



Jersey

CRIMINAL PROCEDURE (STATEMENTS AND EVIDENCE) (JERSEY) RULES 2019¹

Official Consolidated Version

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

Showing the law from 31 October 2019 to 30 September 2021



Jersey

CRIMINAL PROCEDURE (STATEMENTS AND EVIDENCE) (JERSEY) RULES 2019

Contents

Rule

PART 1	4
INTERPRETATION	4
1 Interpretation	4
PART 2	5
RULES MADE UNDER PART 10 OF THE 2018 LAW	5
2 Defence case statement and witness notice	5
PART 3	5
RULES MADE UNDER PART 8 OF THE PPCE LAW	5
3 Application of rules	5
4 Introducing statements not made in oral evidence	6
5 Opposing the introduction of a statement	6
6 Unopposed statement	7
PART 4	8
RULES MADE UNDER PART 9A OF THE PPCE LAW	8
7 Introduction of evidence of bad character	8
8 Evidence of defendant's bad character	8
9 Evidence of a non-defendant's bad character	8
10 Objecting to introduction of evidence of bad character	9
PART 5	10
RULES OF GENERAL APPLICATION	10
11 Service of documents	10
12 Court's power to vary requirements	10
13 Citation and commencement	11
SCHEDULE	12
FORM OF DEFENCE CASE STATEMENT AND WITNESS NOTICE	12

ENDNOTES	16
Table of Legislation History.....	16
Table of Endnote References	16



Jersey

CRIMINAL PROCEDURE (STATEMENTS AND EVIDENCE) (JERSEY) RULES 2019

THE CRIMINAL PROCEDURE RULES COMMITTEE makes these Rules under Articles 83, 84, 85 and 112 of the [Criminal Procedure \(Jersey\) Law 2018](#) and Articles 67I and 82K of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) –

Commencement [[see endnotes](#)]

PART 1

INTERPRETATION

1 Interpretation

- (1) In these Rules –
“2018 Law” means the [Criminal Procedure \(Jersey\) Law 2018](#);
“PPCE Law” means the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#).
- (2) Unless the context otherwise requires, words or phrases in these Rules that are defined in Parts 8 or 9A of the PPCE Law have the same respective meanings as in that Law.
- (3) Any wording identified as a “Note” in these Rules is included for the convenience of the reader only and does not form part of the Rules.

Note: Under Article 9 of the 2018 Law, the court may give any direction and take any step in order to manage a case (unless it would be inconsistent with these Rules or another enactment). 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) *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 the 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*

PART 2

RULES MADE UNDER PART 10 OF THE 2018 LAW

2 Defence case statement and witness notice

- (1) The defence case statement required by Article 83 of the 2018 Law and the witness notice required under Article 85 of that Law –
 - (a) shall be in the form set out in the Schedule;
 - (b) shall be served not later than 14 days after receiving the documents required to be disclosed by Articles 82(1) and 83(1)(a) of the Law.
- (2) If a defendant intends to submit an amended defence case statement and witness notice, the amended version of the statement or notice shall, unless otherwise directed by the court –
 - (a) also be in the form set out in the Schedule; and
 - (b) be served as soon as possible and in any event not later than three working days after the defendant is made aware of –
 - (i) a material change to a matter set out in a defence case statement;
 - (ii) a material change to the defence relied upon by the defendant; or
 - (iii) discovery of any information that should have been included in the witness notice, had the defendant been aware of it at the time of giving the witness notice.
- (3) In Rule 2(2)(b) a reference to the defendant is also a reference to the defendant's legal representative.

PART 3

RULES MADE UNDER PART 8 OF THE PPCE LAW

3 Application of rules

This Part applies where a party wants to introduce a statement not made in oral evidence in the proceedings, within the meaning of Article 64 of the PPCE Law.

4 Introducing statements not made in oral evidence

- (1) A party wishing to introduce such a statement under any of the following Articles of the PPCE Law shall serve notice in accordance with this Rule –
 - (a) Article 64(1)(d) (statement admissible in the interests of justice);
 - (b) Article 65 (statement where a witness is unavailable);
 - (c) Article 66(1)(c) (statement in a document prepared for the purposes of criminal proceedings);
 - (d) Article 67B (multiple statements not made in oral evidence).
- (2) The notice shall –
 - (a) identify the statement;
 - (b) state the provision of the PPCE Law under which the statement is admissible;
 - (c) explain the circumstances that make the statement admissible; and
 - (d) explain how the party will prove those circumstances apply, if another party disputes them.
- (3) The statement shall be attached to the notice unless it contains only evidence that has already been served.
- (4) A party wishing to introduce a statement shall serve the notice as soon as reasonably practicable after the defendant has pleaded not guilty.
- (5) A party may waive any entitlement to notice under this Rule by informing –
 - (a) the Judicial Greffier; and
 - (b) the party who would otherwise have been required to serve the notice.

