



Jersey

CRIMINAL PROCEDURE (JERSEY) LAW 201-

Report

Explanatory Note

CONSULTATION DRAFT



Jersey

CRIMINAL PROCEDURE (JERSEY) LAW 201-

Arrangement

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CONSULTATION DRAFT



Jersey

CRIMINAL PROCEDURE (JERSEY) LAW 201-

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

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION AND APPLICATION

1 Interpretation

(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 201-;

“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 the Island 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;

“court” means the Magistrate’s Court or the Royal Court;

“criminal proceedings” and “proceedings” means proceedings before the court for the determination of a case against a defendant;

“Criminal Procedure Rules Committee” shall be construed in accordance with Article 103;

“Criminal Procedure Rules” shall be construed in accordance with Article 104;

“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 who appears before the court charged with, or convicted of an offence;

“délégué” has the same meaning as in the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée;

“incapacity” shall be construed in accordance with Article 55 of the Mental Health Law;

“indictment” means the document referred to in Article 41(3) which formally specifies the offence with which a person is charged and sets out the particulars of the offence;

“jury list” shall be construed in accordance with Article 62;

“Magistrate’s Court” includes the Youth Court;

“Mental Health Law” means the Mental Health (Jersey) Law 2016;

“offence” means any *crime, délit* or *contravention*, and any other act or omission involving breach of a duty to which by law a sanction is attached, and includes any alleged offence;

“officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005;

“overriding objective” shall be construed in accordance with Article 2;

“panel list” shall be construed in accordance with Article 62;

“participant” and “party” in relation to criminal proceedings means the prosecution, defence and any such other person as the court may direct, or 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 105;

“prescribed” means prescribed by Criminal Procedure Rules;

“programme service” has the same meaning as in the Broadcasting Act;

“prosecution” means –

- (a) the Attorney General;
- (b) a prosecutor; or
- (c) except in relation to proceedings before the Royal Court, or where a reference is made to “prosecution” in Part 10, a Centenier;

“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;

“Solemn Affirmations Law” means the Solemn Affirmations (Jersey) Law 1963;

“summons” and “summoned” shall be construed in accordance with Article [19 or 62], as the case may be;

“trial” means a hearing to determine criminal proceedings and includes a hearing under Article 76;

“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;

(2) For the purposes of this Law, “prosecutor” means a person who is –

- (a) employed in the Law Officers’ Department and is –
 - (i) an advocate,
 - (ii) a solicitor, or
 - (iii) 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, and
authorized by the Attorney General to undertake criminal proceedings on his or her behalf; or
- (b) a Crown Advocate.
- (3) A reference in this Law to “functions” and “the discharge of functions” shall respectively be construed as if it were a reference to “powers or duties” and “the exercise of powers or duties”.
- (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 any provision of this Law requires –
 - (a) the Magistrate –
 - (i) to take a decision, or
 - (ii) do something in relation to a person,in proceedings before the Youth Court, any such provision shall be taken to have effect in accordance with the Schedule to the Young Offenders Law; or
 - (b) 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; or
 - (b) subject to any modifications made by this Law.

PART 2

THE OVERRIDING OBJECTIVE

2 The overriding objective of the Law

- (1) The overriding objective of this Law is to ensure that cases in criminal proceedings are dealt with justly.
- (2) In this Law a reference to the “overriding objective” is a reference to the objective as set out in paragraph (1).

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; and
 - (d) the needs of other cases.

4 Duties of the participants in criminal proceedings

- (1) A participant in the conduct of a case 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 proceeding 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) anyone involved in any way with a case in criminal proceedings is a participant in its conduct;
 - (b) relevant procedures are the procedures prescribed by this Law, Criminal Procedure Rules or practice directions; and
 - (c) 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 a rule of court;
- (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, without or if necessary with a direction; 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 defendant at the first available opportunity, and in any event no later than the beginning of the day of the first hearing;
 - (b) after that, 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 or rule;
 - (g) require that issues in the case should be –
 - (i) identified in writing,
 - (ii) determined separately, and decide in what order they will be determined; and
 - (h) 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 a costs order; 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 [*60 days*].
- (3) 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.

11 Regulations amending Part 3

The States may by Regulations amend this Part.

PART 4

ROLE OF THE ATTORNEY GENERAL

12 Criminal proceedings may only be brought by the Attorney General

Criminal proceedings may only be brought –

- (a) by or on behalf of the Attorney General; and
- (b) in the name 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 17; or
 - (c) the initiation of proceedings in the Royal Court under Article 14.
- (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 authorized prosecutor or Crown Advocate 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 functions

- (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 charged with an offence.
- (2) Subject to paragraphs (3) and (4), Article 41 applies for the purpose of initiating proceedings under paragraph (1).
- (3) The Bailiff may –
 - (a) order the arrest of a person who is subject to proceedings under paragraph (1) and for that person to be brought before the Royal Court to answer the indictment; or
 - (b) issue a summons directed to a person who is subject to proceedings under paragraph (1), requiring him or her to appear before the Royal Court to answer the indictment.
- (4) Unless the Bailiff grants the person bail under Article 75(2), an order under paragraph (3)(a) 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.
- (5) The Bailiff may only order a person's arrest or issue a summons under paragraph (3) if he or she is satisfied that there is sufficient evidence for the Attorney General to initiate criminal proceedings in respect of that person.
- (6) 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.
- (7) Schedule 1 provides for –

- (a) the Attorney General's and Court of Appeal's functions in relation to the quashing of a person's acquittal and subsequent retrial; and
- (b) connected procedures.

PART 5

FUNCTIONS AND JURISDICTION OF THE MAGISTRATE

15 Jurisdiction of Magistrate

The Magistrate sitting as judge in the Magistrate's Court may sit at any time and in any place and shall have the following powers –

- (a) subject to –
 - (i) the provisions of Parts 6 and 10, and
 - (ii) the imposition of the maximum penalties specified under Article 16,
to hear and determine all criminal proceedings, including proceedings to determine matters ancillary to such criminal proceedings; and
- (b) to determine whether to remand a defendant into custody or release him or her from the custody of the Magistrate's Court on, or without 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, provided that the aggregate of the terms so imposed, if the previous sentence was imposed by the Magistrate, shall not exceed the maximum term which the Magistrate is empowered by this Article to impose.
- (3) If a defendant is convicted of more than one offence, the aggregate of the fines imposed by the Magistrate in respect of those offences shall not exceed the maximum fine which the Magistrate is empowered by this Article to impose.
- (4) The States may, by Regulations, amend any of 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

In this Part –

“appellant” means a person who appeals to the Royal Court against his or conviction or sentence;

“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.

19 Summons

- (1) Any person who has committed or is suspected of having committed an offence 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.
- (2) Such summons shall contain a statement of the specific offence with which the person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.
- (3) The statement of the offence shall describe the offence shortly, 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, if the offence charged is one created under an enactment, it shall also contain a reference to the provision of the enactment creating the offence.
- (4) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be required.

20 Failure to comply with summons

- (1) If a person summoned 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 court.
- (3) Unless the Magistrate's Court grants the person bail under Article 75(2), a person arrested and detained under this Article, shall be brought before the court within 48 hours of his or her arrest.
- (4) Subject to the overriding objective, the Magistrate's Court 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 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) The Magistrate's Court may summarily convict a defendant guilty of an offence under this Article.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 12 months and to a fine.

22 Error in summons

- (1) No objection shall be made to a summons issued under Article 17 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 the Magistrate's Court is satisfied that –
 - (a) there is a variation between the summons and the evidence adduced; and
 - (b) the variation has misled the person summoned,the Magistrate's Court shall exercise its case management powers as it sees fit.

23 Proceedings by legally qualified prosecutor

In proceedings conducted by a prosecutor, the Magistrate shall perform only a judicial role.

24 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; 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.

25 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.

