
- (3) The Attorney General must, in relation to a defendant –
  - (a) who has been sent by the Magistrate's Court to the Royal Court for sentencing or trial, as the case may be; or
  - (b) in respect of whom the Attorney General has decided to initiate criminal proceedings in the Royal Court under Article 14,  
prepare an indictment in the prescribed form, sign and lodge it with the Judicial Greffier and serve a copy of it upon the defendant.
- (4) Where paragraph (3)(a) applies and subject to paragraph (5), the indictment must be lodged and served 48 hours, or more, before the date directed for the defendant's first appearance before the Royal Court.
- (5) The period referred to in paragraph (4) shall not apply if the Attorney General notifies the Royal Court as soon as practicable before the date directed for the defendant's first appearance that the indictment is not ready for lodging.
- (6) Where paragraph (5) applies, the Royal Court may, for the purposes of securing the lodging of the indictment, make such order or directions it sees fit.
- (7) Where paragraph (3)(b) applies, the time for lodging the indictment shall be prescribed.

#### 44 Failure to attend first appearance

- (1) Subject to paragraph (3), the Royal Court may order the arrest of a defendant who, without reasonable excuse, fails to attend before the Court for his or her first appearance in accordance with any directions given under Article 28(1)(a) or 43(1)(b), or summons under Article 14(3).
- (2) An order under paragraph (1) authorizes every police officer or the Viscount to arrest and detain the defendant to whom the order relates and to bring him or her before the Royal Court.
- (3) Unless the Royal Court grants the defendant bail under Article 77(2), a defendant arrested and detained under this Article, shall be brought before the Royal Court not later than 48 hours commencing with the time of his or her arrest.

- (4) A defendant who, without reasonable excuse, fails to attend before the Royal Court for his or her first appearance is guilty of an offence.
- (5) It shall be for the defendant to prove that he or she had a reasonable excuse for his or her failure to attend the Royal Court.
- (6) A defendant guilty of an offence under this Article shall be convicted summarily and liable to imprisonment for a term not exceeding 12 months and to a fine.

#### **45 Procedure on first appearance**

- (1) Where a defendant has been sent by the Magistrate's Court to the Royal Court for trial or appears before that Court pursuant to Article 14, paragraphs (2) and (3) shall apply.
- (2) When a defendant mentioned in paragraph (1) first appears before the Royal Court –
  - (a) the defendant shall be identified as the person charged with the offence;
  - (b) the contents of the indictment shall be read out; and
  - (c) subject to paragraph (4), the defendant shall be asked to enter a plea.
- (3) If the defendant does not enter a plea, whether at a first appearance or at any subsequent stage of the proceedings, the defendant shall be taken to have pleaded “not guilty”.
- (4) The Bailiff may direct that the defendant need not enter a plea.
- (5) Where a defendant has been sent by the Magistrate's Court to the Royal Court for sentencing, when he or she first appears before the Royal Court –
  - (a) the defendant shall be identified as the person charged with the offence; and
  - (b) the contents of the indictment shall be read out.
- (6) Where a defendant has, under paragraph (2)(c), pleaded guilty to the offence, or is a defendant who has been sent to the Royal Court for sentencing, the Royal Court may, after enquiring into the circumstances of the case and hearing representations from the parties including, if necessary, representations under Article 78 to determine facts in dispute, sentence the defendant at that hearing.
- (7) If –
  - (a) there is more than one offence specified in the indictment and the defendant pleads not guilty in respect of any other offence, the Royal Court may adjourn the hearing for sentencing of the defendant in respect of the guilty plea until the defendant's trial in respect of the other offence is concluded; or
  - (b) in furtherance of the overriding objective Article 3(1)(f) is relevant, the Royal Court may adjourn the hearing for the sentencing of the defendant at a later date.

#### **46 Power to amend indictment**

- (1) Where, before trial or sentencing, or at any stage of a trial, it appears to the Royal Court on the application of the prosecution, that the indictment requires amendment for any reason or is otherwise defective, the Court shall make such order for the amendment of the indictment as the Court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.
- (2) An order amending an indictment under paragraph (1) may –

- (a) amend the particulars of an offence;
  - (b) substitute an offence;
  - (c) add a new or an alternative offence; or
  - (d) remove an offence.
- (3) Where an order is made under this Article, the particulars of the amended, substituted, additional or alternative offence, as the case may be, shall be read out and the defendant asked to enter a plea in respect of an offence referred to in the indictment as amended.

#### **47 Power to remit case to the Magistrate's Court**

- (1) The Royal Court may, if the circumstances of the case justify it, remit a case to the Magistrate's Court for the sentencing or trial of a defendant, as the case may be.
- (2) Circumstances which may justify the remitting of a case to the Magistrate's Court include where –
- (a) the nature or gravity of the offence has changed or reduced to the extent that the Magistrate would be able to impose any penalty under Article 16; or
  - (b) it is not in the interests of justice that a child or young person who has been sent to the Royal Court under Article 30(4)(b), should be jointly sentenced or tried, as the case may be, with another defendant who is not a child or young person.

#### **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 Sitings and composition of the Royal Court for trial with a jury**

- (1) This Article applies where a defendant is to be tried by the Royal Court sitting with a jury.
- (2) In a trial under this Article the Royal Court shall be composed only of the Bailiff sitting with 12 jurors selected in accordance with Article 66.
- (3) The Royal Court shall convene –
  - (a) when necessary so as to conduct one or more trials under this Article; and
  - (b) for as long as is necessary to conclude such trials.
- (4) Where, at the conclusion of a trial, the defendant is found guilty, the Royal Court shall for the purposes of sentencing that defendant, sit as the Inferior Number or as the Superior Number, depending upon the penalty that the Court may decide to impose.

**50 Sentencing where facts in dispute**

- (1) This Article applies where a defendant found guilty is to be sentenced, and the defence disputes the facts upon which the defendant was found guilty.
- (2) Where this Article applies, the trial court –
  - (a) shall, if invited by the defence or prosecution to do so; or
  - (b) may, of its own motion,communicate its view of the facts to the sentencing court.
- (3) Where, under paragraph (2), the trial court has communicated its view of the facts to the sentencing court, the sentencing court may sentence the defendant on the basis of the facts so communicated.
- (4) In this Article –
  - (a) “trial court” means –
    - (i) where the defendant was tried by the Royal Court sitting with a jury, the Bailiff, or
    - (ii) where the defendant was tried by the Inferior Number of the Royal Court sitting without a jury, the Bailiff and Jurats;
  - (b) “sentencing court” means the Royal Court sitting as the Inferior Number or Superior number, as the case requires.

**51 Verdict where Royal Court sitting as Inferior Number with Bailiff and single Jurat**

- (1) This Article applies where Article 15A(2) of the [Royal Court \(Jersey\) Law 1948](#) applies.
- (2) Where the Bailiff and the Jurat disagree upon a verdict, the Bailiff shall determine the verdict.

## PART 8

### PREPARATORY HEARINGS AND RULINGS IN THE ROYAL COURT

#### *Preparatory hearings*

#### **52 Application of Part 8**

This Part applies in relation to proceedings for an offence if a defendant is sent for trial by the Magistrate's Court to the Royal Court or where proceedings are directly initiated before the Royal Court under Article 14.

