

This is a translation of the

## **Loi (1864) réglant la Procédure Criminelle**

(Chapter 08.740)

as in force on 25 March 2020 and repealed on 1 October 2021

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### LAW (1864) GOVERNING CRIMINAL PROCEDURE

A LAW to govern criminal procedure

#### GENERAL PROVISIONS

2

The Court shall be required to convene from time to time, when necessary to do so, one or more Criminal Assizes.

3

Each Assize shall continue for as long as shall be necessary to conclude each trial that commences in the week of the opening of the said Assize.

6

Prosecutions shall be undertaken in the name of Her Majesty's Attorney General,<sup>[2]</sup> but Her Majesty's Solicitor General may conduct the case and make speeches, either in the presence or in the absence of the Attorney General, as they may agree.

7

The Royal Court consisting of the Bailiff alone shall sit at the Assizes but, for the purposes of Article 47, the Court shall sit as the Inferior Number or as the Superior Number, depending upon the penalty that the Court decides to impose.

[3] [8 See “Loi (1912) sur la Procédure devant la Cour Royale” (L.1/1912) [4]

9

The following persons shall be exempted from serving as jurors[5] –

- 1 members of the Royal Court, Advocates, Solicitors and Connétables[6];
- 2 the Clergy of the Anglican Church and of the Roman Catholic Church; Ministers of the Reformed Nonconformist Churches who can show that they are at the head of a congregation and that they do not follow any secular occupation other than that of teacher;
- 3 persons who practise medicine and surgery in the Island, and pharmacists;
- 4 the Director and employees of the General Post Office; Officers and employees of Her Majesty’s Customs; Agents and persons employed for the collection of “Impôts”; and persons in the pay of the Government who are in active employment;
- 5 Harbour Masters and certificated pilots who are in active employment;
- 6 Her Majesty’s “Prévôts” and “Sergents”[7]
- 7 administrators and heads of hospitals; governors and jailers of the prisons and places of detention and their employees;
- 8 every person suffering from a permanent disability which renders that person incapable of serving.

10

The following persons shall be disqualified from serving as jurors –

- 2 every person who has a curator or a general attorney without whom he or she cannot transact in matters real or personal;
- 3 every person suffering from insanity;
- 4 any person having been, in the Island or elsewhere, sentenced to imprisonment for not less than one month;
- 5 any person having, within the preceding ten years, been convicted of any crime, délit[8] or contravention[9] and –
  - (a) sentenced to imprisonment (including a sentence by virtue of Article 4 of the Criminal Justice (Young Offenders) (Jersey) Law 2014); or
  - (b) ordered to pay a fine exceeding level 2 on the standard scale; or

(c) been subject to an order of the Court with a condition imposed under Article 3 of the Law (1937) on the extenuation of punishments and on supervised release,

(d) been subject to an order imposed pursuant to Article 2 of the Criminal Justice (Community Service Orders) (Jersey) Law 2001,

or sentenced in like manner outside the Island;

6 any person bound over by virtue of an order under Article 2 of the said Law of 1937 and who remains subject thereto;

7 any person who, in the Island or elsewhere, is awaiting trial for a criminal offence or who is in contempt of court and anyone who is liable to arrest.

11

The following persons may be exempted from jury service for as long as the cause of their exemption continues –

1 any person suffering from a temporary disability which renders him or her incapable of serving;

2 any person who does not understand the language in which the proceedings are being conducted.

12

During the first 3 weeks of December, the Bailiff shall review the lists forwarded to the Viscount by the Connétables, and may make such additions thereto and deletions therefrom as the Bailiff thinks fit.

The Viscount shall make a consolidated list<sup>[10]</sup> of the names contained in the lists supplied by the 12 parishes, revised as aforesaid; give each name a serial number and forward a copy of the list to the Judicial Greffier.

Every person whose name is inscribed on the consolidated list shall be bound to serve on a jury if called upon to do so.