26 Magistrate's determination as to sentencing or trial venue

- (1) After a defendant has entered a plea, the Magistrate must, in accordance with this Article, decide whether the case should proceed for sentencing or trial, as the case may be, in the Magistrate's Court or the Royal Court.
- (2) If the defendant pleads guilty to committing an offence, the Magistrate's Court shall record the defendant as convicted of that offence.
- (3) Where a defendant pleads guilty to committing an offence but disputes the facts of the offence alleged by the prosecution, Article 76 shall apply.
- (4) If it appears to the Magistrate –
 - (a) that 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) that the imposition of a penalty under Article 16 is sufficient in respect of the offence, the Magistrate shall sentence the defendant accordingly, or

- (c) that notwithstanding sub-paragraph (b), it would be in the interests of justice to do so, the Magistrate shall send the defendant to the Royal Court for sentencing.
- (5) Before making a decision under paragraph (4), 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.
- (6) If the defendant pleads not guilty to committing an offence, the Magistrate shall, subject to paragraph (7), decide whether the case should proceed for trial in the Magistrate's Court or Royal Court.
- (7) Before making a decision under paragraph (6), 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 and the defendant's previous convictions, if any; and
- (c) have regard to the general principle that all offences should be tried in the Magistrate's Court unless, if the defendant were to be found guilty, the gravity of the offence would require the imposition of a penalty in excess of any penalty imposable under Article 16.
- (8) If the Magistrate decides that a case should proceed for trial in the Magistrate's Court, he or she shall adjourn the case and exercise such case management powers as are required.
- (9) If, following a decision by the Magistrate to proceed for trial in the Magistrate's Court, information emerges to show that 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 trial instead.
- (10) If, following the defendant's trial in the Magistrate's Court, the Magistrate finds the defendant guilty and it appears –
- (a) that 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) that the imposition of a penalty under Article 16 is sufficient in respect of the offence, the Magistrate shall sentence the defendant accordingly; or
- (c) that notwithstanding sub-paragraph (b), it would be in the interests of justice to do so, the Magistrate shall send the defendant to the Royal Court for sentencing.
- (11) Before making a decision as to sentence under paragraph (10), 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.
- (12) If the Magistrate decides to send a defendant to the Royal Court for sentencing or trial, 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.
- (13) The Magistrate shall, as soon as practicable after any direction is issued under paragraph (12), notify the Royal Court and Attorney General of it accordingly.
- (14) 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.
- (15) Where paragraph (14) applies the Magistrate shall direct the return of the defendant's case for sentencing or trial (as the case may be) in the Magistrate's Court.

27 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 which is not connected with another offence with which the defendant is charged.
- (2) The Magistrate may direct that any unconnected offences should be considered at the same hearing for the purposes of making a decision under Article 26(1).
- (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 require the imposition of a penalty 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 28, 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.

28 Magistrate's determination as to sentencing or trial venue - multiple defendants

- (1) This Article applies where the Magistrate is to make a decision under Article 26(1) in respect of more than one defendant charged with offences which appear to be connected.
- (2) The Magistrate shall consider whether the offences charged are sufficiently connected.
- (3) If the offences are considered to be sufficiently connected, and the Magistrate decides in accordance with Article 26 that the defendants should be sentenced or tried in respect of those connected offences the Magistrate shall exercise such case management powers as are appropriate so as to ensure, as far as is reasonably practicable, that the defendants are jointly sentenced or tried.
- (4) 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.
- (5) Where paragraph (4) applies, the Magistrate shall direct that the child or young person be 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 a sentence in excess of the Youth Court's sentencing jurisdiction; or
 - (b) it is in the interests of justice that the child or young person and the other defendant be 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.

29 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.

30 Proceedings in Royal Court remitted to Magistrate's Court

- (1) This Article applies where, under Article 45, 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.

31 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;
 - (b) pleaded not guilty –
 - (i) he or she may appeal against the conviction or sentence,
 - (ii) and was sent to the Royal Court for sentencing under Article 26(10)(a) or (c), he or she may appeal against the conviction.

32 Notice of appeal

- (1) An appeal under Article 31 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 or sentenced.
- (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.

33 Abandonment of appeal

- (1) An appellant may abandon an appeal under Article 31 by giving notice in writing to the Judicial Greffier, not later than the 3rd 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).

34 Procedure on appeals

- (1) The Royal Court may direct that witnesses shall be heard before it at the hearing of any appeal under Article 31 in relation to any matter or thing relevant to the appeal and may require the production of the transcript of the trial.
- (2) 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.
- (3) On any appeal under Article 31, the Royal Court may –
- (a) confirm, reverse or vary the decision of the Magistrate's Court;
 - (b) remit the matter with its opinion thereon to the Magistrate's Court;
 - (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.
- (4) Any order made under paragraph (3)(c) shall have the like effect and may be enforced in like manner as if it had been made by the Magistrate's Court.
- (5) The powers of the Royal Court under paragraph (3) shall be construed as including power to impose any penalty, whether more or less severe than that imposed by the Magistrate's Court, which that Court might have imposed.

- (6) On any appeal under Article 31 –
 - (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.

35 Statement of case by Magistrate

- (1) Subject to paragraph (2), any person who was a party to any proceeding before the Magistrate’s Court or 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 person 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 within 8 days after the day on which the decision of the Magistrate’s Court was given.
- (4) If a person has a right of appeal under Article 31 but makes an application under this Article, that person shall no longer have a right of appeal under Article 31.
- (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 person 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.

36 Bail on appeal or case stated

- (1) This Article applies where a defendant has given notice of appeal under Article 32 or has applied for the statement of a case under Article 35.
- (2) Where this Article applies, the Magistrate may grant the defendant bail.
- (3) The right of a defendant to be granted bail under Article 7(2) of the Bail Law does not apply in respect of bail grantable under this Article.
- (4) A defendant granted bail under this Article who subsequently wishes to abandon his or her appeal or application for the statement of a case, must

immediately surrender himself or herself to the custody of a police officer or the Viscount.

- (5) A defendant who, without reasonable excuse, fails to surrender himself or herself as required under paragraph (4) shall –
 - (a) be guilty of an offence and shall on conviction by the Royal Court be liable to imprisonment for a term of 3 months and to a fine of level 3 on the standard scale; and
 - (b) be required to pay the costs of the prosecution.
- (6) The Magistrate may order the arrest of a defendant who, without reasonable excuse, fails to surrender himself or herself as required under paragraph (4).
- (7) An order under paragraph (6) 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.
- (8) Article 75 shall not apply for the purposes of an order under paragraph (6).

37 Procedure on consideration of statement of a case

- (1) Where a case is stated under Article 35, 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 sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.
- (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.

38 Suspension of licences and custody of goods pending appeal

Where notice of appeal is given under Article 32 or an application for the statement of a case is made under Article 35 in respect of a decision which includes –

- (a) an order for the suspension or withdrawal of a licence or other permit, the Magistrate may, unless it be otherwise provided by the enactment under which the licence or permit was granted, direct that the order be suspended pending the disposal of the appeal or application;

- (b) an order for the confiscation of goods, the goods shall be so confiscated as prescribed, pending the disposal of the appeal or application.

39 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 prosecutor shall be enforced as a civil debt without further order of the Court.

PART 7

PROCEEDINGS IN THE ROYAL COURT

40 Application of Part 7

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

41 Commencement of proceedings

- (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 26(12)(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 not less than 7 days' notice of the hearing date.
- (3) In the case of 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,
the Attorney General must, in relation to that defendant, prepare an indictment in the prescribed form and sign and lodge it with the Judicial Greffier.
- (4) Where paragraph (3)(a) applies and subject to paragraph (5), the indictment must be lodged not less than 48 hours 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, and particulars relating to notification to the defendant about the time and date for his or her first appearance before the Royal Court, shall be prescribed.

42 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 first appearance, in accordance with any directions given under Article 26(12)(a) or 41(1)(b), or notification given under Article 41(7).
- (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 75(2), a defendant arrested and detained under this Article, shall be brought before the Royal Court within 48 hours of his or her arrest.
- (4) A defendant who, without reasonable excuse, fails to attend before the Royal Court for his or 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) The Royal Court may summarily convict a defendant guilty of an offence under this Article.
- (7) A defendant guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 12 months and to a fine.

43 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, the Judicial Greffier shall –
 - (a) identify the defendant charged with the offence;
 - (b) read out the contents of the indictment; and
 - (c) subject to paragraph (4), ask the defendant 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, the Judicial Greffier shall –
 - (a) identify the defendant charged with the offence; and
 - (b) read out the contents of the indictment.
- (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 76 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.

44 Power to amend indictment

- (1) Where, before sentencing or trial, or at any stage of a trial, it appears to the Royal Court that the indictment is 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 under paragraph (1) may –
 - (a) amend the particulars of the offence;
 - (b) substitute the offence; or
 - (c) add a new or an alternative offence,in or to the indictment.
- (3) Where an order is made under this Article, the Judicial Greffier must read out the particulars of the amended, substituted, additional or alternative offence, as the case may be, and ask the defendant to plead "guilty" or "not guilty" of committing an offence referred to in the indictment as amended.