#### **53 Power to order preparatory hearing**

- (1) Where it appears to the Bailiff that a case is so complex or is a case the trial of which is likely to be so long that substantial benefits are likely to accrue from a hearing before the trial and for any of the purposes listed in paragraph (2), he or she may order that a hearing (in this Part referred to as a "preparatory hearing") shall be held.
- (2) The purposes are those of –
  - (a) identifying issues which are likely to be material to the verdict of the Royal Court or jury;
  - (b) assisting comprehension of those issues;
  - (c) expediting the proceedings before the Royal Court or jury;
  - (d) assisting the management of the trial.
- (3) The Bailiff may make an order under paragraph (1) on the application of the prosecution, the defence, or of his or her own motion.

#### **54 Start of trial**

If the Bailiff orders a preparatory hearing the trial shall start with that hearing and the contents of the indictment shall be read out to the defendant at the start of that hearing, unless it has taken place before then.

#### **55 The preparatory hearing**

- (1) At the preparatory hearing the Bailiff may exercise any of the powers specified in this Article.
- (2) The Bailiff may adjourn a preparatory hearing from time to time.
- (3) The Bailiff may make a ruling as to –
  - (a) any question as to the admissibility of evidence;
  - (b) any other question of law relating to the case; or
  - (c) any question as to the joinder or severance of the offences in the indictment.
- (4) The Bailiff may order the prosecution –
  - (a) to give the Royal Court and each defendant a written statement (a "case statement") of the matters falling within paragraph (5);

- (b) to prepare the prosecution evidence and any explanatory material in a form that appears to the Bailiff to be likely to aid comprehension by the Royal Court or jury and to give it in that form to that court and to each defendant;
  - (c) to give the Royal Court and each defendant written notice of documents the truth of the contents of which ought, in the prosecution's view, to be admitted and of any other matters which in the prosecution's view ought to be agreed;
  - (d) to make any amendments of any case statement given in pursuance of an order under sub-paragraph (a) that appear to the Bailiff to be appropriate, having regard to objections made by any defendant.
- (5) The matters referred to in paragraph (4)(a) are –
  - (a) the principal facts of the case for the prosecution;
  - (b) the witnesses who will speak to those facts;
  - (c) any exhibits relevant to those facts;
  - (d) any proposition of law on which the prosecution proposes to rely;
  - (e) the consequences in relation to any of the charges or counts in the indictment that appear to the prosecution to flow from the matters falling within sub-paragraphs (a) to (d).
- (6) Where the Bailiff has ordered the prosecution to give a case statement and the prosecution has complied with the order, the Bailiff may order each defendant –
  - (a) to give the Royal Court and the prosecution a written statement setting out in general terms the nature of the defendant's defence and indicating the principal matters on which he or she takes issue with the prosecution;
  - (b) to give the Royal Court and the prosecution written notice of any objections that the defendant has to the case statement;
  - (c) to give the Royal Court and the prosecution written notice of any point of law, including any point as to the admissibility of evidence, which the defendant wishes to take, and any authority on which the defendant intends to rely for that purpose.
- (7) Where the Bailiff has ordered the prosecution to give notice under paragraph (4)(c) and the prosecution has complied with the order, the Bailiff may order each defendant to give the Royal Court and the prosecution a written notice stating –
  - (a) the extent to which he or she agrees with the prosecution as to documents and other matters to which the notice under paragraph (4)(c) relates; and
  - (b) the reason for any disagreement.
- (8) The Bailiff, on making an order under paragraph (6) or (7), shall warn each defendant of the possible consequences under Article 57 of not complying with it.
- (9) If it appears to the Bailiff that reasons given in pursuance of paragraph (7) are inadequate, the Bailiff shall so inform the person giving them and may require the person to give further or better reasons.
- (10) An order under this Article may specify the time within which any requirement contained in it is to be complied with.
- (11) An order or ruling made under this Article shall have effect throughout the trial, unless it appears to the Bailiff, on application made to the Bailiff, that the interests of justice require the Bailiff to vary or discharge it.



**56 Orders before preparatory hearing**

- (1) This Article applies where the Bailiff orders a preparatory hearing and he or she decides that any order which could be made under Article 55(4), (6) and (7) at the hearing, should be made before the hearing.
- (2) In that case, the Bailiff may make that order before the hearing, or at the hearing, and Article 55(4) to (11) shall apply accordingly.

*Later stages***57 Later stages of trial**

- (1) Any party may depart from the case he or she disclosed in pursuance of a requirement imposed under Article 55.
- (2) Where a party departs from the case he or she disclosed in pursuance of a requirement imposed under Article 55, or a party fails to comply with that requirement, the Bailiff or, with the leave of the Bailiff, any other party may make any comment that appears to the Bailiff or the other party to be appropriate, and the Royal Court or jury may draw any inference that appears proper.
- (3) In deciding whether to give leave the Bailiff shall have regard to the extent of the departure or failure and to whether there is any justification for it.
- (4) Except as provided by this Article no part of a statement given under Article 55(6)(a) or of any other information relating to the case for a defendant which was given in pursuance of a requirement imposed under Article 55, may be disclosed at a later stage in the trial without the consent of the defendant concerned.

**58 Appeals to Court of Appeal**

- (1) An appeal shall lie to the Court of Appeal from any ruling of the Bailiff under Article 55(3), but only with the leave of the Bailiff or of the Court of Appeal.
- (2) The Bailiff may continue a preparatory hearing notwithstanding that leave to appeal has been granted under paragraph (1), but the trial shall not otherwise proceed further until after the appeal has been determined or abandoned.
- (3) On the hearing of the appeal the Court of Appeal may confirm, reverse or vary the decision appealed against.
- (4) The power to make rules of court under the [Court of Appeal \(Jersey\) Law 1961](#) shall include a power to specify the time within which an appeal under this Part to the Court of Appeal shall be made and to regulate generally the practice and procedure relating to any such appeal.

*Rulings***59 Meaning of pre-trial hearing**

- (1) For the purposes of this Part a hearing is a pre-trial hearing if it relates to a trial for an offence in the Royal Court and it takes place after the defendant has been sent for trial by the Magistrate's Court to the Royal Court under Part 6, or after the

proceedings for the offence have been initiated in the Royal Court, under Article 14, and before the start of the trial.

- (2) For the purposes of this Article the start of a trial occurs when –
- (a) a jury is sworn to consider the issue of guilt;
  - (b) the Royal Court, sitting with Jurats, sits to determine the issue of guilt; or
  - (c) if the Royal Court accepts a plea of guilty before it begins to determine the issue of guilt, when that plea is accepted, but subject to Article 54.

## **60 Power to make rulings**

- (1) The Bailiff may make, at a pre-trial hearing, a ruling as to any question as to the admissibility of evidence and any other question of law relating to the case concerned.
- (2) A ruling may be made under this Article on an application by a party to the case or of the Bailiff's own motion.
- (3) Subject to paragraph (4), a ruling made under this Article has binding effect from the time it is made until the case against each defendant is disposed of, and the case against a defendant is disposed of if he or she is acquitted or convicted or the prosecution decides not to proceed with the case against the defendant.
- (4) The Bailiff may discharge, vary or further vary a ruling made under this Article if it appears to the Bailiff that it is in the interests of justice to do so, and the Bailiff may act under this paragraph on an application by a party to the case or of his or her own motion.
- (5) No application may be made under paragraph (4) unless there has been a material change of circumstances since the ruling was made or, if a previous application has been made, since the last application was made.

### *Reporting restrictions*

## **61 Restrictions on reporting preparatory hearings or rulings**

- (1) Except as provided by this Article no publication shall include a report of proceedings falling within paragraph (2), or matters falling within paragraph (3) and no report of those proceedings or matters shall be included in a relevant programme for reception in Jersey.
- (2) The following proceedings fall within this paragraph –
  - (a) a preparatory hearing;
  - (b) an application for leave to appeal in relation to that hearing; and
  - (c) an appeal in relation to that hearing.
- (3) The following matters fall within this paragraph –
  - (a) a ruling made under Article 60;
  - (b) proceedings on an application for a ruling to be made under Article 60;
  - (c) an order that a ruling made under Article 60 be discharged or varied;
  - (d) proceedings on an application for a ruling made under Article 60 to be discharged or varied.

