

# **STATES OF JERSEY**

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## **DRAFT COURT OF APPEAL (AMENDMENT No. 8) (JERSEY) LAW 200**

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**Lodged au Greffe on 7th December 2007  
by the Chief Minister**

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**STATES GREFFE**





Jersey

## **DRAFT COURT OF APPEAL (AMENDMENT No. 8)(JERSEY) LAW 200**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Court of Appeal (Amendment No. 8) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

# REPORT

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## Introductory

Sir Godfray Le Quesne, Q.C. undertook in 2000 a review of the workings of the Court of Appeal (Jersey) Law 1961 (“the Court of Appeal Law”). One of the main purposes of this *projet de loi* is to implement most of the recommendations in that review that have yet to be carried into effect. They are referred to in this Report as “the Le Quesne recommendations”.

However, this draft Law is not confined to implementing the Le Quesne recommendations: it would also make other extensive amendments to the Court of Appeal Law unconnected with the recommendations of Sir Godfray Le Quesne.

This Report analyses all the various amendments under the following headings:

- A. The Le Quesne recommendations: civil causes or matters.
- B. The Le Quesne recommendations: criminal and quasi-criminal matters.
- C. Other amendments: review of unduly lenient sentences.
- D. Other amendments: rights of appeal concerning confiscation orders.
- E. Other amendments: miscellaneous.
- F. Drafting (consequential etc.) amendments.

### A. *The Le Quesne recommendations: civil causes or matters.*

#### A1 *Jurisdiction*

The jurisdiction of the Court of Appeal is set out in Article 12(1) of the Court of Appeal Law as follows–

*“There shall be vested in the Court of Appeal all jurisdiction and powers hitherto vested in the Superior Number of the Royal Court when exercising appellate jurisdiction in any civil cause or matter.”.*

Sir Godfray Le Quesne drew attention to the inconvenience of having, in order to know the extent of the civil jurisdiction of the Court of Appeal, to ascertain what the appellate jurisdiction and powers of the Superior Number were in civil matters before the 1960s. He recommended that the jurisdiction of the Court of Appeal should not continue to be referable to a system ‘becoming lost in time’ and that Article 12 of the Court of Appeal Law be revised to provide a clearer definition of the civil jurisdiction of the Court.

Article 5(1) and (2) of the draft Law seek to give effect to this recommendation by amending Article 12 to provide that –

*“Subject as otherwise provided in this Law or in any other enactment, and to rules of court, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the Royal Court (not being an order or decision of the Judicial Greffier) when exercising jurisdiction in any civil cause or matter”.*

#### A2 *Limitation on appeals*

Under Article 13(e) of the Court of Appeal Law, leave is required to appeal from any interlocutory order or interlocutory judgment (with certain exceptions), the intention being that time should not be consumed by interlocutory appeals – unless the Royal Court or the Court of Appeal thinks that an interlocutory order should be considered by the Court of Appeal. No provision is made for application for leave under Article 13(e) to be heard before a single judge, although in recent years this has been done pursuant to a practice direction. However, an applicant who is not satisfied with the decision of the single judge may renew his or her application to the full court. Sir Godfray recommended that the decision of the single judge to grant or refuse leave to appeal should be final, although the single judge should have power to refer the application for leave to the full court should he or she think fit.

Article 6(4) of the draft Law would amend Article 13 to give effect to that recommendation.

#### A3 *Practice and procedure*

Article 15 of the Court of Appeal Law requires that the jurisdiction vested in the Court of Appeal shall, so far as regards procedure and practice, be exercised in the manner provided by the Court of Appeal Law or by rules of court and, where no special provision is contained in the Law or in rules of court, any such jurisdiction shall be exercised as nearly as may be in the same manner as that in which the Superior Number of the Royal Court might previously have done on an appeal from the Inferior Number.

Sir Godfray Le Quesne recommended an amendment similar to that recommended for Article 12 (see *section A* above) enabling the Court of Appeal to adopt whatever practice and procedure it considered just and convenient. The recommendation was made because Article 15 was open to the same criticism as that made of Article 12(1), namely, that the powers of the Court of Appeal were being defined by reference to an appellate system long superseded and increasingly forgotten.

