

**Guide to Sexual Offences
(Jersey) Law, 2018.**

States 
of Jersey

Jersey has a new law that updates and clarifies the definition of a number of sexual offences and will provide protection for victims of any gender.

A conviction for certain sexual offences means an automatic requirement to register as a sex offender under the Sex Offenders (Jersey) Law, 2010 (see Point 11). These are the main changes:

1. Consent

The law says consent means free agreement.

Consent is not given if a person is:

- asleep
- unconscious
- incapable of consenting due to alcohol or any other substance
- lacks capacity to consent (under the Capacity and Self-Determination (Jersey) Law, 2016).

Free agreement is not given if:

- violence is used or threatened
- a person is being held captive unlawfully
- a person is being deceived about what they are consenting to
- a person is misled about who the other person is.

Consent has to be given to the specific act.

Consent cannot be given by someone else.

Consent can be taken back at any time before or during the act. If the act still takes place or continues; it does so without consent.

A child 15 years and younger cannot give consent.

2. Reasonable belief

If the accused can show that:

- they took steps to ensure consent was freely given
- they believed a person was old enough to give consent
- they believed there was no exploitation.

Then there can be a defence of “reasonable belief” for some offences.

3. Non-Consensual Offences

Rape and sexual penetration without consent:

- rape can now happen to anyone of any gender
- it is a specific offence committed by someone with a penis (including an artificially constructed penis)
- sexual penetration without consent can be committed by anyone of any gender on anyone else of any gender, either with parts of the body or with anything else.

Other non-consensual offences in the law are:

- sexual touching without consent
- causing a sexual act without consent.

4. Offences by adults against children

Young Children

Sexual offences by adults against children aged 12 or younger are strict liability offences.

This means the child's consent is irrelevant, as is any belief by the adult that the child was older.

The offences are:

- penile penetration, sexual penetration or sexual touching of a young child
- causing or inciting a sexual act with a young child.

Older Children

In sexual offences by adults against children aged 13, 14 or 15, the child's consent is still irrelevant, but there is a defence of "reasonable belief" (Point 2).

The offences are:

- unlawful sexual intercourse with, sexual penetration of/ or sexual touching of an older child
- causing or inciting a sexual act with an older child.



5. Other offences against children aged 15 or younger

The law also deals with underage sexual offences when both participants are children. It is accepted that there is a role for the criminal law in this area to protect against: abusive relationships with and between children; the risks of childhood pregnancy; and the transmission of sexually transmitted infections.

While the law does deal with unlawful sexual intercourse between children under 16, discretion will be exercised by authorities to avoid criminalising young people where it is not in the public interest.

Other offences are:

- an adult causing a child aged 15 or younger to watch a sexual act, or be present during a sexual act
- an adult sexually grooming a child aged 15 or younger
- a person (of any age) paying for a sexual service by a child
- a person (of any age) causing, inciting or controlling prostitution or pornography involving a child anywhere in the world.

6. Abuse of trust

The law deals with sexual offences against children aged 16 or 17, where an adult is abusing a position of trust.

Positions of trust are defined in the law, and include¹:

- the adult is regularly involved in caring for, teaching, training, supervising or being in sole charge of any children in premises. These premises being a children's home, a school, a nursing home, or any institution in which a child is detained (for example, a teacher in charge of pupils in one school is in a position of trust for all pupils in all schools in Jersey)
- the adult is regularly involved in caring for, teaching, training, supervising or being in sole charge of the child on an individual basis
- the adult regularly has unsupervised contact with a child due to the provision of public services required to safeguard the child
- the adult is a person engaged, on a professional or voluntary basis and not as a family member, either solely or with others, in coaching, motivating, guiding or training the child for a sport, hobby, career, or competitive event.

¹Part 6, Article 19 of the Sexual Offences (Jersey) Law, 2018

7. Prostitution

Prostitution is not of itself a criminal offence. The law does, however, criminalise certain activities associated with prostitution.

The law defines a prostitution service to mean a sexual act that is performed by a person for another in return for payment. It is drafted to ensure safety for those performing prostitution services by allowing up to two people to offer prostitution services from the same premises without committing an offence.

In order to tackle the issue of 'madams' and 'pimps' who might exploit prostitutes for personal gain, the law only allows a person to control or facilitate entry into premises used for prostitution where that person is one of the people offering the services.

