

STATES OF JERSEY



Jersey

DRAFT CRIMINAL PROCEDURE (JERSEY) LAW 2018 (APPOINTED DAY) (No. 2) ACT 201-

**Lodged au Greffe on 9th September 2019
by the Minister for Home Affairs**

STATES GREFFE

REPORT

The States Assembly approved the Criminal Procedure (Jersey) Law 2018 (“the Law”, see [L.25/2018](#)) on 20th March 2018, and the first Appointed Day Act (see [R&O.61/2019](#)) on 17th July 2019.

The first Act brought some limited provisions of the Law into force, primarily to allow the establishment of the Criminal Procedure Rules Committee, to allow the Rules governing court procedure to be made in advance of the remainder of the Law being brought into force in tranches through late 2019 and early 2020.

The Criminal Procedure Rules Committee has now developed the Rules necessary to underpin the operation of a second tranche of provisions to be brought into force by this second Act.

The provisions to be brought into force and their effects are –

Part 2 – The overriding objective

Part 2 articulates the overriding objective of the Law, ‘*to ensure that cases in criminal proceedings are dealt with justly*’. In practice this means acquitting the innocent and convicting the guilty, dealing fairly with both the prosecution and defence, and respecting the interests and rights of witnesses, victims and jurors. It also means running an efficient and effective criminal justice system, as efficiency and justice are intrinsically linked.

The court itself will be bound by the overriding objective in the exercise of its powers and the interpretation of legislation, but the Law also makes this objective the responsibility of all participants in the process, not just the courts. This means that the parties will be required to keep the courts fully informed about the progress of cases.

All of Part 2 will be brought into force.

Part 3 – The active management of criminal proceedings

Part 3 requires the courts to give effect to the overriding objective of justice by ‘actively managing’ cases in criminal proceedings.

Management includes identifying witnesses at the earliest possible stage, monitoring the progress of cases, discouraging delay, and making the best possible use of technology. It provides the courts with the necessary powers for this purpose.

Active case management will include identifying key issues in the case, together with the identity of witnesses and their needs, and achieving certainty as to what must be done and by whom. It also means setting a timetable for the case and discouraging delay. A key element of this approach is to incorporate the use of technology into the process where it is efficient and just to do so. The defence and the prosecution will be required to actively assist the court in fulfilling its case management duty.

The Law will allow the Bailiff and Magistrate to issue directions about case management to both the prosecution and defence, for instance about whether hearings will be public or private, when they will be held, and how issues in the case will be dealt with.

All of Part 3 will be brought into force.

The creation of the overriding objective in Part 2, together with the provisions for active case management in Part 3, implement the requirements of Article 6 of the ECHR that defendants are entitled to determination of any criminal charge against them within a reasonable time.

Part 4 – The Role of the Attorney General

Part 4 restates the current position that the prosecution of criminal proceedings may only be conducted by, or on behalf of, the Attorney General. This does not affect the powers of a Centenier to charge, grant bail, conduct a parish hall inquiry, or present a defendant before the Magistrate's Court.

This Part also provides that the Attorney General will retain the capacity to directly initiate cases in the Royal Court, where this is appropriate in all the circumstances of the case.

All of Part 4 will be brought into force with one limited exception. Article 14, which deals with the Attorney General's power to initiate proceedings directly in the Royal Court, cross-references Article 43, which is not commenced by this Act. Therefore, the cross-reference is not enacted.

Part 9 (Juries)

Part 9 addresses the selection of juries and the eligibility criteria to serve as a juror, as well as the operation of the jury once it is established. The Articles that concern jury operation are being brought into force as they are reasonably simple to administer, but those which deal with eligibility, the creation of jury and panel lists and summoning will require process and technology changes, so will be brought into force in a later tranche (with the relevant cross references).

Part 10 – Miscellaneous procedures in Magistrate's Court and Royal Court

Part 10 outlines a number of miscellaneous procedures in the Magistrate's Court and the Royal Court. These include a provision for what is commonly referred to as a 'Newton Hearing', where a defendant pleads guilty but disputes the facts of the offence. This part also prescribes the process for discontinuance or withdrawal of proceedings in the Magistrate's Court and the Royal Court.