45 Power to send case to the Magistrate's Court

- (1) The Royal Court may, if the circumstances of the case justify it, send 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 sending 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's Court 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 28(5)(b), should be jointly sentenced or tried, as the case may be, with another defendant who is not a child or young person.

46 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 a *crime* or *délit* 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 must be a *crime* or *délit* and the other a *contravention*.
- (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 a *contravention* shall be tried by the Inferior Number of the Royal Court sitting without a jury.

47 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 64.
- (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.

48 Sentencing where facts in dispute

- (1) This Article applies where a defendant found guilty is to be sentenced, and the defence or prosecution dispute the facts upon which the defendant was found guilty.
- (2) Where this Article applies, the trial court may, at the invitation of the defence or prosecution, communicate its view of the facts to the sentencing court.
- (3) 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.

49 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***50 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.

51 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.

52 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.

53 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 defence 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 55 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.

54 Orders before preparatory hearing

- (1) This Article applies where the Bailiff orders a preparatory hearing and the Bailiff decides that any order which could be made under Article 53(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 53(4) to (11) shall apply accordingly.

*Later stages***55 Later stages of trial**

- (1) Any party may depart from the case he or she disclosed in pursuance of a requirement imposed under Article 53.
- (2) Where a party departs from the case he or she disclosed in pursuance of a requirement imposed under Article 53 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 53(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 53, may be disclosed at a later stage in the trial without the consent of the defendant concerned.

56 Appeals to Court of Appeal

- (1) An appeal shall lie to the Court of Appeal from any ruling of the Bailiff under Article 53(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***57 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 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 this is subject to Article 52.

58 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

59 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 53;
 - (b) proceedings on an application for a ruling to be made under Article 53;
 - (c) an order that a ruling made under Article 53 be discharged or varied;

- (d) proceedings on an application for a ruling made under Article 53 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 56(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 56(1) in relation to a preparatory hearing or an application to that Court for leave to appeal to it under Article 56(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);
 - (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;
 - (c) the inclusion in a relevant programme of a report of a preparatory hearing or any matter falling within paragraph (3); or
 - (d) the inclusion in a relevant programme 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.

60 Offences in connection with reporting preparatory hearings or rulings

- (1) If a report is included in a publication or relevant programme in contravention of Article 59, 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

61 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 or Deputy Judicial Greffier;
 - (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 who, in the 12 months immediately before being summoned for jury service, has participated in any criminal proceedings; or
 - (j) an officer of the Bailiff's Department or Law Officers Department (within the meaning of Article 1 of the Departments of the Judiciary and the Legislature (Jersey) Law 1965) appointed to ensure the service of those Departments.
- (3) A person is disqualified for jury service if he or she –
- (a) is for the time being liable to be detained under the Mental Health Law;
 - (b) is for the time being 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 not less than one month;
 - (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 an order of the Court with a condition imposed under Article 3 of the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée ("Law of 1937"), or
 - (C) been subject to an order imposed under Article 2 of the Criminal Justice (Community Service Orders) (Jersey) Law 2001; or
 - (ii) outside Jersey, of any offence equivalent to a *crime*, *délit* or *contravention* 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 Law of 1937 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).

62 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 specified, to enable the compilation of the jury list;
 - (c) for the Viscount, upon notification by the Judicial Greffier in such manner as may be specified, to prepare a list of persons (“panel list”) who may be called upon to serve a 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.
- (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, not less than 2 days before the day on which the person’s attendance for jury service is first required.

63 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 61 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.

64 Selection of persons for jury service

- (1) A jury shall, in accordance with this Article, be constituted of 12 persons.
- (2) Except as provided under paragraph (3), on the day upon which a person has been summoned to attend for jury service, the names of not less than 14 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.
- (3) The name of any person appearing on the panel list –
 - (a) who has, since the compilation of that list, been exempted from jury service under Article 63; or
 - (b) who, it appears to the Bailiff, it would be in the interests of justice not to identify,shall not be read out.
- (4) Subject to Article 65 or 66, once 12 persons have been selected to serve as jurors, the names of 2 further persons shall, subject to paragraph (3), be read from the list in the order in which their names appear on the list.
- (5) The 2 further persons referred to in paragraph (4) shall, subject to Article 65 or 66, be the jury's reserve jurors.
- (6) A reserve juror may be called to serve on the jury if, before the commencement of the Bailiff's summing up of the case, the number of jurors is reduced.

65 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; a husband and a wife; 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.

66 Non-selection of person for jury service by reason of successful challenge

- (1) The defence and 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, either by reason of risk of material prejudice or by reason of manifest unsuitability or, otherwise, in the interests of justice.

- (3) The fact that a person summoned to serve on a jury is not qualified, 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 62(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 64.
- (6) A reserve juror shall be discharged from jury service if he or she is not required to serve before the commencement of the Bailiff's summing up of the case.

67 Swearing of jurors

- (1) Each juror and reserve juror selected under Article 64 –
 - (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.

68 Reduction in number of jurors

- (1) If during the trial a member of the jury dies, becomes ill or is otherwise indisposed preventing him or her from continuing as a juror, or is discharged by the Court for any other legitimate reason, but 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.
- (2) If, in the circumstances described in paragraph (1) 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.
- (3) Where paragraph (2) applies, the prosecution may apply to the Royal Court for a retrial of the proceeding against the defendant.
- (4) Where paragraph (3) applies, the Bailiff shall adjourn the proceedings pending an application for a retrial and may remand the defendant in custody or on bail.

69 Conduct of jury

- (1) Except where paragraph (2) applies –
 - (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, from the time when they are sworn, until the time they give their verdict and the Viscount shall ensure that the jury does not otherwise communicate with any other person outside the jury room.
- (2) 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.
- (3) At the conclusion of the trial the jurors, escorted by the Viscount, shall retire to the jury room to consider their verdict.
- (4) The jurors shall select from one of their number a juror who shall chair the jury's deliberations and deliver the jury's verdict.
- (5) Exhibits or other material relevant to the trial, may be made available to the jury in such manner as may be prescribed.
- (6) The costs incurred by placing the jury in the custody of the Viscount shall be paid out of the annual income of the States.

70 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 a communications device in accordance with an order under this Article.

- (6) A member of the jury found in contempt of court under this Article is liable to a fine and imprisonment.

71 Verdicts

- (1) If a trial cannot be completed on the same day, it 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) When the jury is ready to deliver its verdict, the Judicial Greffier must ask the juror selected under Article 69(4) –
- (a) whether the defendant is guilty or not guilty of the offence (or each offence, if more than one) charged in the indictment;
 - (b) in the case of a guilty verdict, whether that verdict is in respect of a lesser offence than one charged in the indictment;
 - (c) whether the jury's verdict in respect of the offence (or each offence) was agreed unanimously or by a majority; and
 - (d) in the case of a majority verdict, how many jurors were in favour of acquitting and how many jurors were in favour of convicting 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 the jury from the proceedings and from the custody of the Viscount.
- (9) Where paragraph (8) applies, the Attorney General shall, not more than 7 days after the day the jury is discharged, notify the Court whether or not there is to be a retrial of the proceedings against the defendant.
- (10) In determining when the 7 day expires, there shall be disregarded Christmas Day, Good Friday and any Bank Holiday.

- (11) The Bailiff shall adjourn the case pending receipt of the Attorney General's notification, and may remand the defendant in custody or on bail.
- (12) No judgment after the verdict shall be 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.

72 Procedure where no retrial

- (1) Where notification is given under Article 71(9) that there is to be no retrial of the proceeding against the defendant, the Bailiff shall, for the purposes of formally discharging the defendant from the proceedings, adjourn the case –
 - (a) if the defendant is in custody, to the next working day; or
 - (b) if the defendant has been released on bail, to the next practicable sitting date,following receipt of the Attorney-General's notification.
- (2) The Bailiff may, for the period of the adjournment under paragraph (1), remand the defendant in custody or on bail.
- (3) 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.

73 Offences

Schedule 3 gives effect to offences under this Part.

PART 10

MISCELLANEOUS PROCEDURES IN MAGISTRATE'S COURT AND ROYAL COURT

Application

74 Application and general interpretation of Part 10

- (1) This Part applies to criminal proceedings before the Magistrate's Court and the Royal Court.
- (2) Where there is more than one defendant in any proceedings, this Part applies separately in relation to each of the defendants.
- (3) References to material are to material of all kinds, and in particular include references to –
 - (a) information; and
 - (b) objects of all descriptions.