5 Opposing the introduction of a statement

- (1) A party objecting to the introduction of any statement within the meaning of Article 64 of the PPCE Law, not merely those listed at Rule 4(1), shall –
 - (a) apply to the court to determine the objection;
 - (b) serve the application as soon as reasonably practicable and in any event not later than 14 days after the relevant date as set out in paragraph (2).
- (2) The relevant date is the later of –
 - (a) either –
 - (i) the date of service of the notice to introduce the statement under Rule 4; or
 - (ii) if no notice is required under Rule 4, the date of service of the statement to which the party objects; and
 - (b) the date on which the defence case statement is given in accordance with these Rules.
- (3) The application to court shall explain –
 - (a) which, if any, of the circumstances set out in a notice under Rule 4(2) the party disputes;
 - (b) why the statement is not admissible; and
 - (c) any other objection to the statement.

- (4) The court may determine the application with or without a hearing, which may be public or private.
- (5) However, the court shall not determine the application without a hearing without the consent of the defendant and unless the court has given the party who served the notice to introduce a statement a reasonable opportunity to respond to the application.

6 Unopposed statement

If a party has served notice to introduce a statement under Rule 4, and no other party has applied to the court under Rule 5, the court may treat the statement as though it were admissible by agreement.

Note: Under Article 64 of the PPCE Law, a statement not made in oral evidence is admissible as evidence of any matter stated if –

- (a) a statutory provision makes it admissible;
- (b) a rule of customary law referred to at Article 64A makes it admissible;
- (c) the parties agree to it being admissible; or
- (d) it is in the interests of justice for it to be admissible.

Under Article 63 of the Law –

- (a) a “statement” means any representation of fact or opinion, by any means, and includes a representation in pictorial form; and
- (b) a “matter stated” is something stated by someone with the apparent purpose of –
 - (i) causing another person to believe it, or
 - (ii) causing another person, or a machine, to act or operate on the basis that the matter is as stated.

The Articles of the PPCE Law listed in this Part set out the conditions on which statements not made in oral evidence may be admitted under them.

If notice is not given as this Part requires, then under Article 67I(4) of the PPCE Law –

- (a) the evidence is not admissible without the court’s permission;
- (b) if the court gives permission, it may draw such inferences as appear proper from the failure to give notice; and
- (c) the court may take the failure into account in exercising its powers to order costs.

This Part does not require notice of a statement that is admissible under any of the following Articles of the PPCE Law –

- (a) Article 64(1)(c) (all parties to the proceedings agree to it being admissible);
- (b) Article 66 (business and other documents), otherwise than as required by Rule 15/1(2)(c);
- (c) Article 64A (admissibility of statement under rules of customary law);
- (d) Article 67 (inconsistent statements); or
- (e) Article 67A (other previous statements of witness).

This Part does not require notice of a statement that is admissible under an enactment other than the PPCE Law.

PART 4

RULES MADE UNDER PART 9A OF THE PPCE LAW

7 Introduction of evidence of bad character

- (1) A party wishing to introduce evidence of a person's bad character, other than a defendant in respect of his or her own bad character, shall –
 - (a) in the case of a defendant's bad character, give notice in accordance with Rule 8; or
 - (b) in the case of the bad character of a person other than a defendant, make an application in accordance with Rule 9.
- (2) The notice or application shall –
 - (a) state the provision of the PPCE Law on which the party relies to have the evidence admitted, and explain why it applies;
 - (b) set out the facts of the misconduct on which the party applying to introduce the evidence relies; and
 - (c) explain how that party will prove those facts (whether by certificate of conviction, other official record or other evidence) if another party disputes them.

8 Evidence of defendant's bad character

- (1) If the prosecution wishes to introduce evidence of a defendant's bad character under Part 9A of the PPCE Law it shall serve the notice not later than 21 days before the trial.
- (2) A defendant wishing to introduce evidence of a co-defendant's bad character under Part 9A of the PPCE Law shall serve the notice –
 - (a) as soon as reasonably practicable; and
 - (b) in any event not later than 14 days after the prosecution discloses the material on which the notice is based.