In order to implement this recommendation, Article 8 of the draft Law would amend Article 15 of the Court of Appeal Law to read –

*“The jurisdiction vested in the Court of Appeal under this Part shall, so far as regards procedure and practice, be exercised in the manner provided by this Law or by rules of court and, where no special provision is contained in this Law or in rules of court with reference thereto, any such jurisdiction shall be exercised in such manner as the Court considers just and convenient.”*

#### *A4 Powers exercisable by a single judge*

Article 18 of the Court of Appeal Law provides that, in any appeal pending before the Court of Appeal, any matter incidental thereto not involving the decision of the appeal may be decided by a single judge of the Court of Appeal, and a single judge may, at any time, make any interim order to prevent prejudice to the claims of any parties pending an appeal.

Sir Godfray Le Quesne drew attention to the fact that the opening words “. . . any appeal pending before the Court of Appeal” had often caused difficulty because it was not always clear exactly what was meant in this context by ‘pending’.

Article 9 of the draft Law would insert an additional paragraph (3) in Article 18 to provide that an appeal be taken to be pending for the purposes of that Article if –

- (a) an application had been made for leave to appeal, but had not been determined;
- (b) an application had been made for an order authorizing service of a notice of appeal, but had not been determined; or
- (c) an appeal had been brought, but had not been determined.

### ***B The Le Quesne recommendations – criminal and quasi-criminal matters***

#### *B1 Time for appealing*

Sir Godfray Le Quesne made reference to Article 32(1) of the Court of Appeal Law which provides that–

*“Where a person convicted desires to appeal or to obtain leave to appeal under this Part, the person shall give notice of appeal or notice of the person’s application for leave to appeal to the Judicial Greffier, in such manner as may be directed by rules of court, within 10 days of the date of conviction”.*

This current wording makes no distinction between appeals against conviction and appeals against sentence. An amendment was recommended to deal separately with appeals against conviction on the one hand and appeals against sentence on the other.

Article 14(1) of the draft Law would therefore substitute for the above provision new paragraphs (1), (1A) and (1B) of Article 32 which would make a distinction between notice of appeal in the case of an appeal against conviction and notice of appeal in the case of an appeal against sentence.

They would also provide for notice of an application for leave to appeal (whether against conviction or sentence) to be able to be given within 28 days instead of 10 days as at present. This change of the time limit within which to appeal was not, however, part of the Le Quesne recommendations and is the subject of comment later in this Report (see *section E10* below).

#### *B2 Judge’s notes and report on appeal*

Article 33 of the Court of Appeal Law at present makes provision for the Judge who presided in the Royal Court

(i.e. the Bailiff, Deputy Bailiff or one of the commissioners) to furnish, in the event of an appeal, his or her notes and a report to the Court of Appeal. The actual wording of the Article is as follows –

*“The President of the court before which a person is convicted shall, in the case of an appeal against the conviction or against the sentence, or in the case of an application for leave to appeal, furnish to the Court of Appeal, in accordance with rules of court, the President of the court’s notes of the trial and a report giving the President’s opinion upon the case or upon any point arising in the case”.*

Sir Godfray Le Quesne recommended the outright repeal of this Article. However, Article 15 of the draft Law would provide instead that the presiding Judge have a discretionary power to provide a report on the case and that the Court of Appeal itself have a discretion to require the Judge to do so.

Rules of Court would also be able to prescribe –

- (a) the parties to whom copies of a report furnished under Article 33 were to be given; and
- (b) the manner in which the copies were to be given.

### **B3** *Right of appellant to be present*

The existing position under Article 36 of the Court of Appeal Law is that an appellant who is in custody is entitled to be present on the hearing of his or her appeal except if the appeal only involves a question of law (or if the application is only for leave to appeal or if the proceedings are merely preliminary or incidental to an appeal). But, in those cases, rules of court may provide for the appellant to have the right to be present, or the Court of Appeal itself may give the appellant leave to be present. And the appellant always has a right to be present if he or she is not legally represented.

Sir Godfray Le Quesne recommended that the appellant should have the right to be present when his or her appeal, or application for leave to appeal, is heard irrespective of the grounds on which it is made.

Article 16 of the draft Law would therefore amend Article 36 so that an appellant who was in custody would be entitled to be present at the hearing of his or her appeal – or application for leave to appeal – even if the appeal were on some ground involving a question of law alone. The right of an appellant to be present at proceedings preliminary or incidental to the appeal would continue to be limited to those cases in which –

- (a) rules of court provided for the appellant to have that right;
- (b) the Court of Appeal had given the appellant leave to be present; or
- (c) the appellant was not legally represented.