- (4) In this Part –
- “complainant” means the person against whom an offence is alleged to have been committed;
- “defence case statement” shall be construed in accordance with Article 81;
- “officer of the Force” has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003;
- “spouse” means husband or wife;
- “witness summons” shall be construed in accordance with Article 86.

Arrest order with bail

75 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 provide 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, 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, shall be guilty of an offence and Article 20 of the Bail Law shall apply for the purposes of that offence.

*Hearing to determine facts disputed***76 Guilty plea - hearing 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, 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 under this Article shall be made before the Inferior Number.

*Discontinuance or withdrawal***77 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) The proceedings in respect of the specified offence shall be discontinued with effect from the giving of that notice and, subject to paragraph (6), the Magistrate's Court Greffier or Judicial Greffier, as the case may be, shall make a record to that effect.
- (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) where the proceedings are in the Magistrate's Court, 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 Greffier with a notice to that effect not more than 35 days after the notice given under paragraph (2).
- (6) If the defendant serves a notice under paragraph (5) –
- (a) the Magistrate's Court Greffier must notify the Attorney General or authorized prosecutor, as the case may be, and refer the case to the Magistrate; and
 - (b) the proceedings shall continue as if no notice had been given under paragraph (2).
- (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 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.

78 Withdrawal of proceedings or continuation of previous proceedings

The Attorney General may, at any time, with leave of the court –

- (a) withdraw proceeding against a defendant;
- (b) re-initiate previously withdrawn proceedings; or
- (c) continue previous proceedings against a defendant which the court ordered to be left dormant.

Disclosure

79 Duty of prosecutor to disclose

- (1) The prosecutor must –

- (a) disclose to the defendant any 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 prosecution material of a description mentioned subparagraph (a) has been disclosed to the defendant, or
 - (ii) that the prosecution holds no material of such a description.
- (2) In paragraph (1)(a), “prosecution material” is material which is in the prosecutor's possession, and came into his or her possession in connection with the case for the prosecution against the defendant.
- (3) The prosecutor must disclose any 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.
- (4) The prosecutor shall be under a continuing duty to disclose any 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 where the proceedings have been discontinued.

80 Defence disclosure

- (1) Where –
 - (a) the prosecutor 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 prosecution material has been disclosed in accordance with Article 79(3),the defendant must, subject to paragraph (3), give a defence case statement to the court and the prosecutor.
- (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 81; and
 - (d) be served in accordance with any directions given by the court.
- (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 83(2), he or she shall warn the defendant accordingly.

- (5) If it appears to the Magistrate or Bailiff that the defendant has failed serve his or her defence case statement in accordance with any directions given under paragraph (2)(c), the Magistrate or Bailiff (as the case may be) may order that –
 - (a) the defendant's legal representatives; or
 - (b) a defendant in person, if he or she is required to give a defence case statement,pay such of the prosecution's costs as have been incurred as at the date of the failure to comply with the court's directions.
- (6) A determination under paragraph (5) shall be made as soon as practicable after the date of the failure to comply with the court's directions.

81 Defence case statement

- (1) A defence case statement is a written statement which –
 - (a) sets out the nature of the defendant's defence, including any particular defences on which he or she 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);
 - (b) any information in the defendant's possession which might be of material assistance in identifying or finding any such witness.
- (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) A defence case statement may be amended in such manner as may be prescribed.

[82 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) as witnesses at his or her trial and, if so –*
- (a) *giving 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;*
 - (b) *providing 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 details mentioned in paragraph (a) are not known to the defendant when the notice is given.*
- (2) *Details do not have to be given under this Article to the extent that they have already been given under Article 81(2).*
- (3) *The defendant must give a notice under this Article within such period as may be prescribed.*
- (4) *If, following the giving of a notice under this Article, the defendant –*
- (a) *decides to call a person (other than himself or herself) who is not included in the 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 notice to the court and the prosecution.]*

83 Non-compliant defence case statement

- (1) This Article applies where a defendant –
- (a) fails to give a defence case statement as required by Article 80(1);
 - (b) fails to serve a defence case statement in accordance with directions given under Article 80(2)(c);
 - (c) fails to serve a defence case statement containing the particulars required under Article 81;
 - (d) sets out inconsistent defences in the defence case statement; or
 - (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 81(2)(a) or (b) as regards the witness in his or her defence case statement.
- (2) Where this Article applies –
 - (a) the court or any other party may make such comment as appears appropriate;
 - (b) the Magistrate 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) Where the defendant puts forward a defence which is different from any defence set out in his or her defence case statement, in doing or in deciding whether to do anything under paragraph (2), 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.
- [(4) *Where the defendant calls a witness whom he or she has failed to include, or to identify adequately, in a witness notice under Article 82, in doing anything under paragraph (2) or in deciding whether to do anything under it the court shall have regard to whether there is any justification for the failure.*]
- (5) A defendant shall not be convicted of an offence solely on an inference drawn under paragraph (2)(b).

Witnesses

84 Compellability and competence of witnesses

- (1) A defendant is competent to give evidence in support of his or her defence, provided he or she agrees to do so.
- (2) Subject to the provisions of this Article –
 - (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,
 are competent and compellable to give evidence as witnesses on behalf of the prosecution or defence.
- (3) The spouse or civil partner of a defendant is competent to give evidence –
 - (a) subject to paragraph (6), on behalf of the prosecution; and
 - (b) on behalf of the defence or any other defendant charged in the same proceedings.
- (4) Subject to paragraph (6), the spouse or civil partner of a defendant is compellable to give evidence on behalf of the defence.
- (5) Subject to paragraph (6), 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 involves –

- (a) an assault (including an assault of a sexual nature) on, or an injury done to, or threat of the same made towards, either –
 - (i) the spouse or civil partner of the defendant, or
 - (ii) a person who was, at the time the assault was committed, under the age of 18; or
 - (b) an attempt or a conspiracy to commit, or encouraging, assisting, inciting, counselling or procuring an offence described in subparagraph (a).
- (6) Where a spouse or civil partner of a defendant is jointly charged with the defendant in respect of an offence, neither the spouse or civil partner (as the case may be) shall at the trial be competent or compellable by virtue of paragraph (3)(a), (4) or (5) 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 at the trial as a result of pleading guilty or for any other reason.
- (7) A person who has been but who is no longer married to the defendant, or who has been but is no longer the civil partner of the defendant, shall be competent and compellable to give evidence as if that person and the defendant had never been married, or had never been in a civil partnership.
- (8) Where the age of a person at any time is material for the purposes of paragraph (5), 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.
- (9) For the purposes of paragraph (5)(b), an offence of a sexual nature includes any indecent assault or act offending against public decency whether the offence is a *crime*, *délit* or *contravention* and, for the avoidance of doubt, includes any offence under the Protection of Children (Jersey) Law 1994.
- (10) The failure of the defendant, or spouse or of the civil partner of the defendant, to give evidence shall not be made the subject of any adverse comment by the prosecution.

85 Requirement to give evidence under oath or solemn affirmation

A person who is at least 14 years of age shall give his or her evidence under oath or under the appropriate form of solemn affirmation set out in the Schedule to the Solemn Affirmations Law.

Witness summons

86 Issue of witness summons on application to the court

- (1) This Article applies where the court is satisfied that –

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- (a) a person is likely to be able to give evidence likely to be material evidence, or 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 a 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) In such a case the court shall, subject to the following provisions of this Article, issue a summons (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 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) Except where an 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,the court may dispense with the requirement for a written application for a witness summons.
 - (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 any ground 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 any ground referred to in paragraph (1)(a);
 - (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, and
 - (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.
- (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 Force or a person authorized in writing by the Force.
- (11) Criminal Procedure Rules shall make provision as to the form, content, notice period and service of any notice given under this Article.

87 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 and liable to imprisonment and to a fine.
- (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 in case of vulnerable or intimidated witness

88 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 89 –
 - (a) “special measures” 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;
 - (b) Subject to paragraph (3), an “eligible witness” means a person who at the time of the trial –

- (i) is under the age of 18, or
- (ii) is not less than the age of 18 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 outside Jersey, 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 89 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.

89 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 88 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 or measures 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 88, 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 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.