- (4) The Bailiff, in dealing with a preparatory hearing, may order that paragraph (1) shall not apply, or shall not apply to a specified extent, to a report of the preparatory hearing or an application to the Bailiff for leave to appeal to the Court of Appeal under Article 58(1) in relation to the preparatory hearing.
- (5) The Bailiff, in dealing with any matter falling within paragraph (3), may order that paragraph (1) shall not apply, or shall not apply to a specified extent, to a report of the matter.
- (6) The Court of Appeal may order that paragraph (1) shall not apply, or shall not apply to a specified extent, to a report of an appeal to the Court of Appeal under Article 58(1) in relation to a preparatory hearing or an application to that Court for leave to appeal to it under Article 58(1) in relation to a preparatory hearing.
- (7) Where there is only one defendant and he or she objects to the making of an order under paragraph (4), (5) or (6) the Bailiff or the Court of Appeal (as the case may be) shall make the order if satisfied after hearing the representations of the defendant that it is in the interests of justice to do so and if the order is made it shall not apply to the extent that a report deals with that objection or those representations.
- (8) Where there are 2 or more defendants and one or more of them objects to the making of an order under paragraph (4), (5) or (6) the Bailiff or the Court of Appeal (as the case may be) shall make the order if satisfied after hearing the representations of each of the defendants that it is in the interests of justice to do so and if the order is made it shall not apply to the extent that a report deals with that objection or those representations.
- (9) Paragraph (1) shall not apply to the following at the conclusion of the trial of the last of the defendants to be tried –
  - (a) the inclusion in a publication of a report of a preparatory hearing or any matter falling within paragraph (3); or
  - (b) the inclusion in a publication of a report of an appeal in relation to a preparatory hearing or of an application for leave to appeal in relation to that hearing.
- (10) In relation to proceedings falling within paragraph (2), paragraph (1) shall not apply to a report which only contains one or more of the following matters –
  - (a) the identity of the court and the name of the person presiding;
  - (b) the name and age of a defendant of full age;
  - (c) the offence or offences, or a summary of them, with which a defendant is charged;
  - (d) the name of any advocate in the proceedings;
  - (e) where the proceedings are adjourned, the date and place to which they are adjourned;
  - (f) whether the defendant was granted bail;
  - (g) whether the defendant was granted legal aid.
- (11) Nothing in this Article affects any prohibition or restriction imposed by virtue of any other enactment on the inclusion of any matter in a publication.

## **62 Offences in connection with reporting preparatory hearings or rulings**

- (1) If a report is included in a publication in contravention of Article 61, each of the following persons shall be guilty of an offence –

- (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 is engaged in providing 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.
- (2) A person guilty of an offence under this Article shall be liable to a fine.
- (3) Proceedings for an offence under this Article shall not be commenced without the consent of the Attorney General.

## PART 9

### JURIES

#### 63 Eligibility for jury service

- (1) Subject to the provisions of this Part, every person shall be eligible to serve as a juror and be liable, accordingly, to attend for jury service when summoned, if –
- (a) he or she has attained the age of 18 and has not attained the age of 72;
  - (b) he or she is entitled to have his or her name included on the electoral register in accordance with Article 5 of the [Public Elections \(Jersey\) Law 2002](#); and
  - (c) he or she is not exempt from, or disqualified for jury service.
- (2) A person is exempt from jury service if he or she is –
- (a) the Attorney General or Solicitor General;
  - (b) the Bailiff or Deputy Bailiff;
  - (c) a Commissioner;
  - (d) the Judicial Greffier, Deputy Judicial Greffier or a Greffier Substitute;
  - (e) a Jurat;
  - (f) the Magistrate or Assistant Magistrate;
  - (g) the Viscount or Deputy Viscount;
  - (h) a member of the Youth Court Panel;
  - (i) an advocate, solicitor, prosecutor or Centenier;
  - (j) an officer of the Bailiff's Department or Law Officers Department appointed, as referred to in Article 1(1) of the [Departments of the Judiciary and the Legislature \(Jersey\) Law 1965](#) (the "1965 Law"), to ensure the service of those Departments; or
  - (k) a police officer in the States of Jersey Police Force.
- (3) A person is disqualified for jury service if he or she –
- (a) is detained, or liable to be detained, under the Mental Health Law;
  - (b) is subject to guardianship under Part 4 of the Mental Health Law;
  - (c) lacks capacity, within the meaning of the Capacity and Self- Determination (Jersey) Law 2016, to serve as a juror;

- (d) has at any time, in Jersey or elsewhere, been sentenced to imprisonment for one month or more;
  - (e) has, within 10 years immediately before being summoned for jury service, been convicted –
    - (i) of any offence, and –
      - (A) sentenced to imprisonment (including a sentence by virtue of Article 4 of the Young Offenders Law),
      - (B) been subject to a probation order with a condition imposed under Article 3 of the Probation Law, or
      - (C) been subject to an order imposed under Article 2 of the Community Service Orders Law, or
    - (ii) of an offence under the law of a jurisdiction other than Jersey, and sentenced to a penalty equivalent to any of those listed in clause (i);
  - (f) is bound over by virtue of an order under Article 2 of the Probation Law and who remains subject to such an order;
  - (g) is, in Jersey or elsewhere –
    - (i) awaiting trial for any offence punishable with imprisonment,
    - (ii) in contempt of court, or
    - (iii) liable to arrest.
- (4) The States may, by Regulations, amend the list of persons exempt from, or disqualified for, jury service set out in paragraphs (2) and (3).
- (5) In paragraph (2)(j) “Bailiff’s Department” and “Law Officers Department” have the meaning given in Article 1(1)(a) and (b) of the 1965 Law.

## **64 Jury and panel lists**

- (1) Regulations under this Article shall make provision for, or in connection with, the following requirements –
  - (a) for the Viscount to compile a list of persons who are eligible to serve as jurors (“jury list”);
  - (b) for the parishes or any other administration of the States to provide the Viscount with such information, and in such form, as may be prescribed to enable the compilation of the jury list;
  - (c) for the Viscount, upon notification by the Judicial Greffier in such manner as may be prescribed, to prepare a list of persons (“panel list”) who may be called upon to serve as jurors.
- (2) When the Viscount receives notification that a panel list is required, the Viscount shall, from the jury list, select at random such numbers of persons as appear to the Viscount to be necessary for the purposes of securing that a sufficient number of persons will be available to serve on a jury for a trial on a given date or trials throughout a given period.
- (3) The Viscount may, if he or she considers it expedient, form a supplementary panel list compiled in accordance with paragraph (2).
- (4) When the panel list has been compiled, it shall be signed by the Viscount who shall then individually summon the persons named on that list to attend for jury service.
- (5) A summons requiring a person to attend for jury service shall be –

- (a) signed by the Viscount;
- (b) in the prescribed form and contain such information as may be prescribed; and
- (c) served upon the person in such manner as may be prescribed.