9 Evidence of a non-defendant's bad character

- (1) If the prosecution wishes to introduce evidence of the bad character of a person other than a defendant under Article 82J of the PPCE Law it shall serve the application not later than 21 days before the trial.
- (2) A party, other than the prosecution, wishing to introduce evidence of the bad character of a person other than a defendant under Article 82J of the PPCE Law shall serve the application –
 - (a) as soon as reasonably practicable; and
 - (b) in any event not later than 14 days after the prosecution discloses the material on which the application is based.

10 Objecting to introduction of evidence of bad character

- (1) A party objecting to the introduction of evidence set out in a notice under Rule 8, or to an application under Rule 9 shall –
 - (a) apply to the court to determine the objection; and
 - (b) serve the application as soon as reasonably practicable and in any event not later than 14 days after receipt of the notice served under that Rule.
- (2) The application shall explain –
 - (a) which (if any) of the facts of the misconduct or disposition towards misconduct set out in the notice the party disputes;
 - (b) which (if any) of the facts of the misconduct or disposition towards misconduct set out in the notice the party admits;
 - (c) why the evidence set out in the notice is not admissible;
 - (d) why it would be unfair to admit the evidence; and
 - (e) any other objection to the notice.
- (3) The court may determine the application with or without a hearing, which may be in public or private.
- (4) However, the court shall not determine the application without a hearing without the consent of the defendant and unless the court has given the party who served the notice or application a reasonable opportunity to respond to the application.

Note: Under Article 82C of the PPCE Law, evidence of a person's bad character means evidence of, or of a disposition towards, misconduct on that person's part, other than evidence that –

- (a) *has to do with the alleged facts of the offence; or*
- (b) *is evidence of misconduct in connection with the investigation or prosecution.*

Under Article 82E of the PPCE Law, evidence of a defendant's bad character is admissible if –

- (a) *all parties to the proceedings agree to the evidence being admissible;*
- (b) *the evidence is introduced by the defendant, or is given in answer to a question asked by the defendant in cross-examination which was intended to elicit that evidence;*
- (c) *it is important explanatory evidence;*
- (d) *it is relevant to an important matter in issue between the defendant and the prosecution;*
- (e) *it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;*
- (f) *it is evidence to correct a false impression given by the defendant;*
or
- (g) *the defendant has made an attack on another person's character.*

Articles 82E(5) and 82F to 82I of the Law supplement those requirements. The court shall not admit evidence under (d) or (g) if, on an application by the defendant, the court concludes that to do so would be unfair.

Under Article 82J of the PPCE Law, evidence of a non-defendant's bad character is admissible if –

- (a) it is important explanatory evidence;*
- (b) it has substantial probative value in relation to a matter which –*
 - (i) is a matter in issue in the proceedings, and*
 - (ii) is of substantial importance in the context of the case as a whole; or*
- (c) all parties to the proceedings agree to the evidence being admissible.*

The Article explains requirements (a) and (b). Unless the parties agree to the evidence being admissible, it may not be introduced without the court's permission.

The fact that a person was convicted of an offence may be proved under Article 71 of the PPCE Law (conviction in Jersey).

See also Articles 64A and 66 of the PPCE Law (admissibility of statements contained in business and other documents).

Under Article 3 of the [Criminal Justice \(Evidence and Procedure\) \(Jersey\) Law 1998](#), a party may admit a matter of fact.

PART 5

RULES OF GENERAL APPLICATION

11 Service of documents

- (1) Whenever a party is required to serve a document in accordance with these Rules the party shall serve it –
 - (a) on the court; and
 - (b) on every other party to the proceedings.
- (2) Service under these Rules shall be effected electronically, except where, in respect of an unrepresented defendant, the court directs otherwise.

12 Court's power to vary requirements

Nothing in these Rules shall prevent the court giving any direction or taking any step, in accordance with Article 9 of the 2018 Law, actively to manage a case, including where that direction or step would be inconsistent with these Rules if it considers it reasonable in all the circumstances to do so. In particular the court may –

- (a) shorten or extend (even after it has expired) a time limit under these Rules;
- (b) allow an application or notice to be given other than as set out in these Rules, or to be made or given orally; or
- (c) dispense with the requirement for notice to introduce evidence under Rule 4 or Rule 7;

and for the avoidance of doubt all such directions and dispensations may be given by the trial judge during the trial.

