

Gateway 3



If the court is satisfied that it is in the interests of justice for it to be admissible (Art 64(1)(d))

The court **must** have regard to:

- 1) how much probative value the statement has in relation to a matter in issue or how valuable it is for the understanding of other evidence in the case;
- 2) what other evidence can be given on the matter;
- 3) how important the matter or the evidence is in the context of the case as a whole;
- 4) the circumstances in which the statement was made;
- 5) how reliable the maker appears to be;
- 6) how reliable the evidence of the making of the statement appears to be;
- 7) whether oral evidence on the matter stated can be given and, if not, why not;
- 8) the difficulty involved in challenging the statement;
- 9) the extent to which that difficulty would prejudice the party facing it.

Gateway 4



If all parties agree to the evidence being admissible (Art 64(1)(c))

Multiple Hearsay

Multiple hearsay refers to the situation where information is relayed through more than one person before it is recorded.

Multiple hearsay is only admissible if:

- 1) either of the statements is admissible under Art 66 (business documents), Art 67 (inconsistent statements) or Art 67A (other previous statement); or
- 2) all parties agree; or
- 3) the court uses its discretion to admit under Art 67B (c).

Discretion under Art 67B(c) is framed differently to the overall discretion of the court and requires the court to be satisfied that the value of the evidence, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

Inconsistent and other previous statements of witnesses (Art 67 & 67A)

Inconsistent statements must still be admitted or proved in accordance with Articles 78, 79 or 80 of the PPCE. Once the statement is admitted it becomes evidence of the truth of matters stated in it if oral evidence of the matter would be admissible.

Other previous statements, once admitted, become evidence of truth. Statements under this provision require the witness to be called to give evidence. (Art 67A(1))

If a previous statement is admitted to rebut a suggestion that evidence has been fabricated, the status of the evidence is that it is admissible as evidence of any matter stated of which oral evidence would be admissible. Thus the whole statement becomes evidence of truth of the statements contained therein and not just as evidence of credibility. (Art 67A(2))

A statement used to refresh memory while giving evidence, on which the witness is cross-examined, and which, as a consequence, is admitted in evidence, becomes evidence of truth. (Art 67A(3))

A statement is admissible if whilst giving evidence the witness indicates that to the best of his belief he made the statement and that to the best of his belief it states the truth **and** one of the following three conditions apply:

- 1) the statement identifies or describes a person, object or place (Art 67A(5)); or
- 2) the statement was made when matters were fresh in his memory but he does not and cannot reasonably be expected to remember them well enough to give oral evidence of them in the proceedings (Art 67A(6)); or
- 3) all of the following are satisfied:
 - a) the witness claims to be a person against whom an offence has been committed;
 - b) the offence is one to which the proceedings relate;
 - c) the statement consists of a complaint made by the witness about conduct which would constitute the offence or part of it;
 - d) the complaint was not made as a result of a threat or promise; and
 - e) before the statement is adduced the witness gives oral evidence in connection with the subject matter. (Art 67A(7))