Offences in relation to prostitution are:

- paying for a prostitution service performed by an exploited person (Exploitative conduct is defined as deception or coercion which may include violence or threats)
- offering or seeking a prostitution service in a road or public place.
- advertising prostitution services on (or in the immediate vicinity of) a building which can be accessed by children aged 15 and younger
- causing, inciting or controlling prostitution services, in the expectation of gain for anyone (anywhere in the world)
- controlling or facilitating entry to premises, knowing (or intending) that the person is entering to receive or perform a prostitution service
 - unless the person themselves is performing a prostitution service
 - unless that person is one of two people performing prostitution services
- letting premises for use for prostitution services, or failing to prevent that use.



8. Female genital mutilation (FGM)

Female genital mutilation (FGM) is now a standalone offence

Offences in relation to female genital mutilation:

- carrying out female genital mutilation
- assisting female genital mutilation
- failing to protect a child aged 15 or younger from risk of female genital mutilation
- the law identifies those regulated professionals who are required to report apparent female genital mutilation.

These include:

- teachers
- social Workers
- doctors
- midwives
- nurses
- a person registered to administer body piercing or tattooing².

Female genital mutilation protection order - The law also allows orders to be made by a court to protect people from female genital mutilation. An offence is committed if someone breaches such an order.

9. Miscellaneous Sexual Offences

Penetrative sex with a blood relative by people aged 16 or older

The law defines blood relative as a grandparent, aunt, uncle, parent, sister, brother, half-sister, half-brother, child, niece, nephew or grandchild; except where that relationship arises through marriage, a civil partnership, or adoption.

The offence is not extended to cover under 16-year olds, as offences against children are dealt with elsewhere in the law.

Exposure

The offence is exposure of the penis, scrotum or vagina with the intent to humiliate, alarm or distress anyone who may see it, or to obtain sexual gratification, without a reasonable belief that all of the persons who may see it have consented to seeing it.

²Part 8, Article 31 of the Sexual Offences (Jersey) Law, 2018. This list may be amended once 'regulated activities' has been defined under the Regulation of Care (Jersey) Law, 2014

Voyeurism

The law defines where a person can reasonably expect to be in private, and describes voyeurism as being for the purpose of obtaining sexual gratification, and without consent.

Offences in relation to voyeurism:

- a person observes another person doing a private act
- operates equipment or records an image without consent
- operates equipment, or records an image, under the clothing of another person
- constructs a structure, and installs equipment, in order to commit an offence.

Penetration of or by an animal

Administering a substance to stupefy or overpower a person for sexual purposes

Committing an offence with intent to commit a sexual offence

Sexual offences outside Jersey

A Jersey resident who commits an act outside Jersey that would be an offence under the new law, can be prosecuted in Jersey. The offence must also be an offence where the offence is committed if the offender is not a British National, but does not need to be if the person is a British National.

10. Miscellaneous provisions, repeals and amendments

Evidence as to sexual history

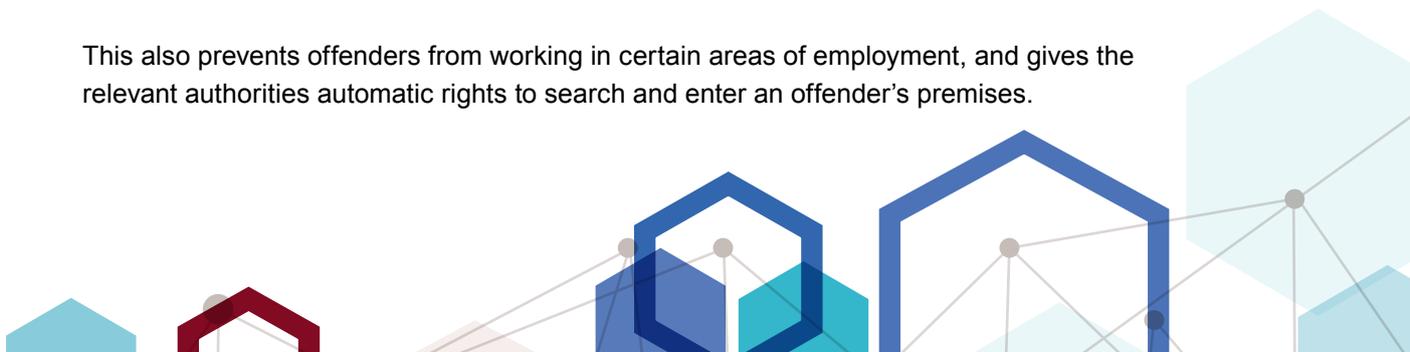
The court can stipulate what sexual history can be cited as evidence, and whether questions can be asked in cross-examination, in a trial for a sexual offence. The States has the power to set the considerations the court must consider, when determining whether to grant such leave.