## **65 Viscount's power to exempt from jury service**

- (1) The Viscount may, of his or her own motion or on the written application of a person summoned to attend for jury service, exempt the person from his or her duty to attend –
  - (a) if the Viscount considers the person to be exempted from or disqualified for jury service under Article 63 or under any other enactment; or
  - (b) for any other reason which the Viscount considers sufficient to justify such exemption.
- (2) The Viscount shall notify the Judicial Greffier of every application received and decision he or she has made under paragraph (1) together with the reasons given for the decision.
- (3) A person aggrieved by a decision of the Viscount following a written application under paragraph (1) may renew that application to the Royal Court.
- (4) Criminal Procedure Rules may make provision as to procedure for an application under paragraph (3) and for the determination of that application.
- (5) A person who, with the intention of obtaining an exemption under this Article, makes a false declaration or representation in a written application under paragraph (1), is guilty of an offence and liable to a fine.

## **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 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) fails to attend for jury service when summoned under Article 64(4); (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) If, when all the names on the panel list have been read out, the number of unchallenged or undischarged persons remaining is insufficient to constitute a jury, the trial shall be postponed until –
  - (a) the persons whose names appear on any supplementary panel list, formed under Article 64(3); or
  - (b) the Viscount forms a new panel list and the persons on that list, are summoned to constitute a jury in accordance with Article 66.

#### **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) After a verdict is delivered, that verdict is not 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.<sup>5</sup>

## 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) <sup>6</sup>
- (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).
- (6A) The proceedings in respect of the specified offence are discontinued with effect from –
- (a) 14 days after the date that a notice under paragraph (2) is given to the Magistrate’s Court or Judicial Greffier, as the case may be; or
- (b) if, before the proceedings are discontinued under sub-paragraph (a), the defendant notifies the court that the defendant does not intend to serve a notice under paragraph (5), the date of that notification.<sup>7</sup>
- (6B) A record must be made noting that the proceedings are discontinued.<sup>8</sup>
- (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(1),the defendant must, subject to paragraph (3), give a defence case statement to the court and the prosecution.<sup>9</sup>
- (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 representative; 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).<sup>10</sup>
- (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 subject to such rates or scales of payment of any costs payable out of public funds or by the defendant as are provided for by Regulations made under Article 6 of the [Costs in Criminal Cases \(Jersey\) Law 1961](#).<sup>11</sup>
- (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.

## PART 11

### PROVISIONS IN RELATION TO DEFENDANTS AND WITNESSES

#### *Application*

#### **91 Application and general interpretation of Part 11**

- (1) This Part applies to criminal proceedings before the Magistrate's Court and the Royal Court.
- (2) In this Part –
  - “oath” includes a solemn affirmation made in accordance with the Solemn Affirmations Law;
  - “spouse” means husband or wife;
  - “witness summons” shall be construed in accordance with Article 93.

#### *Competence and compellability of witnesses*

#### **92 Competence of defendant and witnesses to give evidence**

- (1) Except as provided under paragraphs (3) and (4), at every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.
- (2) A defendant is competent to give evidence in support of his or her defence, provided he or she agrees to do so, but the failure of a defendant, to give evidence shall not be made the subject of any adverse comment by the prosecution.
- (3) A person (including a defendant) is not competent to give evidence in criminal proceedings if it appears to the court that he or she is not a person who is able to –
  - (a) understand questions put to him or her as a witness; and
  - (b) give answers to them which can be understood.
- (4) A defendant is not competent to give evidence for the prosecution (whether he or she is the only defendant, or is one of two or more defendants charged in the same proceedings).
- (5) In paragraph (4) the reference to a defendant does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

#### **93 Determining competence of witnesses**

- (1) The Bailiff or Magistrate (as the case may be) shall determine, in accordance with this Article, any question as to whether a witness is competent to give evidence in criminal proceedings, whether raised –
  - (a) by a party to the proceedings; or
  - (b) by the court of its own motion.
- (2) It is for the party calling the witness to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

- (3) In determining the question mentioned in paragraph (1) the court shall treat the witness as having the benefit of any special measures ordered, or proposed to be ordered, under Article 101, in relation to the witness.
- (4) Expert evidence may, with leave of the court, be received on the question.
- (5) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.

#### **94 Compellability of witnesses related to defendant to give evidence**

- (1) Subject to the provisions of this Article, the following persons are compellable to give evidence as witnesses on behalf of the prosecution or defence –
  - (a) the blood relatives of a defendant;
  - (b) the relatives by adoption of a defendant; or
  - (c) the relatives either by marriage or by the formation of a civil partnership of a defendant.
- (2) Subject to paragraph (4), the spouse or civil partner of a defendant is compellable to give evidence on behalf of the defence or any other defendant charged in the same proceedings.
- (3) Subject to paragraph (4), the spouse or civil partner of a defendant is compellable to give evidence on behalf of the prosecution or any other defendant charged in the same proceedings on condition the offence is an offence specified in Schedule 1.
- (4) Where a spouse or civil partner of a defendant is jointly charged with the defendant in respect of an offence, neither the spouse nor civil partner (as the case may be) shall at the trial be compellable by virtue of paragraph (2) or (3) and Schedule 1 to give evidence in respect of that charge unless that spouse or that civil partner (as the case may be) is not, or is no longer, liable to be convicted of the said offence in the proceedings whether as a result of pleading guilty, or for any other reason.
- (5) A person who has been but who is no longer married to a defendant, or who has been but is no longer the civil partner of a defendant, shall be compellable to give evidence as if that person and the defendant had never been married, or had never been in a civil partnership.
- (6) The failure of a spouse or civil partner of a defendant, to give evidence shall not be made the subject of any adverse comment by the prosecution.

#### *Giving of sworn or unsworn evidence*

#### **95 Determining whether witness to be sworn**

- (1) Subject to the provisions of this Article and Article 96, a witness who is competent to give oral evidence in criminal proceedings shall give that oral evidence on oath.
- (2) Any question whether a witness may be sworn for the purpose of giving evidence on oath, whether raised –
  - (a) by a party to the proceedings; or
  - (b) by the court of its own motion,shall be determined by the Bailiff or Magistrate (as the case may be) in accordance with this Article.

- (3) Expert evidence may, with leave of the court, be received on the question.
- (4) The witness may not be sworn for the purpose of giving evidence on oath unless –
  - (a) he or she has attained the age of 14; and
  - (b) he or she has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.
- (5) The witness shall, if he or she is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced by any party.
- (6) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the court that, on a balance of probabilities, the witness has attained the age of 14 and has a sufficient appreciation of the matters mentioned in paragraph (4)(b).
- (7) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.
- (8) For the purposes of this Article a person is able to give intelligible testimony if he or she is able to –
  - (a) understand questions put to him or her as a witness; and
  - (b) give answers to them which can be understood.

## **96 Receiving of unsworn evidence**

- (1) This paragraph applies to a witness (of any age) who –
  - (a) is competent to give evidence in criminal proceedings; but
  - (b) by virtue of Article 95(4) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.
- (2) The evidence in criminal proceedings of a witness to whom paragraph (1) applies shall be given unsworn.
- (3) A deposition of unsworn evidence given by a person to whom paragraph (1) applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.
- (4) The court shall accordingly receive in evidence any evidence given unsworn in accordance with paragraph (2) or (3).
- (5) Where a witness who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no appeal against conviction or sentence shall be allowed by reason only that it appears to the Royal Court or Court of Appeal that the witness was a person falling within Article 95(4) (and should accordingly have given his or her evidence on oath).

### *Requirement of witnesses to attend court*

## **97 Warning of witnesses as to attendance at court**

- (1) Where a person has made a written statement in accordance with Article 9 of the [Criminal Justice \(Evidence and Procedure\) \(Jersey\) Law 1998](#), a person authorized by the Attorney General may warn that person, in writing, or by attending upon him

or her in person, to attend before the court to give oral evidence on the day and at the time so warned.