### COMMITTAL FOR TRIAL

13

No person arrested by a police officer on suspicion of having committed a *crime* or a *délit*<sup>[11]</sup> shall be provisionally detained in the custody of the Governor of the Prison otherwise than on a warrant signed by the Bailiff or by a Jurat; the officer

receiving this warrant shall be bound to deliver it to the Governor of the prison when he or she hands over the person arrested.[12]

## 15

The Centenier in charge of the case shall warn the witnesses who he or she considers should be heard, or shall cause them to be warned by such police officer or officers as he or she shall nominate, to appear before the Magistrate on the day on which his or her report is due to be presented.

The Centenier shall also warn or cause to be warned in like manner the witnesses whom the accused[14] wishes to call.

The accused may, if he or she wishes, cause his or her witnesses to be warned by the Viscount.

It shall be the duty of the Centenier to send his or her report to the Magistrate together with a list of the witnesses who have been warned.

## 16

The Magistrate may order the adjournment or several adjournments of the case when the circumstances require, either to compel the attendance of an absent witness, or for the hearing of further witnesses, or to obtain further information:

Provided that no adjournment shall be for a period exceeding 30 days. Any further witnesses shall be warned in the manner prescribed by Article 15.

## 17

Every witness warned, whether personally or at his or her place of abode, who does not appear when the case is called on the day for which he or she has been warned, and who does not offer to the Magistrate a sufficient reason to justify his or her absence, shall be condemned to a fine.

An absent witness shall, on the order of the Magistrate, be arrested by one of the Officers of the Court and required to provide bail in an amount to be fixed by the Magistrate for his or her appearance on the day when the case is to be called again; and in the event of the witness failing to provide such bail to the Officer, the witness shall be detained in the custody of the Governor of the Prison until the witness can be presented before the Magistrate to give his or her evidence.

## 18

The witnesses shall give their evidence on oath or, in such cases as the law provides, by making a solemn affirmation. In cases which are liable to be sent to the Royal Court for trial the Magistrate shall take down, or cause to be taken down in writing in the Magistrate's presence, the substance of the deposition of

each witness. This deposition, after having been read over, shall be signed by the witness.

## 19

When the examination of the case before the Magistrate has been completed, the Magistrate shall decide whether the accused should be discharged or committed for trial before the Royal Court:

Provided that, if –

- (a) the evidence consists exclusively of written statements tendered to the Court pursuant to the provisions of Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998;
- (b) the accused is represented by an advocate; and
- (c) his or her advocate does not submit that the contents of the said written statements fail to establish a *prima facie* case against the accused,

the Magistrate shall commit the accused to the Royal Court without the need to consider the contents of the said written statements.

## 19A

For the avoidance of doubt, the provisions of Article 19 apply equally in the case of proceedings in respect of a *contravention*<sup>[15]</sup> as in the case of proceedings in respect of a *crime* or *délit*.<sup>[16]</sup>

## 20

At any stage of the case, including upon remand to the Royal Court, the Magistrate may grant the accused bail in accordance with the Criminal Procedure (Bail) (Jersey) Law 2017.

## 21

When the Magistrate remands the case to the Royal Court, the Magistrate shall without delay cause to be deposited at the Judicial Greffe the original copies of the depositions which have been taken down pursuant to the provisions of Article 18 or tendered in evidence pursuant to the provisions of Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998; and the Magistrate shall attest the depositions by signing them.

Any exhibits produced before the Magistrate shall be delivered to the Centenier who presented the report so that the Centenier may deposit them at the Judicial Greffe when the accused is presented before the Royal Court.

## THE INDICTMENT

22

As soon as possible after the examination has been completed, the Centenier who presented the accused before the Magistrate shall deliver to the Attorney General the Centenier's report and the act remanding the case to the Royal Court, and an early date shall be fixed for the appearance of the accused before the Royal Court.

23

On the appointed day the Centenier shall present the accused and the exhibits that may need to be produced.

The Attorney General shall produce the Indictment and the Judicial Greffier shall read it.

The accused shall plead.

24

If the accused pleads not guilty, he or she shall be taken into custody, but may be granted bail in accordance with the Criminal Procedure (Bail) (Jersey) Law 2017.