### **B4** *Admission of appellant to bail*

Article 37 of the Court of Appeal Law is concerned with the admission of an appellant to bail. Article 37(2) empowers the Royal Court to grant bail to an appellant pending the determination of his or her appeal. This power appears to be to the exclusion of any power in the Court of Appeal to grant bail.

Sir Godfray Le Quesne thought it unsatisfactory that the Court of Appeal lacked jurisdiction in this respect and recommended that the Court of Appeal should have such a power, but that that power should be exercisable by a single judge. If that were to be done, he saw *‘no reason why there should be a parallel power in the Royal Court to grant bail pending an appeal’*. He went on to recommend that Article 37 (and Article 41 which confers certain powers on a single judge) be amended so that the power to grant or refuse bail shall be able to be exercised by a single judge (and not by the Royal Court).

Article 17(2) of the draft Law would therefore amend Article 37 of the Court of Appeal Law to empower the Court of Appeal, instead of the Royal Court, to grant or revoke bail and Article 21(b) of the draft Law would go on to amend Article 41 of the Court of Appeal Law to enable that power to be exercisable by a single judge.

### **B5** *Shorthand notes of trial*

Article 42 of the Court of Appeal Law requires shorthand notes to be taken of a trial. For many years, however, a transcript of a tape-recording of the proceedings has taken the place of a transcript of any shorthand notes.

Article 22 of the draft Law would (following the recommendation of Sir Godfray Le Quesne) add a provision in Article 42 to make it plain that proceedings are indeed able to be recorded by electronic means.

## **C. Other amendments: review of unduly lenient sentences**

### **C1** *The existing position*

Article 45 of the Court of Appeal Law enables the Attorney General to refer points of law to the Court of Appeal following an acquittal. The Court is then bound to give its opinion on that point of law.

But a reference under Article 45 cannot affect the trial in relation to which the reference is made or any acquittal in that trial. Because Article 45 only applies in the case of an acquittal, of course no question of sentencing arises.

#### *C2 Review of sentences on application of the Attorney General*

Article 27 of the draft Law would augment the powers of the Attorney General to refer matters to the Court of Appeal by inserting new *Articles 45A, 45B and 45C* in the Court of Appeal Law. Under these new provisions, if the Attorney General considered that an offender had been sentenced unduly leniently in proceedings in the Royal Court, he would be able to refer the case to the Court of Appeal for review of the sentence.

This would (see the inserted *Article 45A*) be subject to –

- (a) the Court of Appeal giving leave; and
- (b) the offence concerned being either –
  - (i) an offence for which the defendant had been liable to imprisonment for a term of one or more years (whether or not it was one for which he or she was also liable to any other penalty); or
  - (ii) an offence which the States had by Regulations declared to be one to which in respect of which the Attorney General could bring such a reference.

Upon a reference by the Attorney General, the Court of Appeal would be able (see the inserted *Article 45B*) to quash the sentence passed by the Royal Court and replace it with the sentence it thought appropriate. The decision as to the sentence would be required to be made without the Court having regard to the fact that the convicted person was being sentenced for a second time in relation to the offence, and the replacement sentence would have to be a sentence that the Royal Court had power to pass.

The inserted *Article 45C* would make provision for calculating any sentence passed by the Court of Appeal on a reference under *Article 45A* and would make it clear that the term of any custodial sentence passed by the Court under *Article 45B* would, unless the Court otherwise directed, begin to run from the time when it would have begun to run had it been passed in the proceedings in respect of which the reference had been made.

### ***D. Other amendments: rights of appeal concerning confiscation orders***

#### *D1 The existing position*

Confiscation orders may be made by the Royal Court under the Drug Trafficking Offences (Jersey) Law 1988 or under the Proceeds of Crime (Jersey) Law 1999 at the request of the Attorney General. There are two matters concerning confiscation orders that need to be addressed insofar as the Court of Appeal Law is concerned.

Firstly, the Court of Appeal Law does not make it absolutely clear whether or not the person against whom such a confiscation order is made actually has a right of appeal to the Court of Appeal, although such an order has been taken to form part of a person's 'sentence' and, therefore, able to be appealed against.

Secondly, should the Royal Court *refuse* to make a confiscation order, or should it make an order in an amount less than that applied for, the Attorney General has no right to appeal to the Court of Appeal against that refusal or against the order actually made.