Protection of witnesses from cross-examination by unrepresented defendant

90 Defendant charged with certain offences - prohibition of cross-examination by defendant in person

- (1) No defendant charged with an offence to which this Article applies may in any criminal proceedings 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.
- (2) 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 connexion),
 - (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; 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.
- (3) The States may, by Regulations, amend this Article for the purposes of amending the offences listed in paragraph (2).

91 Order prohibiting defendant from cross-examining particular witness

- (1) This Article applies in a case where Article 90 does not operate so as to prevent a defendant in any criminal proceedings from cross-examining a witness in person.
- (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) 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 give such a direction,
- the court may make an order prohibiting the defendant from cross-examining (or further cross-examining) the witness in person.
- (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 90 applies, and (if so) whether Article 90 operates or would have operated to prevent that person from cross-examining the witness in person;
 - (f) any order under Article 89 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 an 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 88(4).

Cross-examination on behalf of the defendant

92 Defendant’s representative for purposes of cross-examination

- (1) This Article applies where a defendant is prevented from cross-examining a witness in person by virtue of Article 90 or 91.
- (2) Where it appears to the court that this Article applies, it must –
 - (a) invite the defendant to arrange for a legal representative 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 a legal representative is to act for him or her for that purpose.
- (3) If by the end of the period mentioned in paragraph (2)(b) either –
 - (a) the defendant has notified the court that no legal representative 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 legal representative 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 a legal representative appointed to represent the interests of the defendant.
- (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 93, any reference to cross-examination includes (in a case where an order is made under Article 91 after the defendant has begun cross-examining the witness) a reference to further cross-examination.

93 Warning to Jury

Where, on a trial with a jury, a defendant is prevented from cross-examining a witness in person by virtue of Article 90 or 91, the Bailiff must give the jury such warning (if any) 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 in person;
- (b) where the witness has been cross-examined by a legal representative appointed under Article 92(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

94 Intimidation, etc. of witnesses, jurors and others

- (1) A person commits an offence if –
- (a) he or she does an act which intimidates, and is intended to intimidate, another person (“the victim”);
- (b) he or she does the act 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 proceedings for an offence; and
- (c) he or she does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.
- (2) A person 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 threatens to do an act which would harm that other person;
- (b) he or she does or threatens to do the 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 proceedings for an offence, or
- (iii) acted as a juror or concurred in a particular verdict in proceedings for an offence; and

- (c) he or she does or threatens to do the 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 or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.
- (5) The intention required by paragraph (1)(c) and the motive required by paragraph (2)(c) need not be the only or the predominating 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 a person 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), he or she 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) A person 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” includes a suspected offence;
- “potential”, in relation to a juror, means a person who has been summoned for jury service under Article 62;
- “relevant period” –
- (a) in relation to a witness or juror in any proceedings for an offence, means the period beginning with the institution of the proceedings and ending with the first anniversary of the conclusion of the trial or, if there is an appeal, of the conclusion of the appeal;

- (b) in relation to a person who has, or is believed by the defendant to have, assisted in an investigation into an offence, but was not also a witness in proceedings for an offence, means the period of one year beginning with any act of that person, or any act believed by the defendant 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 defendant to have, assisted in the investigation into an offence and was a witness in proceedings for the offence, means the period beginning with any act of that person, or any act believed by the defendant 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) proceedings for an offence are instituted at the earliest of the following times –
 - (i) when a person is charged with the offence,
 - (ii) when a summons is issued under Article 19, or
 - (iii) when a person is indicted by the Attorney General to appear before the Royal Court by virtue of Article 41(3)(b);
 - (b) proceedings at a trial of an offence are concluded with the occurrence of any of the following –
 - (i) the discontinuance of the proceedings under Article 77,
 - (ii) the discharge of the jury without a verdict under Article 71(10),
 - (iii) the acquittal of the defendant or the sentencing of or other dealing with the defendant for the offence of which he or she was convicted; and
 - (c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.
- (11) This Article is in addition to, and not in derogation of, any offence subsisting under customary law.

Requirement of witnesses to attend court

95 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 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 2 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.

96 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's evidence and, in such case, the normal practice and procedure of the court shall be followed.

*Attendance of defendant before a court***97 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.

98 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 on bail is otherwise required to be present at court throughout his or her trial and has the right to be legally represented.
- (2) If a defendant –
 - (a) chooses not to exercise his or 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; or
 - (b) fails to instruct his or her legal representatives adequately so as to enable them to represent the defendant,the court may, subject to paragraph (3), proceed to try the defendant in his or her absence.
- (3) So as to ensure that a trial in the absence of a defendant is as fair as circumstances permit and will lead to a just outcome, 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 taking account of the inconvenience and hardship –
 - (i) to witnesses and especially to any complainant, of a delay,
 - (ii) to witnesses who have attended court and are ready to give evidence,

that will weigh in favour of continuing the trial;

- (d) the effect of any delay;
- (e) whether the attendance of the defendant could be secured at a later hearing;
- (f) the likely outcome if the defendant is found guilty,

as well as any other factors which, subject to paragraph (4), also appear to the court to be relevant.

- (4) The seriousness of the offence with which the defendant is charged is not a relevant factor for the purposes of paragraph (3).
- (5) 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

99 Contemporary reports of criminal proceedings

- (1) In any criminal proceedings, a 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 inclusion of a written report –
 - (a) in a publication in Jersey; or
 - (b) in a relevant programme for reception 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 –
 - (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.
- (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 of level 3 on the standard scale –

- (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.

PART 11

WASTED COSTS IN CRIMINAL PROCEEDINGS

100 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, 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.

101 Wasted costs against defence or prosecution

- (1) In criminal proceedings, the court may disallow, or (as the case may be) order the defence (whether legally aided or privately funded), or prosecution (as the case may be) to meet, the whole of any wasted costs or such part of them as may be determined in accordance with such Regulations as the States may make.
- (2) Regulations under this Article shall provide that the defence or prosecution against whom action is taken by –
 - (a) the Magistrate under paragraph (1) may appeal to the Royal Court; or
 - (b) the Royal Court under paragraph (1) may appeal to the Court of Appeal.
- (3) In this Article –

“defence”, in relation to criminal proceedings, means a person who is representing the defendant or the defendant in person; and

“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, a person employed by the defence or the 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.

102 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 12**ESTABLISHMENT AND FUNCTIONS OF THE CRIMINAL PROCEDURE
RULES COMMITTEE****103 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;
 - (h) a person nominated by the Chief Minister who appears to represent *[organizations (not established by the States)] [non-profit organizations within the meaning of the Non-Profit Organizations (Jersey) Law 2008]* with a direct interest in the work of the courts in criminal proceedings; and
 - (i) a senior officer nominated by the Chief Minister who is in an administration of the States for which the Chief Minister is assigned responsibility.
- (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 6 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 6 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) shall be treated as an enactment to which the Subordinate Legislation (Jersey) Law 1960 applies.

104 Criminal Procedure Rules

- (1) Criminal Procedure Rules may be made by the Criminal Procedure Rules Committee –
- (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 regulating the means of service of any application, summons, order, notice, order for the arrest of a person or other instrument or document, issued under this Law or under Criminal Procedure Rules;
 - (d) for prescribing forms to be used for the purposes of this Law;
 - (e) for regulating any matters relating to the costs of proceedings before the court;
 - (f) 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;
 - (g) 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.

105 Practice directions

- (1) The Bailiff or Magistrate may, from time to time, issue directions as to the practice and 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 13

MISCELLANEOUS AND CLOSING PROVISIONS

106 Regulations

- (1) The States may by Regulations make such transitional provision as appears to the States to be necessary or expedient for the purposes of bringing this Law into force.
- (2) The States may by Regulations amend any enactment including this Law for the purpose of making such consequential, incidental, supplementary, transitory or saving provisions as they consider necessary or expedient in respect of any provision made by or under this Law.

- (3) The power to make Regulations under this Law (apart from paragraph (2)) includes the power to make any consequential, incidental, supplementary, transitional, transitory or saving provision which appear to the States to be necessary or expedient for the purposes of the Regulations.

[107 Transitional provisions]

108 Miscellaneous enactments amended

Schedule 4 has effect to amend enactments consequentially upon the enactment of this Law.

109 Police Procedures and Criminal Evidence (Jersey) Law 2003 amended

Schedule 5 has effect to amend the Police Procedures and Criminal Evidence (Jersey) Law 2003.