If the accused refuses to plead, the trial shall proceed as if the accused had pleaded not guilty.

If the accused pleads guilty, the Court shall pronounce sentence, either forthwith or within such period as the Court shall determine.

Nevertheless, if the case so requires, the Court may (where the accused has pleaded guilty) call for the depositions taken before the Magistrate or tendered pursuant to Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998, to be produced and may, if need be, order that the trial shall continue and that the verdict of a jury shall be returned before it pronounces sentence.

26

After the accused has been indicted, the exhibits produced by the Centenier shall be lodged at the Judicial Greffe to be produced again at the Assize hearing.

The report presented by the Centenier shall also be lodged at the Judicial Greffe, but for information only, and it shall not be produced to the jury.

27

The prosecution and the accused's advocate shall have free access to the report presented by the Centenier against the accused and to the depositions taken before the Magistrate or tendered pursuant to Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998, at any time after these documents have been deposited at the Judicial Greffe.

### *FORMATION OF THE JURY*

28

At least a fortnight before the date fixed for the opening of an Assize, 2 Jurats assisted by the Viscount shall convene for the purpose of drawing the persons from whom the jury will be chosen.[17]

29

(1) The drawing of jurors for each Assize shall take place in the manner prescribed by Rules of Court which shall make provision necessary to ensure –

- (a) that the names of jury members are drawn at random; and
- (b) that there will be a sufficient number of persons warned to serve on each jury throughout the Assize.

(2) who have served at one or more trials during the Assize shall be exempt from serving on any other Assize of that year.[18]

31

When the list of jurors for the Assize has been drawn up in accordance with Rules of Court made pursuant to Article 29 of this Law, it shall be signed by one of the Jurats and the Viscount who[19] shall summon the members of the jury to appear on the day and at the time appointed for the opening of the Assize and on such other days as the Court may determine.

32

The summonses shall be written or printed; they shall be signed by the Viscount and served at the jurors' place of abode at least 2 days before the day on which their first appearance is required. The summonses shall state the penalty to which jurors are liable if they fail to appear.

## 32A

- (1) The Viscount may, of his own motion or on the written application of a person summoned to appear as a juror, exempt the person from his duty to appear –
  - (a) if the Viscount considers the person to be exempted from jury service by virtue of Article 9 of this Law or of Article 2 of the *Loi (1912) sur la Procédure devant la Cour Royale* or any other statutory provision;
  - (b) for one of the reasons specified in Article 11 of this Law; or
  - (c) for any other reason which the Viscount considers sufficient to justify such exemption.
- (2) The Viscount shall submit to the Court sitting at the Assize every application received by the Viscount in accordance with this Article and shall give reasons for every decision taken under this Article.
- (2A) Any person having made a written application in accordance with paragraph (1) who is aggrieved by a refusal of the Viscount to grant that person an exemption under the said paragraph may renew the application to the Court, which shall forthwith rule thereon.
- (3) Every person who, with intent to obtain such an exemption, makes a false declaration or representation, shall be liable to a fine.

## 37

If, when all the jurors on the list have been called, the number of unchallengeable jurors remaining is insufficient to constitute a jury, the trial shall be postponed and supplementary jurors shall be summoned to complete the jury.

## PROCEDURE BEFORE THE JURY

## 42

After the jury has been empanelled, the indictment shall be read and the President of the Court shall call upon the accused to repeat his or her plea; the acts and documents relating to the case shall be read; the witnesses shall give evidence orally on oath; if a witness who gave evidence before the Magistrate or who gave a written statement pursuant to Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998, has died before the case is brought before the jury and his deposition had not been taken before the Viscount or the Judicial Greffier by virtue of Article 66, the witness's deposition taken before the Magistrate or given pursuant to Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998, shall be read to the jury; the



prosecution shall set out its case; the advocate for the accused present the case for the defence; and the prosecution may reply, to which the accused may respond; the President of the Court shall sum up the case.

54

When questions of law are submitted to the Court, either by the prosecution or by the defence, the party who raises the question shall set forth the grounds thereof, and the other party shall have the right to answer.