#### *D2 Appeals by defendants*

In order to clarify what right of appeal there is against the making of a confiscation order, Article 24 of the draft Law would insert in Article 44 of the Court of Appeal Law a definition of 'confiscation order' and would go on to substitute for the existing definition of 'sentence' the following definition –

“ ‘sentence’ includes any order of a court (including an order of banishment or a confiscation order) made by a court when dealing with the person convicted, and the power of the Court of Appeal to pass a sentence includes a power to make any such order.”

It would thus be clear on the face of the Law that a person against whom a confiscation order had been made by the Royal Court had the right under the Court of Appeal Law to appeal to the Court of Appeal against that order.

#### *D3 Appeals by the Attorney General*

In order to address rights of appeal by the Attorney General, Article 27 of the draft Law would insert new *Articles*

45D, 45E and 45F in the Court of Appeal Law.

The inserted *Article 45D* would entitle the Attorney General to appeal to the Court of Appeal against either the making of, or a decision not to make, a confiscation order by the Royal Court. An appeal under *Article 45D* would lie only with the leave of the Court of Appeal.

On such an appeal, the Court of Appeal would be empowered, under the inserted *Article 45E* to confirm, quash or vary the confiscation order. If it believed that the decision of the Royal Court was wrong, the Court of Appeal would be able itself to proceed to make a confiscation order or direct the Royal Court to proceed afresh under the appropriate provisions of either the Drug Trafficking Offences (Jersey) Law 1988 or the Proceeds of Crime (Jersey) Law 1999.

The inserted *Article 45F* would set out the matters to which the Court of Appeal (or the Royal Court, if directed to proceed afresh) would have to have regard on making or varying a confiscation order under these new provisions.

## **E. Other amendments: miscellaneous**

### *E1 Leave to appeal in civil matters – limitation on appeals*

Amongst other provisions regarding the right of appeal to the Court of Appeal in civil matters, Article 13(d) of the Court of Appeal Law provides that no appeal lies to the Court of Appeal without the leave of the Royal Court or of the Court of Appeal, except where the value of the matter in dispute is more than £3,000 or the appeal is on a question of law. There can be great difficulty in ascertaining what the value of a matter in dispute is (e.g. in cases of judicial review) and, therefore, whether or not leave is in fact required. In any event, there is unlikely to be any appeal now in which the value of the matter in dispute will be less than £3,000. The maximum jurisdiction of the Petty Debts Court is now £10,000. Hence there already exists an unfettered right of appeal in almost all cases.

Article 6(2) of the draft Law would acknowledge this by repealing Article 13(d), thereby conferring an unfettered right of appeal in all final decisions except those on costs.

### *E2 Appeal from the Court of Appeal (civil)*

Article 14 of the Court of Appeal Law provides that no appeal shall lie from a decision of the Court of Appeal in a civil matter without the leave of the Court or the special leave of Her Majesty in Council, except where the value of the matter in dispute is £10,000 or more. This gives rise to difficulties similar to those described in relation to Article 13(d) of the principal Law – see section E1 of this Report. It amounts in reality to provision for a virtually unfettered right of appeal to the Privy Council, which is inappropriate and at odds anyway with the rules of the Judicial Committee of the Privy Council.

Article 7 of the draft Law would therefore remove the reference to the value of the matter in dispute.

### *E3 Criminal appeals – appeals against sentence*

A person's right of appeal against a sentence passed by the Royal Court is restricted by Article 24(c) of the Court of Appeal Law to a right of appeal, with the leave of the Court of Appeal, against "the sentence passed on the person's conviction, unless the sentence is one fixed by law" (emphasis supplied).

Article 12 of the draft Law would amend this provision to make it clear that a person could appeal, with leave against a sentence whether or not it was passed on his or her conviction or in subsequent proceedings.

### *E4 Life sentences – mandatory minimum imprisonment*

The Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment) (Jersey) Law 2005 provided a framework within which the Royal Court could make orders determining the period that offenders sentenced to mandatory life imprisonment were bound to spend in prison. The 2005 Law made provision in Article 24(3) of the Court of Appeal Law enabling the Attorney General, with the leave of the Court of Appeal, to appeal against an order made by the Royal Court under the 2005 Law if the Attorney General felt that the order did not impose a mandatory minimum period of imprisonment of sufficient length.

Now, Article 27 of the draft Law would confer on the Attorney General an overall right (under the inserted *Article 45A*) to refer to the Court of Appeal any sentence considered to be too lenient, including a minimum term of imprisonment under the 2005 Law. Because this would render Article 24(3) of the Court of Appeal Law superfluous, Article 12(2) of the draft Law would repeal Article 24(3).