13 Citation and commencement

These Rules may be cited as the Criminal Procedure (Statements and Evidence) (Jersey) Rules 2019 and come into force on 31st October 2019.

SCHEDULE

(Rule 2)

FORM OF DEFENCE CASE STATEMENT AND WITNESS NOTICE

<p style="text-align: center;"><i>DEFENCE CASE STATEMENT AND WITNESS NOTICE</i> Articles 83 to 85 of the Criminal Procedure (Jersey) Law 2018 Rule 2 of the Criminal Procedure (Statements and Evidence) (Jersey) Rules 2019</p>
<p>Case details</p> <p>Name of defendant:</p> <p>Court:</p> <p>Case reference number:</p> <p>Charge(s):</p> <p>Have you given a defence case statement or witness notice in this case before?</p> <p style="text-align: center;">No Yes</p> <p>If yes, give the date(s).</p>
<p>When to use this form</p> <p>If you are the defendant, and you are pleading not guilty, you must give the information required by Parts 2 and 3 of this form.</p> <p>Unless you are told otherwise by the court, the time limit for returning this form is 14 days after the date of receipt of the prosecution documents containing the evidence which is the basis of the charge and any unused prosecution material (or notice from the prosecution that there is no unused material to disclose).</p> <p>How to use this form</p> <p>1. Complete the case details box above, and Parts 1 to 3 below.</p> <p>2. Sign and date the completed form.</p> <p>3. Send a copy of the completed form to:</p> <p style="padding-left: 40px;">(a) the court, and</p> <p style="padding-left: 40px;">(b) the prosecutor</p> <p>before the time limit expires.</p> <p>If you need more time, you must write to the court to ask for this before the time limit expires.</p>

Part 1: Plea

I confirm that I intend to plead not guilty to [all the charges] [the following charges] *(delete as applicable)* against me:

Part 2: Nature of the defence

Under Article 84 of the [Criminal Procedure \(Jersey\) Law 2018](#), you must:

- (a) set out the nature of your defence, including any particular defences on which you intend to rely;
- (b) indicate the matters of fact on which you disagree with the prosecution, and in respect of each explain why;
- (c) set out the particulars of the matters of fact on which you intend to rely for the purposes of your defence;
- (d) indicate any point of law that you wish to take, including any point about the admissibility of evidence or about abuse of process, and any authority you wish to rely on; and
- (e) if your defence case statement includes an alibi (i.e. an assertion that you were in a place or area and at a particular time inconsistent with your having committed the offence), give particulars, including –
 - (i) the name, address and date of birth of any witness whom you believe can give evidence in support of that alibi,
 - (ii) if you do not know all of those details, any information that might help identify or find that witness.

Complete your statement below. If you need more space, add a further page.

Part 3: List of intended defence witness(es)

Do you intend to call anyone other than yourself as a witness at your trial?
(please tick yes or no)

No

Yes

If yes, give details below.

Name	Date of birth (if known)	Address, or any other contact or identifying details

IMPORTANT NOTICE

You must let the court and the prosecution know if, after you have sent this form in –

- (i) you decide to call a witness, other than yourself, whom you have not already identified in Part 3 of this form,
- (ii) you decide not to call a witness you have listed Part 3, or
- (iii) you discover information which you should have included in Part 2 or Part 3 if you had known it then.

Declaration

I understand that I am responsible for the accuracy and completeness of this document, and that if I –

- (a) do not provide a full and complete defence case statement before the time limit expires;**
- (b) give inconsistent defences in the defence case statement;**
- (c) at trial, rely on a defence, or facts, that I have not disclosed; or**

**(d) at trial, call a witness not included or adequately identified in a witness notice in advance,
the court may draw inferences in deciding whether or not I am guilty.**

This form must be signed by the defendant or the defendant's legal representative. If signed by a legal representative, he or she confirms that the defendant has read the completed form (or has had it read to him or her), understands it and agrees with it.

Signed: *defendant / defendant's legal representative*
(delete as applicable)

Date:

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	Project No (where applicable)
Criminal Procedure (Statements and Evidence) (Jersey) Rules 2019	R&O.125/2019	31 October 2019	

Project available at statesassembly.gov.je

Table of Endnote References

¹

These Rules were repealed by the Criminal Procedure (Consequential and Supplementary Amendments) (Jersey) Regulations 2021 on 1 October 2021