110 Enactments repealed

The enactments listed in Schedule 6 are repealed.

111 Citation and commencement

This Law may be cited as the Criminal Procedure (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

SCHEDULE 1

(Article 14(8))

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; or
 - (c) on 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 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 may, 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;
 - (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 of an application under paragraph 3(1) or (2) to the Court of Appeal.
- (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 necessary or 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 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.

11 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 retried 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 as mentioned in Article 65(2) of the 2003 Law, and Article 65(1)(d) of that Law applies.

12 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 (Jersey or elsewhere) of the qualifying offence.
- (2) Subject to paragraph 13, 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 on a written application, and such an application may be made only by an officer who is of the rank of chief inspector.
- (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.

13 Urgent investigative steps

- (1) Paragraph 12 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 authorised 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 12(2);
 - (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 may authorise 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 authorisation 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 authorisation under sub-paragraph (3);
 - (b) that authorisation has not been refused; and
 - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorisation 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.

14 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 11.
- (3) Nothing in this paragraph is to be taken as affecting the generality of any enactment conferring power to make rules of court.

SCHEDULE 2

(Article X)

SCHEDULE 3

(Article 73)

OFFENCES UNDER PART 9

1 Offence under Article 63

A person who, with the intention of obtaining an exemption under Article 63, makes a false declaration or representation in a written application under Article 63(1), is guilty of an offence and liable to a fine.

2 Offences of failing to attend or serve as a juror

- (1) A person who, without reasonable excuse –
 - (a) fails to attend for jury service when summoned under Article 62(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,is guilty of an offence and liable to a fine.
- (2) It shall be for the person to prove that he or she had a reasonable excuse under paragraph (1).

3 Offence under Article 69

A juror who communicates with another person in contravention of Article 69(1)(b), is guilty of an offence and liable to a fine.

4 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, he or she 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.

CONSULTATION DRAFT

SCHEDULE 4

(Article 107)

ENACTMENTS CONSEQUENTIALLY AMENDED**1 Loi (1908) au sujet des témoins et informateurs amended**

In the Loi (1908) au sujet des témoins et informateurs –

- (a) in the long title the words “, Criminelles” are deleted;
- (b) in the preamble the words “, criminelles” are deleted;
- (c) Article 2 is deleted;
- (d) in Article 3 the words “, criminelles” are deleted;
- (e) in Article 4 the words “, criminelle” are deleted;
- (f) in Article 5 the words “, criminelles” are deleted;
- (g) in Article 7 the words “Toute autre cause en ajonction et toute action pour la protection des revenus des Impôts sera censée cause criminelle aux fins de la présente Loi.” are deleted;
- (h) in Article 8 the for the words “civiles et à toute poursuite criminelle soit pour crime, délit ou contravention” there are substituted the words “soit civiles ou mixtes”.

2 Royal Court (Jersey) Law 1948 amended

In the Royal Court (Jersey) Law 1948 –

- (a) Article 10(10) is deleted;
- (b) in Article 13 –
 - (i) paragraph (1), immediately before the words commencing “Rules of Court” there are substituted the words “For the purposes of all civil causes and matters,”;
 - (ii) in paragraph (1)(a) the words “in all causes and matters whatsoever in or with respect to which the Court has for the time being jurisdiction” are deleted;
 - (iii) in paragraph (2), for the words “all proceedings” there are substituted the words “all civil proceedings”;
- (c) in Article 15 –
 - (i) in paragraph (1), for the words “In all causes” there are substituted the words “Except as provided in paragraph (1AA), in all causes”;
 - (ii) after paragraph (1) there is inserted the following paragraph –

“(1AA) Where Article 15A(2) applies, the Bailiff shall also be a judge of fact.”;
 - (iii) after Article 15 there is inserted the following Article –

“15A Quorum of the Inferior number

- (1) Subject to paragraph (2), the Inferior Number of the Royal Court shall be composed only of the Bailiff and 2 Jurats.
- (2) If, in a criminal cause one of the Jurats dies or is otherwise indisposed, for the purposes of hearing and determining that particular cause, the Inferior Number of the Royal Court shall be composed only of the Bailiff and one Jurat.”;
- (d) in Article 16(2)(a), for the words “Article 7 of the Loi (1864) réglant la procédure criminelle” there are substituted the words “Article 43 of the Criminal Procedure (Jersey) Law 201-”.

3 Court of Appeal (Jersey) Law 1961 amended

In the Court of Appeal (Jersey) Law 1961 –

- (a) in Article 1, after the words “by this Law” there are inserted the words “or the Criminal Procedure (Jersey) Law 201-”;
- (b) after Article 1 there is inserted the following Article –

“1A Interpretation of Part 1

In this Part, “quashing application” means an application under paragraph 3(1) or (2) of Schedule 1 to the Criminal Procedure (Jersey) Law 201-”.

- (c) in Article 8 –
 - (i) in paragraph (1), for the words “any appeal or reference to the Court of Appeal and any proceedings preliminary or incidental to such an appeal or reference” there are substituted the words “any appeal, quashing application or reference to the Court of Appeal and any proceedings preliminary or incidental to such an appeal, quashing application or reference”;
 - (ii) in the proviso to paragraph (1), for the words “such appeal or proceedings” there are substituted the words “such appeal, quashing application, reference or preliminary proceedings”;
 - (iii) in paragraph (2), for the words “any such appeals, references” there are substituted the words “any such appeals, quashing applications, references”;
 - (iv) for paragraph (3) there is substituted the following paragraph –

“(3) Subject as provided by rules of court, it shall be lawful for a party to an appeal under Part 2 or quashing application, or for an appellant under Part 3, notwithstanding the foregoing provisions of this Article, to address the Court of Appeal or any single judge thereof both on the hearing of the appeal or quashing application and in any proceedings preliminary or incidental to the appeal or quashing application, and to do in any such office or to transact with any such officer as is mentioned in paragraph (2) any act or thing required or necessary to be done in connection with any such appeal, quashing application or proceedings.”;

- (d) in Article 9(1B)(a) and (b), for the words “appeal or reference” there are substituted the words “appeal, quashing application or reference”;
- (e) in Article 25(2), for the words “or Article 8(2) or (4) of the Criminal Justice (Community Service Orders) (Jersey) Law 2001” there are substituted the words “, Article 8(2) or (4) of the Criminal Justice (Community Service Orders) (Jersey) Law 2001 [*or Article X*] of the Criminal Procedure (Jersey) Law 201-”.

4 Costs in Criminal Cases (Jersey) Law 1961 amended

In the Costs in Criminal Cases (Jersey) Law 1961 –

- (a) for Article 2(7), there is substituted the following paragraph –
 - “(7) Subject to Article 5A, the amount of costs ordered to be paid under this Article shall be summarily assessed by the Magistrate or the Royal Court.”;
- (b) in Article 2(9), for the words “committed by the Magistrate’s Court to the Inferior Number of the Royal Court under Article 4 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949”, there are substituted the words “sent by the Magistrate’s Court to the Royal Court under Part 6 of the Criminal Procedure (Jersey) Law 201-”;
- (c) for Article 3(2), there are substituted the following paragraphs –
 - “(2) This paragraph applies where –
 - (a) the Superior Number of the Royal Court allows an appeal against a sentence; or
 - (b) the Court of Appeal allows an appeal against a conviction or a sentence.
 - (2A) Where paragraph (2) applies, the 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 in the prosecution of the appellant’s appeal, including any proceedings preliminary or incidental thereto, or in carrying on the appellant’s defence.
 - (2B) Subject to Article 5A, the amount of costs that the Court has ordered to be paid under paragraph (2A) shall be summarily assessed by the court which determines the appeal.”.
- (d) in Article 4 for the words “costs ordered or allowed under this Law to be paid out of public funds has been ascertained” there are substituted the words “costs ordered or allowed under this Law or under Criminal Procedure Rules made under Part 12 of the Criminal Procedure (Jersey) Law 201-, to be paid out of public funds has been assessed”;
- (e) in Article 5(1) and (3), after the words “orders the payment of costs by the accused under this Law” there are added the words “or under Criminal Procedure Rules made under Part 12 of the Criminal Procedure (Jersey) Law 201-”;
- (f) after Article 5 there is inserted the following Article –

“5A Assessment of costs

- (1) Where costs are summarily assessed under Articles 2 and 3 and if the court to which those Articles apply makes an order for the payment of such costs, the amount awarded must be reasonably sufficient to compensate the recipient for costs –
 - (a) actually, reasonably and properly incurred; and
 - (b) which are reasonable in amount.
- (2) the court may order the payment of –
 - (a) a proportion of the amount assessed;
 - (b) a stated amount less than that amount;
 - (c) costs from or until a certain date only;
 - (d) costs relating only to particular steps taken; or
 - (e) costs relating only to a distinct part of the case.”.