### *E5 Effect of judgment of the Court of Appeal (criminal)*

Article 13 of the draft Law would insert a new *Article 30A* in the Court of Appeal Law to make it clear that an



order made by the Court of Appeal or by the Superior Number of the Royal Court on any appeal should have like effect and be enforced in like manner as if it had been made by the court from which the appeal lies.

This would implement a recommendation of the Attorney General that there be added to the Court of Appeal Law a provision similar to that in Article 20(3) of the Magistrate's Court (Jersey) Law 1949. That Article reads as follows –

*“On any appeal [from the Magistrate’s Court to the Royal Court], the Royal Court may by order confirm, reverse or vary the decision of the Magistrate’s Court, or may remit the matter with its opinion thereon to the Magistrate’s Court, or may make such other order in the matter as it thinks just, and may by such order exercise any power which the Magistrate’s Court might have exercised, and any order so made shall have the like effect and may be enforced in like manner as if it had been made by the Magistrate’s Court” (emphasis supplied).*

It may be noted that Article 29 of the draft Law would repeal, consequentially, Article 9(6) of the Criminal Justice (Community Provisions) (Jersey) Law 2001 which provides that a community service order made by the Court of Appeal or by the Superior Number of the Royal Court on any appeal shall have the like effect and be enforced in the like manner as if it had been made by the court from which the appeal lies. That provision would be subsumed in the new Article 30A and would therefore be otiose.

#### *E6 References to capital punishment and corporal punishment*

Article 32(3) of the Court of Appeal Law provides that–

*“(3) Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Appeal.”.*

Article 14(2) of the draft Law would delete the reference to the death sentence, which is now obsolete.

#### *E7 Time spent in custody – computation of sentences*

Article 37(4) of the Court of Appeal Law is concerned with the computation of the eventual sentence of a person who has spent time in custody pending the determination of his or her appeal. It provides that, if under prison rules the person is specially treated as an appellant, 6 weeks of the time spent in custody pending appeal are to be disregarded when calculating the time served under the sentence of imprisonment. However, this does not apply if leave to appeal has been granted, or the trial judge has certified that it is a fit case for appeal against conviction, or the Court of Appeal itself directs that the whole or part of the period of 6 weeks is to be taken into account.

Article 17 (paragraphs (1) and (3)) of the draft Law would repeal Article 37(4).

But Article 18 of the draft Law would then go on to insert a new *Article 37A* which would provide instead that time spent in custody pending the determining of an appeal was to be taken into account in reckoning the length of the sentence served, unless the Court of Appeal directed otherwise. The Court would have to state its reasons for such a direction. In any event, it would not be able to give such a direction if leave to appeal had been granted, or if the trial judge had certified that it was a fit case for appeal.

By way of a consequential amendment, Article 21(c) of the draft Law would repeal a reference to Article 37(4) in Article 41 of the principal Law.

#### *E8 References by the Secretary of State*

Article 43 of the Court of Appeal Law provides that–

*“Nothing in this Part shall affect the prerogative of mercy, but, as respects the conviction of a person on indictment by the Royal Court or the sentence (other than sentence of death) passed on a person so convicted, being a conviction or sentence against which an appeal lies under this Part to the Court of Appeal, the Secretary of State may, if the Secretary thinks fit, at any time either –*

- (a) refer the whole case to the Court of Appeal, and the case shall then be heard and determined by the Court as in the case of an appeal by a person convicted; or*
- (b) if the Secretary desires assistance on any point arising in the case, refer that point to the Court of Appeal for its opinion thereon, and the Court shall consider the point so referred and furnish the Secretary of State with its opinion thereon accordingly.”.*

Article 23 of the draft Law would amend Article 43–

- (a) by deleting the reference to sentence of death; and
- (b) by substituting for references to the Secretary of State references to the Lieutenant-Governor.

*E9 References and appeals by Attorney General – supplementary provisions*

Part 4 of the Court of Appeal Law – as it would be amended by the draft Law – is concerned with references and appeals to the Court of Appeal by the Attorney General. Article 28 of the draft Law would insert new *Articles 46 to 46E* relating to a variety of procedural and other matters when the Attorney General brings such a reference or an appeal.