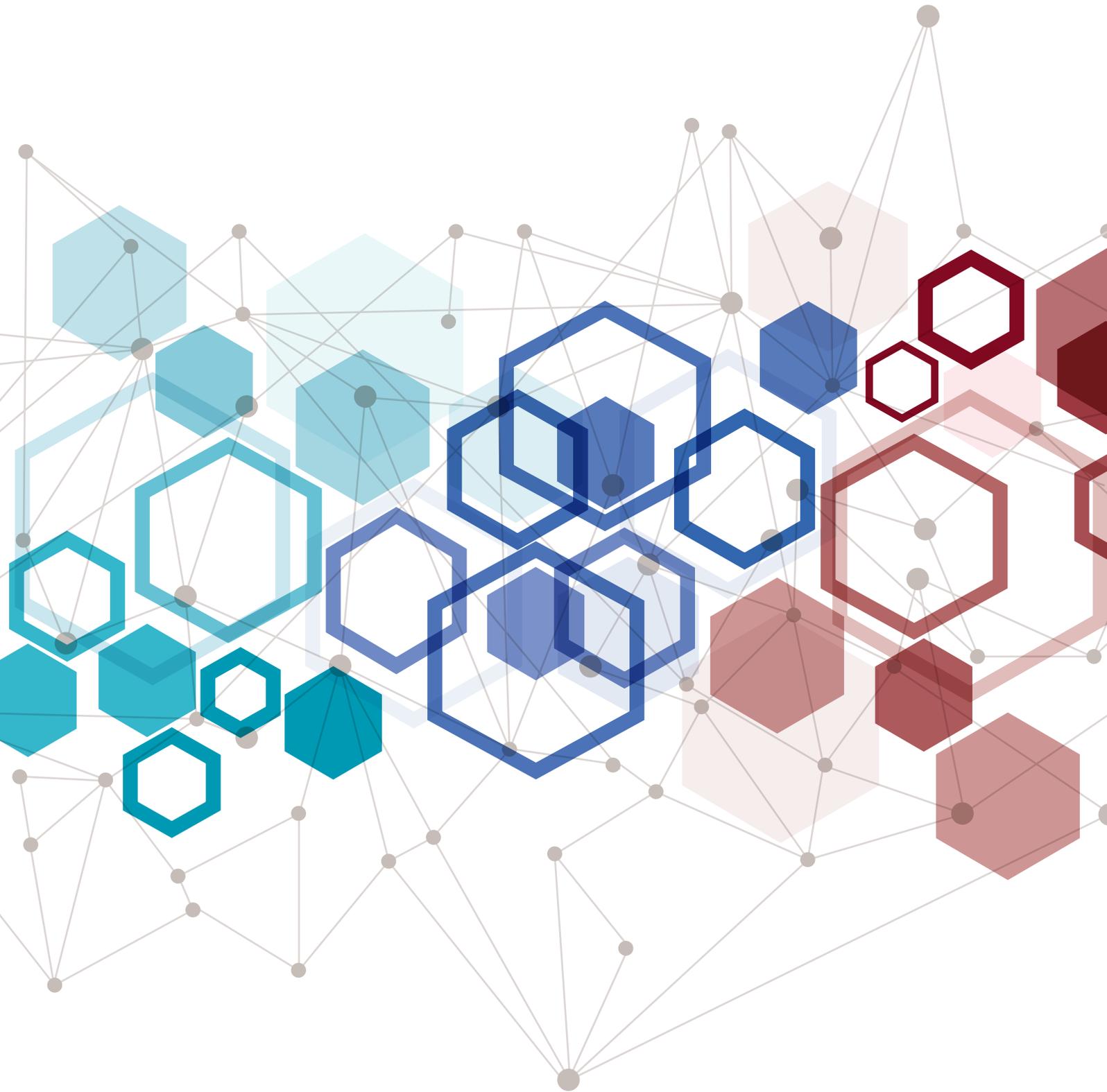
11. Consequences of being convicted of a sexual offence

Once convicted, in addition to any other sentence a Court may impose, the person will be required to register as a sex offender under the Sex Offenders (Jersey) Law, 2010. This means the relevant authorities will be able to keep track of the whereabouts of any sex offenders convicted of a relevant sexual offence.

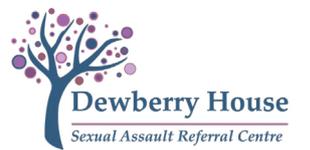
The normal period that a registered person remains on the register is 5 years and they must then apply to the Court to be removed.

This also prevents offenders from working in certain areas of employment, and gives the relevant authorities automatic rights to search and enter an offender's premises.





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