5 Solemn Affirmations (Jersey) Law 1963 amended

In the Solemn Affirmations (Jersey) Law 1963 –

- (a) for Article 1(1) to (3) there are substituted the following words –

“A person who objects to taking an oath shall make a solemn affirmation instead in all places and for all purposes where an oath is required either by customary law or under any enactment, whether passed before or after the commencement of this Law.”;

- (b) after Article 2 there is inserted the following Article –

“2A Regulations

The States may by Regulations amend the Schedule so as to provide for different forms of affirmation for specified categories, classes or descriptions of person.”.

6 Part 3 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 repealed

Part 3 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 is repealed.

7 Criminal Justice (Evidence of Children) (Jersey) Law 2002 amended

In Article 8(4) of the Criminal Justice (Evidence of Children) (Jersey) Law 2002, for the words “with imprisonment” there are substituted the words “with a fine of level 1 on the standard scale”.

SCHEDULE 5

(Article 109)

POLICE PROCEDURES AND CRIMINAL EVIDENCE (JERSEY) LAW 2003 AMENDED

1 Interpretation

In this Schedule, “principal Law” means the Police Procedures and Criminal Evidence (Jersey) Law 2003.

2 Preamble of principal Law amended

In the preamble of the principal Law, for the words “, criminal evidence and the conduct of criminal proceedings” there are substituted the words “and criminal evidence”.

3 Article 63 amended

In Article 63 of the principal Law, for the definition “statement” there is substituted the following definition –

“statement” means any representation of fact or opinion made by a person by whatever means including a representation made in a sketch, photofit or other pictorial form.”.

4 Articles 64, 65, 66 and 67 substituted

For Articles 64, 65, 66 and 67 of the principal Law there are substituted the following Articles –

“64 Admissibility of statement not made in oral evidence

- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if –
 - (a) any provision of this Part or any other provision of an enactment makes it admissible;
 - (b) any rule of customary law makes it admissible;
 - (c) all parties to the proceedings agree to it being admissible; or
 - (d) the court is satisfied that it is in the interests of justice for it to be admissible.
- (2) In deciding whether a statement not made in oral evidence should be admitted under paragraph (1)(d), the court must have regard to the following factors (and to any others it considers relevant) –

- (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
 - (b) what other evidence has been, or can be, given on the matter or evidence mentioned in sub-paragraph (a);
 - (c) how important the matter or evidence mentioned in sub-paragraph (a) is in the context of the case as a whole;
 - (d) the circumstances in which the statement was made;
 - (e) how reliable the maker of the statement appears to be;
 - (f) how reliable the evidence of the making of the statement appears to be;
 - (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
 - (h) the amount of difficulty involved in challenging the statement;
 - (i) the extent to which that difficulty would be likely to prejudice the party facing it.
- (3) Nothing in this Part affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

65 Cases where a witness is unavailable

- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if –
 - (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;
 - (b) the person who made the statement (the relevant person) is identified to the court's satisfaction; and
 - (c) any condition listed in paragraph (2) is satisfied.
- (2) The conditions are –
 - (a) that the relevant person is dead;
 - (b) that the relevant person is unfit to be a witness because of his or her bodily or mental condition;
 - (c) that the relevant person is outside Jersey and it is not reasonably practicable to secure his or her attendance;
 - (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him or her have been taken;
 - (e) that through fear, the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the

statement, and the court gives leave for the statement to be given in evidence.

- (3) For the purposes of paragraph (2)(e) “fear” is to be widely construed and, for example, includes fear of the death or injury of another person or financial loss.
- (4) Leave may be given under paragraph (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard –
 - (a) to the statement's contents;
 - (b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence);
 - (c) in appropriate cases, special measures for the giving of evidence by fearful witnesses could be made in relation to the relevant person; and
 - (d) to any other relevant circumstances.
- (5) Any condition set out in paragraph (2) which is in fact satisfied, is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused –
 - (a) by the person in support of whose case it is sought to give the statement in evidence; or
 - (b) by a person acting on the above mentioned person's behalf, in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).

66 Business and other documents

- (1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if –
 - (a) oral evidence given in the proceedings would be admissible as evidence of that matter;
 - (b) the requirements of paragraph (2) are satisfied; and
 - (c) the additional requirements of paragraph (5) are satisfied, in a case where paragraph (4) applies.
- (2) The requirements of this paragraph are satisfied if –
 - (a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office;
 - (b) the person who supplied the information contained in the statement (the relevant person) had or may reasonably be supposed to have had personal knowledge of the matters dealt with; and

- (c) each person (if any) through whom the information was supplied from the relevant person to the person referred to in sub-paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.
- (3) The persons mentioned in paragraph (2)(a) and (b) may be the same person.
- (4) If the statement –
- (a) was prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation; but
- (b) was not obtained pursuant to a request under Article 4 of the Criminal Justice (International Co-operation) (Jersey) Law 2001,
- the additional requirements of paragraph (5) must be satisfied.
- (5) Where paragraph (4) applies, the additional requirements of this paragraph are satisfied if –
- (a) any condition listed in Article 65(2) is satisfied; or
- (b) the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since he or she supplied the information and all other circumstances).
- (6) A statement is not admissible under this Article if the court makes a direction to that effect under paragraph (7).
- (7) The court may make a direction under this paragraph if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of –
- (a) its contents;
- (b) the source of the information contained in it;
- (c) the way in which, or the circumstances in which the information was supplied or received; or
- (d) the way in which, or the circumstances in which the document concerned was created or received.”.

67 Inconsistent statements

If, in criminal proceedings a person gives oral evidence and –

- (a) the person admits making a previous inconsistent statement; or
- (b) a previous inconsistent statement made by the person is proved by virtue of Article 78, 79 or 80,

the statement is admissible as evidence of any matter stated of which oral evidence by the person would be admissible.

67A Other previous statements of witnesses

- (1) This Article applies where a person (the witness) is called to give evidence in criminal proceedings.
- (2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his or her oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.
- (3) A statement made by the witness in a document –
 - (a) which is used by the witness to refresh his or her memory while giving evidence;
 - (b) on which the witness is cross-examined; and
 - (c) which as a consequence is received in evidence in the proceedings,is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

67B Additional requirement for admissibility of multiple statements not made in oral evidence

A statement not made in oral evidence is not admissible to prove the fact that an earlier statement not made in oral evidence was made unless –

- (a) either of the statements is admissible under Article 66, 67 or 67A;
- (b) all parties to the proceedings so agree; or
- (c) the court is satisfied that the value of the evidence in question, 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.”.

5 Part 9A inserted

After Article 82 of the principal Law there is inserted the following Part –

**“PART 9A
EVIDENCE OF BAD CHARACTER**

Interpretation and general provisions

82A Interpretation of Part 9A

- (1) In this Part –

‘bad character’ is to be construed in accordance with Article 82C;

‘criminal proceedings’ means criminal proceedings in relation to which the [*strict rules of evidence*] apply;

‘defendant’, in relation to criminal proceedings, means a person charged with an offence in those proceedings; and “co-defendant”, in relation to a defendant, means a person charged with an offence in the same proceedings;

‘important matter’ means a matter of substantial importance in the context of the case as a whole;

‘misconduct’ means the commission of an offence or other reprehensible behaviour;

‘offence’ means any *crime, délit* or *contravention*;

‘probative value’, and ‘relevant’ (in relation to an item of evidence), are to be read in accordance with Article 82B;

‘prosecution’ means the Attorney General or a prosecutor within the meaning of Article 1(2) of the Criminal Procedure (Jersey) Law 201-;

‘prosecution evidence’ means evidence which is to be (or has been) adduced by the prosecution, or which a witness is to be invited to give (or has given) in cross-examination by the prosecution.

- (2) Where a defendant is charged with two or more offences in the same criminal proceedings, this Part [(*except Article 82D(2)*)] has effect as if each offence were charged in separate proceedings; and references to the offence with which the defendant is charged are to be construed accordingly.
- (3) Nothing in this Part affects the exclusion of evidence –
 - (a) under the rule against a party impeaching the credit of his own witness by general evidence of bad character;
 - (b) under [*principles of equivalent legal effect as section 41 of the Youth Justice and Criminal Evidence Act 1999 (c 23) (restriction on evidence or questions about complainant's sexual history)*]; or
 - (c) on grounds other than the fact that it is evidence of a person's bad character.