- (2) A person who, without reasonable excuse, fails to comply with a warning given under paragraph (1) shall be guilty of an offence punishable with a fine of level 3 on the standard scale.
- (3) It shall be for the person to prove that he or she had a reasonable excuse for his or her failure to comply with the warning.
- (4) The court may order the arrest of a person who fails to attend before the court on the day and at the time so warned, and a person so arrested may be remanded by the court, in custody or on bail, until such time as the court may appoint for receiving his or her evidence.

## **98 Issue of witness summons on application to the court**

- (1) This Article applies where the court is satisfied that a person is likely to be able to give evidence in support of a party applying for a witness summons under this Article if –
  - (a) the evidence is likely to be material evidence, or the person can produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the court;
  - (b) there is reason to believe that person will fail to attend court to give evidence; and
  - (c) it is in the interests of justice to issue a summons under this Article to secure the attendance of that person to give evidence or to produce the document or thing.
- (2) Where the court is so satisfied it shall, subject to the following provisions of this Article, issue a witness summons directed to the person concerned and requiring him or her to –
  - (a) attend before the court at the time and place stated in the witness summons; and
  - (b) give the evidence or produce the document or thing.
- (3) Subject to paragraph (4), a witness summons may only be issued under this Article where a party –
  - (a) has given notice to the court and any other party to the proceedings of a proposed application for a witness summons; and
  - (b) has applied in writing to the court for the issue of a witness summons.
- (4) The court may dispense with the requirement for a written application for a witness summons, unless the proposed application for a witness summons requires the proposed witness –
  - (a) to produce in evidence a document or thing that relates to another person; or
  - (b) to give evidence about information apparently held in confidence, that relates to another person.
- (5) A party who wants the court to issue a witness summons must apply as soon as practicable after becoming aware of the existence of anything referred to paragraph (1)(a), that would satisfy the court.
- (6) A party applying for a witness summons must –

- (a) indicate when that party first became aware of the existence of anything referred to in paragraph (1);
  - (b) identify the proposed witness;
  - (c) explain –
    - (i) what evidence the proposed witness can give or produce,
    - (ii) why it is likely to be material evidence, and
    - (iii) why there is reason to believe that the witness will fail to attend court to give evidence,
    - (iv) why it would be in the interests of justice to issue a summons; and
  - (d) identify, in relation to sub-paragraph (c), any specific document or thing the proposed witness should be required to bring to court.<sup>12</sup>
- (7) The court may refuse to issue a witness summons if any of the requirements of this Article are not fulfilled.
  - (8) Where the court decides to issue a witness summons under this Article, that summons may be served in accordance with the court's directions.
  - (9) Where the court does not issue any directions as to service of the witness summons, it shall be sufficient for the summons to be served on the witness personally or left at his or her last known address.
  - (10) Service of the witness summons shall be effected by the Viscount, an officer of the States of Jersey Police Force or a person authorized in writing by the States of Jersey Police Force.
  - (11) Criminal Procedure Rules shall make provision as to the form, content, notice period and service of any notice given under this Article.

## **99 Consequences of failure to comply with witness summons**

- (1) A person who, without reasonable excuse, fails to comply with a witness summons by failing to –
  - (a) attend before the court at the time and place stated in the summons; or
  - (b) give the evidence or produce the document or thing specified in the summons,shall be guilty of contempt of court.
- (2) It shall be for the person to prove that he or she had a reasonable excuse for his or her failure to comply with the summons.
- (3) The court may order the arrest of a person who fails to attend before the court at the time and place stated in the summons, and a person so arrested may be remanded by the court, in custody or on bail, until such time as the court may appoint for receiving his or her evidence.

### *Special measures*

## **100 Eligibility of witness for special measures**

- (1) This Article applies in relation to the giving of evidence by an eligible witness in criminal proceedings.
- (2) In this Article and in Article 101 –



- (a) “special measures” –
  - (i) means any form of individual assistance, facilitation or support specifically tailored to meet the needs of an eligible witness, whether such measures are applied individually or in combination and which would, in the opinion of the court, be likely to improve the quality of evidence given by that witness,
  - (ii) without limiting the generality of the measures described in clause (i), includes any measures which would enable a witness to give his or her evidence in chief, or under cross-examination, before the commencement of the trial;
- (b) subject to paragraph (3), “eligible witness” means a person who at the time of the trial –
  - (i) is under the age of 18, or
  - (ii) is aged 18 or older and –
    - (A) suffers from mental disorder within the meaning of the Mental Health Law,
    - (B) has a significant impairment of intelligence and social functioning,
    - (C) has a physical disability or is suffering from a physical disorder,
    - (D) is or is expected to be off the Island, or
    - (E) the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.
- (3) Except in relation to paragraph (2)(b)(ii)(D) and (E) a witness includes a defendant who gives evidence on his or her own behalf.
- (4) References in this Article and in Article 101 to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.
- (5) In determining whether a witness falls within paragraph (2)(b)(ii)(C) the court must consider any views expressed by the witness.
- (6) In determining whether a witness falls within paragraph (2)(b)(ii)(E) the court must take into account, in particular –
  - (a) the nature and alleged circumstances of the offence to which the proceedings relate;
  - (b) the age of the witness;
  - (c) any such other matters as appear to the court to be relevant, including –
    - (i) the social and cultural background and ethnic origins of the witness,
    - (ii) the domestic and employment circumstances of the witness, and
    - (iii) any religious beliefs or political opinions of the witness;
  - (d) any behaviour towards the witness on the part of –
    - (i) the defendant,
    - (ii) members of the family or associates of the defendant, or

- (iii) any other person who is likely to be a defendant or witness in the proceedings.
- (7) For the purpose of a determination under paragraph (6), the court must in addition consider any views expressed by the witness.

## **101 Power of the court to order special measures**

- (1) The court may order the provision of special measures –
  - (a) of its own motion; or
  - (b) on the application of a party to the proceedings in relation to a witness in the proceedings.
- (2) Where the court determines under Article 100 that a witness is eligible for assistance by way of special measures, the court must then –
  - (a) determine whether any of the special measures reasonably or practically available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and
  - (b) if so –
    - (i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence, and
    - (ii) order the provision of the measure or measures so determined to apply to evidence given by the witness.
- (3) In determining, for the purposes of paragraph (2), whether any special measure would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court must consider all the circumstances of the case, including in particular –
  - (a) any views expressed by the witness; and
  - (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.
- (4) Notwithstanding paragraph (1), and regardless of whether or not a defendant is determined to be an eligible witness under Article 100, a defendant may apply in writing to the court for such special measures as will assist him or her in understanding and following the case or for giving instructions to his or her legal representatives.
- (5) Regardless of whether or not the court receives an application under paragraph (4), or where the defendant is unrepresented, the court may, in the interests of justice, order the provision of such special measures as it considers necessary to assist the defendant.
- (6) An order under this Article must specify particulars of the provision to be made in respect of each special measure which is to apply to the witness's or, in the case of paragraph (4), the defendant's evidence.
- (7) Nothing in this Article shall be taken as preventing the court from making an order or giving leave of any description –
  - (a) in relation to a witness who is not an eligible witness; or
  - (b) in relation to an eligible witness where (as, for example, in a case where a foreign language interpreter is to be provided) the order is made or the leave

is given otherwise than by reason of the fact that the witness is an eligible witness.