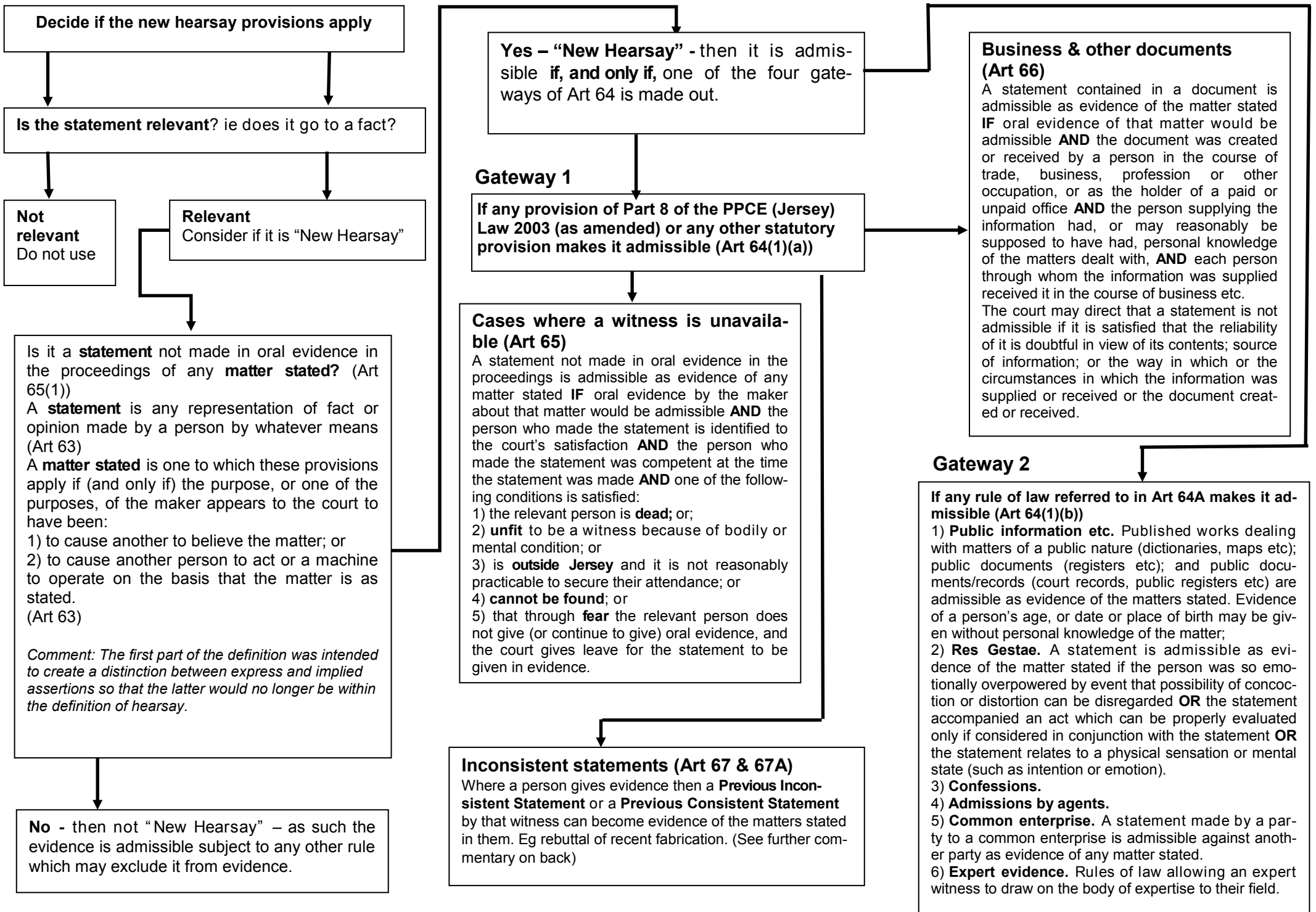


Attorney General's Guidance

Hearsay Provisions of the Criminal Procedure (Jersey) Law 2018

The admissibility of hearsay evidence in criminal proceedings is set out in Articles 63 - 74A of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (as amended by the Criminal Procedure (Jersey) Law 2018) and applies in all criminal proceedings from 31 October 2019.

*This can only be a guide - reference should be made to the legislation for its full effect.
Issued November 2019*



Decide if the new hearsay provisions apply

Is the statement relevant? ie does it go to a fact?

Not relevant
Do not use

Relevant
Consider if it is "New Hearsay"

Is it a **statement** not made in oral evidence in the proceedings of any **matter stated**? (Art 65(1))
 A **statement** is any representation of fact or opinion made by a person by whatever means (Art 63)
 A **matter stated** is one to which these provisions apply if (and only if) the purpose, or one of the purposes, of the maker appears to the court to have been:
 1) to cause another to believe the matter; or
 2) to cause another person to act or a machine to operate on the basis that the matter is as stated.
 (Art 63)

Comment: The first part of the definition was intended to create a distinction between express and implied assertions so that the latter would no longer be within the definition of hearsay.

No - then not "New Hearsay" – as such the evidence is admissible subject to any other rule which may exclude it from evidence.

Yes – "New Hearsay" - then it is admissible **if, and only if**, one of the four gateways of Art 64 is made out.

Gateway 1
If any provision of Part 8 of the PPCE (Jersey) Law 2003 (as amended) or any other statutory provision makes it admissible (Art 64(1)(a))

Cases where a witness is unavailable (Art 65)
 A statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated **IF** oral evidence by the maker about that matter would be admissible **AND** the person who made the statement is identified to the court's satisfaction **AND** the person who made the statement was competent at the time the statement was made **AND** one of the following conditions is satisfied:
 1) the relevant person is **dead**; or
 2) **unfit** to be a witness because of bodily or mental condition; or
 3) is **outside Jersey** and it is not reasonably practicable to secure their attendance; or
 4) **cannot be found**; or
 5) that through **fear** the relevant person does not give (or continue to give) oral evidence, and the court gives leave for the statement to be given in evidence.

Inconsistent statements (Art 67 & 67A)
 Where a person gives evidence then a **Previous Inconsistent Statement** or a **Previous Consistent Statement** by that witness can become evidence of the matters stated in them. Eg rebuttal of recent fabrication. (See further commentary on back)

Business & other documents (Art 66)
 A statement contained in a document is admissible as evidence of the matter stated **IF** oral evidence of that matter would be admissible **AND** the document was created or received by a person in the course of trade, business, profession or other occupation, or as the holder of a paid or unpaid office **AND** the person supplying the information had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with, **AND** each person through whom the information was supplied received it in the course of business etc.
 The court may direct that a statement is not admissible if it is satisfied that the reliability of it is doubtful in view of its contents; source of information; or the way in which or the circumstances in which the information was supplied or received or the document created or received.

Gateway 2
If any rule of law referred to in Art 64A makes it admissible (Art 64(1)(b))
 1) **Public information etc.** Published works dealing with matters of a public nature (dictionaries, maps etc); public documents (registers etc); and public documents/records (court records, public registers etc) are admissible as evidence of the matters stated. Evidence of a person's age, or date or place of birth may be given without personal knowledge of the matter;
 2) **Res Gestae.** A statement is admissible as evidence of the matter stated if the person was so emotionally overpowered by event that possibility of concoction or distortion can be disregarded **OR** the statement accompanied an act which can be properly evaluated only if considered in conjunction with the statement **OR** the statement relates to a physical sensation or mental state (such as intention or emotion).
 3) **Confessions.**
 4) **Admissions by agents.**
 5) **Common enterprise.** A statement made by a party to a common enterprise is admissible against another party as evidence of any matter stated.
 6) **Expert evidence.** Rules of law allowing an expert witness to draw on the body of expertise to their field.