Part 10 introduces a new obligation for the defence counsel to provide a case statement setting out the defendant's defence where a plea of not guilty has been entered. This will allow the courts to concentrate time and effort on the real issues in the proceedings, and will reduce unnecessary pre-trial burdens on the prosecution preparing to address issues that are not in dispute.

This Part also codifies the obligations of the prosecution to disclosure 'unused material' that has been collected, but which does not support the prosecution case, in line with existing guidelines.

All of Part 10 will be brought into force.

Other provisions enacted

Article 114 (quashing of acquittal and retrial)

This provision will allow the Court of Appeal to make an order quashing an acquittal, and ordering a retrial, in respect of very serious offences where there is new and compelling evidence against the acquitted person, and it is in the interests of justice to do so.

This provision requires the Assembly to determine which offences can be retried, and draft Regulations for that purpose are lodged alongside this Act.

Article 116 (Police Procedures and Criminal Evidence (Jersey) Law 2003 amended) (PPCE)

This Article will activate Schedule 3, which contains the necessary amendments to the PPCE to provide for evidence of bad character and hearsay evidence to be heard in criminal cases.

'Hearsay evidence' is evidence given by *Person A* about something that *Person B* is supposed to have said. It is currently not admissible, except in very specific circumstances (such as where the defendant has confessed to another person), and this creates special difficulties in prosecutions for domestic violence, where victims are not willing to repeat in court what they may have told Police Officers, doctors or family, earlier. PPCE Schedule 3 will broaden the scope of admissible hearsay evidence in line with the current position in England and Wales.

In addition, the Law makes provision for the prosecution to introduce evidence of a defendant's previous criminal record to show a propensity to commit similar offences to the one charged. This is referred to as evidence of 'bad character'.

Articles 117 and 118

These Articles deal with repeals and miscellaneous amendments to other enactments. These are activated in part to the extent necessary to allow the Law to function within the statutory framework.

Financial and manpower implications

The Act will bring several provisions into force that will improve the efficiency of the process of criminal trials, particularly those within Parts 2, 3 and 10 of the Law, which should allow financial and staff resources to be better utilised. The changes to the operation of the jury in Part 9 may have some limited implications, as they require provision to be made for 2 additional jurors in trials lasting over 5 days (which are rare), but the net effect should be neutral or positive.

EXPLANATORY NOTE

The Draft Criminal Procedure (Jersey) Law 2018 (Appointed Day) (No. 2) Act 201-, if passed, would bring certain provisions of the Criminal Procedure (Jersey) Law 2018 (the “Law”) into force on 31st October 2019. In particular –

- the whole of Parts 2 (the overriding objective), 3 (the active management of criminal proceedings) and 10 (miscellaneous procedures in Magistrate’s Court and Royal Court);
- Part 4 (role of the Attorney General) with the exception of some words in Article 14 (Attorney General’s power to initiate proceedings directly in the Royal Court);
- most of Part 9 (juries);
- Article 114 (including Schedule 2 to the Law) (quashing of acquittal and retrial);
- Article 116 to the extent that the majority of the amendments to the Police Procedures and Criminal Evidence (Jersey) Law 2003 contained in Schedule 3 to the Law are brought into force;
- Article 117 (miscellaneous enactments amended) only to the extent that the amendments to the Court of Appeal (Jersey) Law 1961 contained in paragraph 3 of Schedule 4 to the Law, and amendments to the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 contained in paragraph 6 of Schedule 4 to the Law, relating to alibis, are brought into force; and
- Article 118 (enactments repealed), but only to the extent of repealing certain enactments (partly, or in full) listed in Schedule 5 to the Law, as follows –
 - (a) certain specified provisions of the Loi (1864) réglant la Procédure Criminelle;
 - (b) Article 6 (power to hear accused through television links) of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949; and
 - (c) the Criminal Procedure (Alibis) (Jersey) Rules 1999.