The Court shall make an act of all its decisions, and shall register the verdict of the jury.

57

Every juror duly summoned to appear at an Assize who, without a legitimate excuse, fails to appear when his or her name is called, or who, having appeared, withdraws without the leave of the President of the Court, shall be liable to a fine.

58

Summonses to witnesses in a trial held in the presence of a jury shall be served by the Viscount, either at the witnesses' place of abode or on them personally, at least 24 hours before the time of the hearing, at the instance of the Attorney General.

59

The summons shall be in writing, or printed, and shall be signed by the Officer; it shall state the name of the witness, the name or names of the accused, the day and hour at which, and the place where, the attendance of the witness is required, and the penalty to which the witness will be liable if he or she does not appear.

60

The Attorney General shall cause the accused to be notified, at least 3 days before the Assize, of the names of the witnesses for the prosecution who were not heard before the Magistrate or who have not made a deposition by virtue of Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998.

61

Every person who, having been duly summoned to give evidence before the jury, without a legitimate excuse fails to appear at the hearing mentioned in the summons when the person's name is called, or who, having appeared, withdraws without the leave of the President of the Court before the person has given evidence, shall be condemned to a fine; and, if the case is adjourned, his or her arrest by the Officer shall be ordered.

When the Court orders the arrest of a witness, it shall fix the amount of bail which the witness must give to the Officer for the witness's appearance on the day on which he or she is required to appear.

If the witness does not provide the required bail, the witness shall be detained in the part of the prison which is reserved for persons imprisoned for debt [20] until he or she has given evidence.

62

The following grounds shall be sufficient to justify the absence of a juror who was duly summoned in pursuance of this Law –

- 1      Illness which prevents the juror from attending Court;
- 2      The death of a blood relation or relation by marriage, up to and including the degrees of brother or sister, provided that the burial did not take place more than 8 days before the day on which the juror was required to attend; and in the event of the death of an uncle or aunt, nephew or niece, provided that the burial did not take place before the day on which the juror was required to attend.

The following grounds shall be sufficient to justify the absence of a witness or informant who was duly summoned in pursuance of this law -

- 1      Illness which prevents him from attending Court;
- 2      The death of a blood relation or relation by marriage, up to and including the degrees of uncle and nephew, aunt and niece, provided that the burial did not take place before the day on which the witness or informant was required to attend.

In every other case, a juror, witness or informant who has been condemned to a fine by reason of his or her absence may obtain the remission of the penalty by accounting for his or her absence to the satisfaction of the Court.

63

Every witness or informant who is prevented by illness from appearing on the day on which he or she is required to attend shall either send to the Attorney General, before the hearing, a certificate from a doctor or surgeon specifying the nature of the person's illness or have himself or herself excused from appearance before the Court.

64

A juror, witness or informant who is prevented from appearing on account of the death of a blood relation or relation by marriage shall notify the Attorney General before the hearing.

65

Nevertheless, if the ground for absence arises on the day before that on which the person is required to attend, or on the day itself, and the juror, witness or informant who is prevented from appearing has been unable to fulfil the requirements of this Law, he or she may obtain the remission of the penalties incurred by him, without incurring costs, by accounting for his or her inability to attend to the satisfaction of the Court.

66

The prosecution and the accused may, on obtaining an act of the Court to that effect, cause witnesses or informants who are about to leave the Island, or who are prevented by illness or infirmity from attending the Court, to give their evidence before the Viscount or the Judicial Greffier. This shall also apply if, between the date of the indictment and that of the Assize there is reason to fear that a person whose evidence is essential may die or leave the Island.

67

If a witness or informant who has been heard before the Viscount or the Judicial Greffier is able to give evidence in Court when the case is heard, his or her written deposition shall be produced; but he or she shall nevertheless be summoned to appear and may be examined orally.

68

The summoning of a witness or informant to appear before the Viscount or the Judicial Greffier shall be effected in the manner prescribed by Articles 58 and 59. A person summoned who fails to appear shall be liable to the penalties set out in Article 61.

The absentee may rely on the grounds set out in Article 62 by satisfying the requirements of Articles 63 and 64.