- (8) An application under paragraph (1)(b) may be made orally or in writing and Criminal Procedure Rules may make further provision for or in connection with such an application.
- (9) The States may, by Regulations, make such further or supplementary provision as may be necessary or expedient for the purposes of any special measures which may be ordered under this Article including provision as to –
  - (a) the nature or description of such special measures;
  - (b) any specified circumstances in which special measures may, or may not be ordered;
  - (c) any specified circumstances in which special measures of a particular description must be ordered; or
  - (d) the manner or form in which special measures may be delivered or implemented.

## **102 Power to hear witnesses elsewhere than in court**

Where a witness is, by reason of illness or being off the Island, unable to attend before the court to give evidence, the court may adjourn elsewhere to receive the witness' evidence and, in such case, the normal practice and procedure of the court shall be followed.

*Protection of witnesses from cross-examination by unrepresented defendant*

## **103 Defendant charged with certain offences – prohibition of cross-examination by defendant in person**

- (1) For the purposes of this Article “witness” means –
  - (a) a complainant;
  - (b) a person under the age of 18; or
  - (c) a person aged 18 or older who –
    - (i) suffers from mental disorder within the meaning of the Mental Health Law, or
    - (ii) has a significant impairment of intelligence and social functioning.
- (2) No defendant charged with an offence to which this Article applies may cross-examine, in person, a witness, either –
  - (a) in connection with that offence; or
  - (b) in connection with any other offence (of whatever nature) with which that defendant is charged in the proceedings.
- (3) The offences to which this Article applies are –
  - (a) the customary law offences of false imprisonment; gross indecency; incest; indecent assault; indecent exposure; kidnapping; manslaughter; murder; rape and sodomy;
  - (b) an offence under any of the following Articles of the Loi (1895) modifiant le droit criminel –

- (i) Article 1.1 (procuring any woman or girl by threats for unlawful carnal connection),
- (ii) Article 1.2 (procuring a woman or girl by false pretences for unlawful carnal connexion, or causing a woman or girl to have unlawful carnal connexion with a third person),
- (iii) Article 1.3 (administering drugs for the purposes of unlawful carnal connexion with a woman or girl),
- (iv) Article 2 (unlawful carnal knowledge of a girl under the age of 13),
- (v) Article 4.1 (unlawful carnal knowledge of a girl aged 13 but under the age of 16 or a mentally impaired girl or woman), and
- (vi) Article 5 (permitting girls under the age of 16 to frequent premises for the purposes of prostitution);
- (c) an offence under Article 2 (indecent photographs or pseudo-photographs of children) of the [Protection of Children \(Jersey\) Law 1994](#);
- (d) an offence under any of the following Articles of the Sexual Offences (Jersey) Law 2007 –
  - (i) Article 2 (meeting a child following sexual grooming etc.),
  - (ii) Article 3 (abuse of position of trust: sexual activity with a child),
  - (iii) Article 4 (abuse of position of trust: causing or inciting a child to engage in sexual activity),
  - (iv) Article 5 (abuse of position of trust: sexual activity in the presence of a child), and
  - (v) Article 6 (abuse of position of trust: causing a child to watch a sexual act);
- (e) any sexual offence under Articles 74 to 76 of the Mental Health Law
- (ea) an offence under the [Sexual Offences \(Jersey\) Law 2018](#); and
- (f) any offence (not within any of the preceding sub-paragraphs) which involves an assault on, or injury or a threat of injury to any person.<sup>13</sup>
- (4) The States may, by Regulations, amend this Article for the purposes of amending the offences listed in paragraph (3).

#### **104 Order prohibiting defendant in person from cross-examining witness**

- (1) This Article applies in a case where Article 103 does not operate so as to prevent a defendant from cross-examining, in person, a witness.
- (2) In a case to which this Article applies –
  - (a) the prosecutor may make an application to the court for an order under this Article in relation to a witness; or
  - (b) the court may, of its own motion, make an order under this Article in relation to a witness.
- (3) The court may make an order prohibiting the defendant from cross-examining (or further cross-examining), in person, the witness if it appears to the court –
  - (a) that the quality of evidence given by the witness on cross-examination –
    - (i) is likely to be diminished if the cross-examination (or further cross-examination) is conducted by the defendant in person, and

- (ii) would be likely to be improved if an order were given under this Article; and
  - (b) that it would not be contrary to the interests of justice to make such an order.
- (4) In determining whether paragraph (3)(a) applies in the case of a witness, the court must have regard, in particular, to –
  - (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the defendant in person;
  - (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);
  - (c) any behaviour on the part of the defendant at any stage of the proceedings, both generally and in relation to the witness;
  - (d) any relationship (of whatever nature) between the witness and the defendant;
  - (e) whether any person (other than the defendant) is or has at any time been charged in the proceedings with a sexual offence or an offence to which Article 103 applies, and (if so) whether Article 103 operates or would have operated to prevent that person from cross-examining the witness in person; and
  - (f) any order under Article 101 which the court has given, or proposes to give, in relation to the witness.
- (5) For the purposes of this Article –
  - (a) “witness”, in relation to a defendant, does not include any other person who is charged with an offence in the proceedings; and
  - (b) any reference to the quality of a witness’s evidence shall be construed in accordance with Article 100(4).

*Cross-examination on behalf of the defendant*

## **105 Defendant’s representative for purposes of cross-examination**

- (1) This Article applies where a defendant is prevented from cross-examining, in person, a witness by virtue of Article 103 or 104.
- (2) Where it appears to the court that this Article applies, it must –
  - (a) invite the defendant to arrange for an advocate to act for him or her for the purpose of cross-examining the witness; and
  - (b) require the defendant to notify the court, by the end of such period as it may specify, whether an advocate is to act for him or her for that purpose.<sup>14</sup>
- (3) If by the end of the period mentioned in paragraph (2)(b) either –
  - (a) the defendant has notified the court that no advocate is to act for him or her for the purpose of cross-examining the witness; or
  - (b) no notification has been received by the court and it appears to the court that no advocate is to so act,

the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by an advocate appointed to represent the interests of the defendant.<sup>15</sup>

- (4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court must appoint an advocate (chosen by the court) to cross-examine the witness in the interests of the defendant.
- (5) An advocate so appointed shall not be responsible to the defendant.
- (6) Criminal Procedure Rules may make provision –
  - (a) as to the time when, and the manner in which, paragraph (2) is to be complied with;
  - (b) in connection with the appointment, and payment of costs of an advocate under paragraph (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.
- (7) For the purposes of this Article and Article 106, any reference to cross-examination includes (in a case where an order is made under Article 104 after the defendant has begun cross-examining the witness) a reference to further cross-examination.

## **106 Warning to Jurats or Jury**

Where a defendant before the Royal Court is prevented from cross-examining, in person, a witness by virtue of Article 103 or 104, the Bailiff must give the Jurats or jury (as the case may be) such warning as he or she considers necessary to ensure that the defendant is not prejudiced –

- (a) by any inferences that might be drawn from the fact that the defendant has been prevented from cross-examining the witness;
- (b) where the witness has been cross-examined by a legal representative appointed under Article 105(4), by the fact that the cross-examination was carried out by such a legal representative, and not by a person acting as the defendant's own legal representative.