82B Assumption of truth in assessment of relevance or probative value

- (1) Subject to paragraph (2), a reference in this Part to the relevance or probative value of evidence, is a reference to its relevance or probative value on the assumption that it is true.
- (2) In assessing the relevance or probative value of an item of evidence for any purpose of this Part, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence it decides to hear on the matter), that no court or jury could reasonably find it to be true.

82C Bad character

References in this Part to evidence of a person's 'bad character' are to evidence of, or of a disposition towards, misconduct on his or her part, other than evidence which –

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

*Evidence of bad character***82D Defendant's bad character - admissibility of evidence**

- (1) In criminal proceedings, evidence of the defendant's bad character is admissible if, but only if –
 - (a) all parties to the proceedings agree to the evidence being admissible;
 - (b) the evidence is adduced by the defendant himself or herself or is given in answer to a question asked by him or her in cross-examination and intended to elicit it;
 - (c) it is important explanatory evidence if –
 - (i) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
 - (ii) its value for understanding the case as a whole is substantial; or
 - (d) it is admissible under any of Articles 82E to 82H.
- (2) The court must not admit evidence under Article 82E or Article 82H if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.
- (3) On an application to exclude evidence under paragraph (2) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.
- (4) In proceedings for an offence committed or alleged to have been committed by the defendant when aged 21 or over, evidence of his or her conviction for an offence when under the age of 14 is not admissible unless the court is satisfied that the interests of justice require the evidence to be admissible.

82E Matter in issue between the defendant and the prosecution

- (1) Subject to paragraph (2), evidence of a defendant's bad character is admissible if it is relevant to an important matter in issue between the defendant and the prosecution which includes –
 - (a) the question whether the defendant has a propensity to commit offences of the kind with which he or she is charged, except where the defendant having such a propensity makes it no more likely that he or she is guilty of the offence; or
 - (b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.
- (2) Only prosecution evidence is admissible under this Article.
- (3) Where paragraph (1)(a) applies, a defendant's propensity to commit offences of the kind with which he or she is charged may (without prejudice to any other way of doing so) be established by evidence that the defendant has been convicted of –
 - (a) an offence of the same description as the one with which he or she is charged; or
 - (b) an offence of a similar nature as the one with which he or she is charged.
- (4) Paragraph (3) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his or her case.
- (5) For the purposes of paragraph (3) –
 - (a) 2 offences are of the same description as each other if the statement of the offence in a written charge or indictment would, in each case, be in the same terms;
 - (b) 2 offences are of a similar nature as each other if, in the case of both offences being –
 - (i) a *crime* or *délit*, they both contain the same or similar customary law ingredients; or
 - (ii) a *contravention*, they both contain the same or similar enacted provisions.
- (6) Where –
 - (a) a defendant has been convicted of an offence under the law of any country outside Jersey ('the previous offence'); and
 - (b) the previous offence would constitute an offence under the law of Jersey ('the corresponding offence') if it were committed in Jersey at the time of the trial for the offence with which the defendant is now charged ('the current offence'),paragraph (7) applies for the purpose of determining if the previous offence and the current offence are of the same description or of a similar nature.

- (7) For the purpose of making the determination referred to in paragraph (6) –
 - (a) the previous offence is of the same description as the current offence if the corresponding offence is of that same description as defined under paragraph (5)(a); or
 - (b) the previous offence is of a similar nature as the current offence if the current offence and the corresponding offence are of a similar nature as defined under paragraph (5)(b).

82F Matter in issue between the defendant and a co-defendant

- (1) Evidence of a defendant's bad character is admissible if it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant.
- (2) Accordingly, evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible only if the nature or conduct of his or her defence is such as to undermine the co-defendant's defence.
- (3) Only evidence –
 - (a) which is to be (or has been) adduced by the co-defendant; or
 - (b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,is admissible under this Article.

82G Evidence to correct a false impression

- (1) Evidence of a defendant's bad character is admissible if it is evidence to correct a false impression given by the defendant.
- (2) The defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant.
- (3) Evidence to correct such an impression is evidence which has probative value in correcting it.
- (4) Only prosecution evidence is admissible under this Article and provided it goes no further than is necessary to correct the false impression.
- (5) A defendant is treated as being responsible for the making of an assertion if –
 - (a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him or her);
 - (b) subject to paragraph (5), the assertion was made by the defendant –
 - (i) on being questioned under caution, before charge, about the offence with which he or she is charged, or
 - (ii) on being charged with the offence or officially informed that he or she might be prosecuted for it,

- and evidence of the assertion is to be given in the proceedings;
- (c) the assertion is made by a witness called by the defendant;
 - (d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so; or
 - (e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.
- (6) Paragraph (4)(b) shall not apply unless the prosecution first obtains leave of the court to adduce that evidence.
 - (7) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he or she withdraws it or disassociates himself or herself from it.
 - (8) Where it appears to the court that a defendant, by means of his or her conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself or herself that is false or misleading, the court may, if it appears just to do so, treat the defendant as being responsible for the making of an assertion which is apt to give that impression.
 - (9) In paragraph (8), 'conduct' includes appearance or dress.

82H Attack on another person's character

- (1) Evidence of a defendant's bad character is admissible if it is evidence that the defendant has made an attack on another person's character.
- (2) Only prosecution evidence is admissible under this Article.
- (3) A defendant makes an attack on another person's character if –
 - (a) he or she adduces evidence attacking the other person's character;
 - (b) he or she (or any legal representative appointed to cross-examine a witness in the defendant's interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so; or
 - (c) subject to paragraph (4), evidence is given of an imputation about the other person made by the defendant –
 - (i) on being questioned under caution, before charge, about the offence with which he or she is charged, or
 - (ii) on being charged with the offence or officially informed that he or she might be prosecuted for it.
- (4) Paragraph (3)(c) shall not apply unless the prosecution first obtains leave of the court to adduce that evidence.
- (5) In Article (3)(a) 'evidence attacking the other person's character' means evidence to the effect that the other person –

- (a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one); or
- (b) has behaved, or is disposed to behave, in a reprehensible way, and

in paragraph (3)(c), ‘imputation about the other person’ means an assertion to that effect.

82I Non-defendant's bad character

- (1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only 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.
- (2) For the purposes of paragraph (1)(a) evidence is important explanatory evidence if –
 - (a) without it, the court or jury would find it impossible or difficult, properly to understand other evidence in the case; and
 - (b) its value for understanding the case as a whole is substantial.
- (3) In assessing the probative value of evidence for the purposes of paragraph (1)(b) the court must have regard to the following factors (and to any others it considers relevant) –
 - (a) the nature and number of the events, or other things, to which the evidence relates;
 - (b) when those events or things are alleged to have happened or existed;
 - (c) where –
 - (i) the evidence is evidence of a person's misconduct, and
 - (ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,
 the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;
 - (d) where –
 - (i) the evidence is evidence of a person's misconduct,
 - (ii) it is suggested that that person is also responsible for the misconduct charged, and

- (iii) the identity of the person responsible for the misconduct charged is disputed,
the extent to which the evidence shows or tends to show that the same person was responsible each time.
- (4) Except where paragraph (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.”.

6 Parts 10 and 12 repealed

Parts 10 and 12 of the principal Law are repealed.

7 Transitional provisions

[Transitional provisions may be required as a result of the introduction of new Part 9A.]

SCHEDULE 6

(Article 110)

ENACTMENTS REPEALED

The following enactments are repealed –

- (1) Loi (1835) sur la procédure devant la Cour Royale;
- (2) Loi (1853) établissant la Cour pour la répression des moindres délits;
- (3) Loi (1862) sur la procédure devant la Cour Royale;
- (4) Loi (1864) Régulant la Procédure Criminelle;
- (5) Loi (1912) sur la Procédure devant la Cour Royale (Jours Fériés, Assises Criminelles, etc.);
- (6) Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949;
- (7) Criminal Procedure (Alibis) (Jersey) Rules 1999;
- (8) Criminal Procedure (Tirage) Rules 2002;
- (9) Police Procedures and Criminal Evidence (Preparatory Hearings) Rules 2003.

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