69

The Viscount (or, if the witness or informant has been summoned to appear before the Judicial Greffier, the Judicial Greffier) shall record the failure to appear and on production of the Viscount's (or the Judicial Greffier's) record, the Court shall pronounce the penalty incurred by the absentee; nevertheless, the arrest and requirement to provide bail shall be provisionally enforced on the Viscount's or the Judicial Greffier's record, as the case may be, without recourse to the Court.

73

Any person who falsely makes or alters a certificate required by virtue of the provisions of this Law or knowingly makes use of such a falsely made or altered certificate, shall be liable to imprisonment of 3 months and to a fine.

74

This Law is without prejudice to the jurisdiction of the Royal Court *en matière correctionnelle*,<sup>[21]</sup> and the jurisdiction of the Magistrate's Court, in so far as they are not contrary to the provisions of this Law.

## NULLITIES

75

If in any case the Court should declare the whole or any part of the proceedings to be null and void, the accused shall not, in consequence thereof, be discharged from the indictment, but the proceedings shall be recommenced and the hearing resumed at such point and in such a manner as the Court shall determine.

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[1] *Crimes* and *délits* are customary law offences. *Crimes* are the more serious, *délits* the less serious (see also the Schedule to the Interpretation (Jersey) Law 1954: "misdemeanour" in any enactment shall mean a *délit*).

[2] See also Crown Advocates (Jersey) Law 1987, Article 1: "*The Attorney General may, with the approval of the Bailiff, appoint either for a definite or indefinite period, one or more Advocates of the Royal Court to discharge the Attorney General's functions in any proceedings before any court in Jersey.*"

[3] The Articles from this point up to and including Article 12 deal with the selection of persons to form a jury ('*composition du personnel de l'enquête*') although the heading to that effect has been omitted from the revised edition.

[4] Article 1 of L.1/1912 provides, in translation, as follows: "*Every year, during the first fortnight of the month of November, each Connétable shall forward to the Viscount a list of the names and addresses of inhabitants of his parish who are capable of serving as jurors, being at least 25 years of age but below the age of 65, not including those exempted by Article 9 of the Law of 1864 and by this Law [i.e. of 1912].*"

[5] Article 2 of L.1/1912 provides, in translation, that the following shall also be exempted from service as jurors: the Judge and Officers of the Magistrate's and Petty Debts Courts; centeniers; schoolmasters; registrars of births, marriages and deaths; officers of weights and measures; other public officials paid by the States; dentists.

[6] 'Connétable' translates into English as 'Constable', but the office of Connétable is radically different from the office of Constable in England and Wales. The Jersey/French term is now used in Jersey statutes (whether in English or French).

[7] The offices of *Prévôt* and *Sergeant* are now obsolete: see Article 3 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1967 (the Rules of Court to which that Article refers have been made).

[8] See footnote 1.

[9] A *contravention* means any Jersey statutory offence.

[10] *Tableau général*

[11] See footnote 1. As to police detention, see now the Police Procedures and Criminal Evidence (Jersey) Law 2003.

[12] *le prévenu*

[13] See footnote 1.

[14] *le prévenu* in Articles 15 – 22 describes the accused in relation to committal proceedings before the Magistrate; *l'accusé* from Article 23 onwards describes the accused in relation to the trial before the Royal Court.

[15] See footnote 9.

[16] See footnote 1.

[17] The process of drawing persons for this purpose is known as 'the tirage'.

[18] See also Article 3 of L.1/1912 (in translation): "*The Court may also exempt from jury service for a given period the members of a jury who have served in a trial that has lasted several days.*"

[19] N.B. the word '*qui*' has inadvertently been omitted from the text of the Law in the revised edition.

[20] See Rules 5(1)(f), 8(1)(d), 9 and 105 of the Prison (Jersey) Rules 2007.

[21] The Inferior Number *en police correctionnelle* tries persons accused of statutory offences (*contraventions*). The Inferior Number *sans enquête* tries persons accused of *crimes* and *délits* who have not opted for jury trial (under Article 1 of this Law).