Jersey

DRAFT CRIMINAL PROCEDURE (JERSEY) LAW 2018 (APPOINTED DAY) (No. 2) ACT 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make this Act under Article 119 of the Criminal Procedure (Jersey) Law 2018¹ –

1 Commencement of certain provisions of the Criminal Procedure (Jersey) Law 2018

The following provisions of the Criminal Procedure (Jersey) Law 2018² come into force on 31st October 2019 –

- (a) Part 2 (the overriding objective);
- (b) Part 3 (the active management of criminal proceedings);
- (c) Part 4 (role of the Attorney General) with the exception in Article 14 (Attorney General's power to initiate proceedings directly in the Royal Court) of the following words –
 - (i) in paragraph (1), “and Article 43 applies for the purpose of initiating proceedings”, and
 - (ii) in paragraph (3), “referred to in Article 43”;
- (d) Article 66 (selection of persons for jury service) with the exception, in paragraph (4)(a), of the words “under Article 65”;
- (e) Article 67 (offence of failing to attend or serve as a juror) except for sub-paragraph (a) of paragraph (1);
- (f) Article 68 (non-selection of person for jury service – family relationship);
- (g) Article 69 (non-selection of person for jury service by reason of successful challenge) with the exception of paragraph (5);
- (h) Articles 70 (swearing of jurors), 71 (reduction in number of jurors), 72 (conduct of jury), 73 (surrender of communication devices), 74 (offence: research by jurors), and 75 (verdicts);
- (i) Part 10 (miscellaneous procedures in Magistrate's Court and Royal Court);
- (j) Article 114 (including Schedule 2) (quashing of acquittal and retrial);
- (k) Article 116 (Police Procedures and Criminal Evidence (Jersey) Law 2003³ amended) except that paragraph 10 (Parts 10 and 12 and Schedule 4 repealed) of Schedule 3 comes into force only to the extent of repealing the

- following provisions of the Police Procedures and Criminal Evidence (Jersey) Law 2003 –
- (i) Article 106 (contemporary reports of criminal proceedings) in Part 12 (reporting of committal and other criminal proceedings) of that Law, and
 - (ii) Schedule 4 (provisions supplementary to Articles 64 to 69) to that Law;
- (l) Article 117 (miscellaneous enactments amended) to the extent only of the following provisions in Schedule 4 (enactments consequentially amended) –
- (i) paragraph 3 (Court of Appeal (Jersey) Law 1961⁴ amended), and
 - (ii) in paragraph 6 (Criminal Justice (Evidence and Procedure) (Jersey) Law 1998⁵ amended) –
 - (A) sub-paragraph (a) except for the words “and “and depositions””, and
 - (B) sub-paragraphs (b)(i) and (d);
- (m) Article 118 (enactments repealed) to the extent that only –
- (i) the following provisions of the Loi (1864) réglant la Procédure Criminelle⁶ (listed in Schedule 5 at paragraph (4)) are repealed –
 - (A) Article 10A,
 - (B) Article 33,
 - (C) Articles 35 and 36,
 - (D) Articles 38 to 41,
 - (E) Articles 43 to 50,
 - (F) Articles 55 and 56,
 - (G) Articles 70 to 72A, and
 - (H) Article 72B.
 - (ii) Article 6 (power to hear accused through television links) of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949⁷ (listed in Schedule 5 at paragraph (6)) is repealed, and
 - (iii) the Criminal Procedure (Alibis) (Jersey) Rules 1999⁸ (listed in Schedule 5 at paragraph (7)) are repealed.

2 Citation

This Act may be cited as the Criminal Procedure (Jersey) Law 2018 (Appointed Day) (No. 2) Act 201-.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>L.25/2018</i>
<i>2</i>	<i>L.25/2018</i>
<i>3</i>	<i>chapter 23.750</i>
<i>4</i>	<i>chapter 07.245</i>
<i>5</i>	<i>chapter 08.240</i>
<i>6</i>	<i>chapter 08.740</i>
<i>7</i>	<i>chapter 07.595</i>
<i>8</i>	<i>chapter 07.595.25</i>