### *Intimidation of witnesses and jurors*

## **107 Intimidation, etc. of witnesses, jurors and others**

- (1) A person commits an offence ("an offender") if he or she does an act –
  - (a) which intimidates, and is intended to intimidate, another person ("the victim");
  - (b) knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in criminal proceedings; and
  - (c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.
- (2) An offender commits an offence if –
  - (a) he or she does an act –
    - (i) which harms, and is intended to harm, another person, or
    - (ii) intending to cause another person to fear harm, he or she threatens to do an act which would harm that other person;
  - (b) he or she does or threatens to do the said act knowing or believing that the person harmed or threatened to be harmed ("the victim"), or some other person has –

- (i) assisted in an investigation into an offence,
  - (ii) given evidence or particular evidence in criminal proceedings, or
  - (iii) acted as a juror or concurred in a particular verdict in criminal proceedings; and
- (c) he or she does or threatens to do that act because of that knowledge or belief.
- (3) For the purposes of paragraphs (1) and (2) it is immaterial that the act is or would be done, or that the threat is made –
  - (a) otherwise than in the presence of the victim; or
  - (b) to a person other than the victim.
- (4) The harm that may be done to a person, includes –
  - (a) physical harm or an intimidatory act;
  - (b) financial harm;
  - (c) harm to a persons’ property; and
  - (d) threats.
- (5) The intention required by paragraph (1)(c) and the motive required by paragraph (2)(c) need not be the only or the primary intention or motive with which the act is done or, in the case of paragraph (2), threatened.
- (6) If, in proceedings against a person for an offence under paragraph (1), it is proved that he or she did an act falling within paragraph (1)(a) with the knowledge or belief required by paragraph (1)(b), he or she shall be presumed, unless the contrary is proved, to have done the act with the intention required by paragraph (1)(c).
- (7) If, in proceedings against an offender for an offence under paragraph (2), it is proved that within the relevant period –
  - (a) he or she did an act which harmed, and was intended to harm, another person; or
  - (b) intending to cause another person fear of harm, he or she threatened to do an act which would harm that other person,and that he or she did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by paragraph (2)(b), the offender shall be presumed, unless the contrary is proved, to have done the act or, (as the case may be) threatened to do the act with the motive required by paragraph (2)(c).
- (8) An offender guilty of an offence under this Article shall be liable to imprisonment for a term of 10 years and to a fine.
- (9) In this Article –
  - “investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;
  - “offence” and “offender” includes a suspected offence or offender;
  - “potential”, in relation to a juror, means a person who has been summoned for jury service under Article 64;
  - “relevant period” –
    - (a) in relation to a witness or juror in any criminal proceedings, means the period beginning with the formal commencement of the proceedings and ending with the first anniversary of the conclusion of the trial, or –
      - (i) if there is an appeal under Article 33, the determination or abandonment of the appeal, or

- (ii) where a case is stated under Article 37, the determination of the case in accordance with Article 38;
  - (b) in relation to a person who has, or is believed by the offender to have, assisted in an investigation into an offence, but was not also a witness in criminal proceedings, means the period of one year beginning with any act of that person, or any act believed by the offender to be an act of that person assisting in the investigation; and
  - (c) in relation to a person who both has, or is believed by the offender to have, assisted in the investigation into an offence and was a witness in criminal proceedings, means the period beginning with any act of that person, or any act believed by the offender to be an act of that person assisting in the investigation and ending with the anniversary mentioned in sub-paragraph (a).
- (10) For the purposes of the definition of the relevant period in paragraph (9) –
- (a) criminal proceedings are formally commenced when a summons is issued under Article 14 or 19;
  - (b) a trial is concluded with the occurrence of any of the following –
    - (i) the discontinuance of the proceedings under Article 80,
    - (ii) the discharge of the jury without a verdict under Article 75(8),
    - (iii) the acquittal of a defendant or the sentencing of, or other dealing with, a defendant for the offence of which he or she was convicted.
- (11) This Article is in addition to, and not in derogation of, any offence subsisting under customary law.

## PART 12

### COSTS IN CRIMINAL PROCEEDINGS<sup>16</sup>

#### **108 Provisions as to costs incurred because of act or omission**

- (1) In any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, the court may make an order as to the payment of those costs.
- (2) Criminal Procedure Rules may make further provision regarding costs ordered under this Article.

#### **109 Wasted costs against defence or prosecution**

- (1) In criminal proceedings, the court may order the defence or prosecution to meet, the whole of any wasted costs or such part of them as the court may determine.
- (2) The States may, by Regulations, make further provision as to the court's determination of costs for the purposes of an order under paragraph (1), including in relation to cases of a particular description.
- (3) Where an order is made by –
  - (a) the Magistrate under paragraph (1), the defence or prosecution may appeal to the Royal Court; or



- (b) the Royal Court under paragraph (1), the defence or prosecution may appeal to the Court of Appeal.
- (4) In this Article “wasted costs” means any costs incurred by a party –
  - (a) as a result of any improper, unreasonable or negligent act or omission on the part of the defence or prosecution; or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

## **110 Provision for award of costs against third parties**

- (1) The States may by Regulations make provision empowering the court to make a third party costs order if the condition in paragraph (3) is satisfied.
- (2) A “third party costs order” is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings (“the third party”).
- (3) The condition is that –
  - (a) there has been serious misconduct (whether or not constituting a contempt of court) by the third party; and
  - (b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against that third party.
- (4) Regulations under this Article may, in particular –
  - (a) specify types of misconduct in respect of which a third party costs order may not be made;
  - (b) allow the making of a third party costs order at any time;
  - (c) make provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;
  - (d) make provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.
- (5) Regulations under this Article in relation to the Magistrate or Royal Court must provide that the third party may appeal to –
  - (a) the Royal Court against a third party costs order made by the Magistrate; and
  - (b) the Court of Appeal against a third party costs order made by the Royal Court.

## **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) <sup>17</sup>
- (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.
- (3) The Criminal Procedure Rules Committee may make Criminal Procedure Rules in relation to any matter connected to the following enactments that the Criminal Procedure Rules Committee sees appropriate –
- (a) the [Criminal Justice \(Community Service Orders\) \(Jersey\) Law 2001](#);
  - (b) the [Criminal Justice \(International Co-operation\) \(Jersey\) Law 2001](#);
  - (c) the [Criminal Justice \(Suspension of Prison Sentences\) \(Jersey\) Law 2003](#);
  - (d) the [Dogs \(Jersey\) Law 1961](#);
  - (e) the [Drug Trafficking Offences \(Enforcement of Confiscation Orders\) \(Jersey\) Regulations 2008](#);
  - (f) the [Electronic Communications \(Jersey\) Law 2000](#);
  - (g) the [Extradition \(Jersey\) Law 2004](#);
  - (h) the Geneva Conventions Act (Jersey) Order 1966;

- (i) the [Human Rights \(Jersey\) Law 2000](#);
- (j) the [International Criminal Court \(Jersey\) Law 2014](#);
- (k) the [Mental Health \(Jersey\) Law 2016](#);
- (l) the [Proceeds of Crime \(Enforcement of Confiscation Orders\) \(Jersey\) Regulations 2008](#);
- (m) the [Proceeds of Crime \(Jersey\) Law 1999](#);
- (n) the [Repatriation of Prisoners \(Jersey\) Law 2012](#);
- (o) the [Sex Offenders \(Jersey\) Law 2010](#);
- (p) the [Sexual Offences \(Jersey\) Law 2018](#);
- (q) the [Terrorism \(Jersey\) Law 2002](#);
- (r) the [Trade Marks \(Jersey\) Law 2000](#).<sup>18</sup>

### 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

### MISCELLANEOUS AND CLOSING PROVISIONS

### 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** <sup>19</sup>**117** <sup>20</sup>**118** <sup>21</sup>**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<sup>22</sup>**

(Article 94(3))

**OFFENCES IN RESPECT OF WHICH A SPOUSE OR CIVIL PARTNER OF A DEFENDANT IS COMPELLABLE TO GIVE EVIDENCE**

- (1) For the purpose of Article 94(3) this Schedule specifies the offences in respect of which the spouse or civil partner of a defendant is compellable to give evidence on behalf of the prosecution or any other defendant charged in the same proceedings.
- (2) Paragraph (7) sets out the offences with which a defendant is charged of having committed against, or in relation to, any person described in paragraph (4).
- (3) Paragraph (8) sets out an offence with which a defendant is charged of having committed in the presence of any such person.
- (4) The persons to whom paragraphs (2) and (3) refer are any of the following –
  - (a) the spouse or civil partner of a defendant;
  - (b) a person who was under the age of 18 at the time the offence was committed; and
  - (c) a person aged 18 or older who –
    - (i) suffers from a mental disorder within the meaning of the Mental Health Law, or
    - (ii) has a significant impairment of intelligence and social functioning.
- (5) In relation to a person described in paragraph (4)(b) or (c), it does not matter whether the defendant knew the person or not at the time the offence was committed.
- (6) Where the age of a person at any time is material for the purposes of paragraph (4)(b), his or her age at the time the offence was committed shall be deemed for the purposes of that paragraph to be the age which the court believes he or she was at that time.
- (7) The offences for the purposes of paragraph (2) are any of the following –
  - (a) the customary law offences of –
    - (i) assault including common assault, grave and criminal assault or indecent assault, or threat of any such assault,
    - (ii) breach of the peace,
    - (iii) breaking and entering and committing an assault, larceny or malicious damage,
    - (iv) demanding money with menaces,
    - (v) false imprisonment,
    - (vi) gross indecency or procuring an act of gross indecency,
    - (vii) incest,
    - (viii) indecent exposure,
    - (ix) kidnapping,
    - (x) malicious damage,
    - (xi) manslaughter,
    - (xii) murder or attempted murder,

- (xiii) perverting or attempting to pervert the course of justice,
  - (xiv) rape, or attempted rape,
  - (xv) sodomy;
  - (b) any offence not falling within sub-paragraph (a) which involves injury or threat of injury;
  - (c) attempting or conspiring to commit, or encouraging, assisting, inciting, counselling, procuring an offence described in sub-paragraph (a) or (b);
  - (d) any offence under the [Protection of Children \(Jersey\) Law 1994](#);
  - (e) an offence under Article 32 or 33 of the [Firearms \(Jersey\) Law 2000](#);
  - (f) an offence under Article 35 of the [Children \(Jersey\) Law 2002](#);
  - (g) an offence under Article 51 of the [Telecommunications \(Jersey\) Law 2002](#);
  - (h) an offence under Article 60 of the [Postal Services \(Jersey\) Law 2004](#);
  - (i) an offence under Article 2, 3 or 6 of the [Crime \(Disorderly Conduct and Harassment\) \(Jersey\) Law 2008](#);
  - (j) any offence referred to in Article 103(3)(b), (d) , (e) or (ea).
- (8) For the purpose of paragraph (3), an offence under Article 4 of the [Animal Welfare \(Jersey\) Law 2004](#).
- (9) The States may, by Regulations, amend this Schedule.

**SCHEDULE 2<sup>23</sup>**

(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 indicted 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.



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**SCHEDULE 3<sup>24</sup>**

(Article 116)

**POLICE PROCEDURES AND CRIMINAL EVIDENCE (JERSEY) LAW 2003 AMENDED**

**SCHEDULE 4<sup>25</sup>**

(Article 117)

**ENACTMENTS CONSEQUENTIALLY AMENDED**

## **SCHEDULE 5<sup>26</sup>**

(Article 118)

### **ENACTMENTS REPEALED**

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	°Projet No (where applicable)
Criminal Procedure (Jersey) Law 2018	<a href="#">L.25/2018</a>	<p>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 (<a href="#">R&amp;O.61/2019</a>)</p> <p>31 October 2019 – various provisions (<a href="#">R&amp;O.110/2019</a>)</p> <p>25 March 2020 – Articles 17, 19–23, 100–102 and Article 118 to the extent that Article 14 of the Loi (1864) réglant la Procédure Criminelle (listed in Schedule 5 at paragraph (4)) is repealed and Article 7 and Part 3 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 (listed in Schedule 5 at paragraph (6)) are repealed (<a href="#">R&amp;O.26/2020</a>)</p> <p>1 October 2021 – all remaining provisions (<a href="#">R&amp;O.95/2021</a>)</p>	<a href="#">P.118/2017</a>

Legislation	Year and No	Commencement	°Projet No (where applicable)
Criminal Procedure (Transitional Provisions) (Jersey) Regulations 2019	<a href="#">R&amp;O.111/2019</a>	31 October 2019 – temporary amendments commenced  1 October 2021 – Not in force – cessation of temporary amendments	<a href="#">P.96/2019</a>
Criminal Procedure (Qualifying Offences) (Jersey) Regulations 2019	<a href="#">R&amp;O.112/2019</a>	31 October 2019	<a href="#">P.97/2019</a>
Legislation (Jersey) Law 2021	<a href="#">L.8/2021</a>	28 September 2021 ( <a href="#">R&amp;O.112/2021</a> )	<a href="#">P.26/2021</a>
Criminal Procedure (Consequential and Supplementary Amendments) (Jersey) Regulations 2021	<a href="#">R&amp;O.94/2021</a>	1 October 2021	<a href="#">P.59/2021</a>
Access to Justice (Jersey) Law 2019	<a href="#">L.11/2019</a>	1 April 2022 ( <a href="#">R&amp;O.91/2021</a> )	<a href="#">P.23/2019</a>

°Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

## Table of Endnote References

- <sup>1</sup> Article 1(1) *editorial change definition of “juror”, “mean” deleted, “means” inserted instead, temporarily amended by R&O.111/2019, temporary amendment reversed by R&O.111/2019*
- <sup>2</sup> Article 13(2) *temporarily amended by R&O.111/2019, temporary amendment reversed by R&O.111/2019*
- <sup>3</sup> Article 21(3) *amended by R&O.94/2021*
- <sup>4</sup> Article 41(4) *inserted by L.11/2019*
- <sup>5</sup> Article 75(10) *amended by R&O.94/2021*
- <sup>6</sup> Article 80(3) *deleted by R&O.94/2021*
- <sup>7</sup> Article 80(6A) *inserted by R&O.94/2021*
- <sup>8</sup> Article 80(6B) *inserted by R&O.94/2021*
- <sup>9</sup> Article 83(1) *amended by R&O.94/2021*
- <sup>10</sup> Article 83(5) *amended by R&O.94/2021*
- <sup>11</sup> Article 89(4) *amended by L.11/2019*
- <sup>12</sup> Article 98(6) *amended by R&O.94/2021*
- <sup>13</sup> Article 103(3) *amended by R&O.94/2021*
- <sup>14</sup> Article 105(2) *amended by R&O.94/2021*
- <sup>15</sup> Article 105(3) *amended by R&O.94/2021*
- <sup>16</sup> Part 12 *sub-heading amended by R&O.94/2021*
- <sup>17</sup> Article 111(9) *amended by L.8/2021*
- <sup>18</sup> Article 112(3) *inserted by R&O.94/2021*
- <sup>19</sup> Article 116 *spent, omitted*
- <sup>20</sup> Article 117 *spent, omitted*
- <sup>21</sup> Article 118 *spent, omitted*
- <sup>22</sup> Schedule 1 *amended by R&O.94/2021*

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- <sup>23</sup> *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), amended by R&O.94/2021*
- <sup>24</sup> *Schedule 3*                      *amended by R&O.111/2019, spent, omitted,*
- <sup>25</sup> *Schedule 4*                      *spent, omitted*
- <sup>26</sup> *Schedule 5*                      *spent, omitted*