The inserted *Article 46* would entitle a defendant to be present at the hearing of a reference brought by the Attorney General for a review of the defendant's sentence or at the hearing of an appeal brought by the Attorney General in respect of a confiscation order made against the defendant. The Court would be able nevertheless to proceed in the defendant's absence if for any reason the defendant did not wish to exercise the right to be present. However, the defendant would not be entitled to be present at preliminary or incidental hearings, unless the Court granted leave.

Under the inserted *Article 46A* the Attorney General would be required to give notice of a reference, or of an appeal, under Part 4 within 28 days after the defendant had been sentenced. The Court would however be able to grant an extension of time.

The inserted *Article 46B* would set out the duties of the Judicial Greffier on receiving notice of proceedings from the Attorney General under Part 4.

Under the inserted *Article 46C* a single judge in proceedings under Part 4 would be able to exercise the same powers as those exercisable by a single judge in ordinary criminal appeals.

The inserted *Article 46D* would apply to Part 4 a number of the provisions of Part 3 that regulate the powers and the procedures of the Court of Appeal in ordinary appeals in criminal and quasi-criminal matters. The provisions concerned are –

- (i) Article 29 relating to the pronouncement of judgments;
- (ii) Article 30 relating to the determination of questions necessary for doing justice;
- (iii) Article 30A (which would be inserted by the draft Law) relating to the enforceability of judgements of the Court;
- (iv) Article 33 (as substituted by the draft Law) relating to the furnishing of a report of the judge who presided in the lower court;
- (v) Article 34 relating to certain supplemental powers of the Court of Appeal;
- (vi) Article 35 relating to legal aid; and
- (vii) Article 40 relating to the power to make Rules of Court (this would replace the existing provision in Article 46 for the making of Rules of Court under Part 4).

The inserted *Article 46E(1)* and (2) would make provision for the interpretation of Part 4.

The inserted *Article 46E(3)* would make special provision, in connexion with references or appeals by the Attorney General under Part 4, in the case of persons who had been –

- (a) convicted and sentenced by the Inferior Number of the Royal Court; or
- (b) sentenced by the Inferior Number to probation or a community service order.

*Article 46E(3)* would provide in such cases for the reference or the appeal (as the case may be) by the Attorney General to lie to the Superior Number of the Royal Court instead of to the Court of Appeal proper. This would be the equivalent for Part 4 proceedings of the provision that already exists in the proviso to Article 24(1) of the Court of Appeal Law in respect of ordinary appeals in criminal and quasi-criminal matters under Part 3.

*E10 Time within which to appeal etc. in criminal matters (28 days)*

The time within which an appeal, or an application for leave to appeal, against conviction or sentence would have to be brought would, under Article 32 of the Court of Appeal Law (as amended by Article 14 of the draft Law – see *section B1* above), be extended from the present 10 days to 28 days.

The period of 28 days for a defendant would be the same period as that which would apply to references and appeals by the Attorney General under Part 4 of the Court of Appeal Law (see *Article 46A(1)*) that would be

inserted by Article 28 of the draft Law).

#### *E11 Sitings of the Court of Appeal – which judge to preside*

Article 9(3) of the Court of Appeal Law provides that if, at any sitting of the Court of Appeal, the Bailiff is unable to act, the Deputy Bailiff shall preside. If the Deputy Bailiff is also unable to act, the remaining members of the Court must select another member to preside at the sitting. This would be changed by Article 4 of the draft Law so that, if neither the Bailiff nor Deputy Bailiff was able to act, the senior ordinary judge (by reference to appointment) would preside unless the remaining members of the Court at the sitting decided otherwise.

#### **F. Drafting (consequential etc.) amendments**

##### *F1 Right to practice in Court of Appeal – consequential amendment*

Article 8(1) of the Court of Appeal Law provides that, “as respects any appeal to the Court of Appeal and any proceedings preliminary or incidental thereto”, the right to practise in the Court of Appeal shall be restricted to the Attorney General, the Solicitor General, advocates of the Royal Court and solicitors of the Royal Court (except that no solicitor has a right of audience).

Article 3 of the draft Law would amend Article 8 so that it referred to any *reference* to the Court of Appeal (as well as to any *appeal* to the Court of Appeal).

##### *F2 Convening and constitution of Court of Appeal – consequential amendment*

The proviso to Article 9(1) of the Court of Appeal Law requires that no judge of the Court of Appeal sit on the hearing of an appeal from a judgment, order, conviction or sentence made or pronounced by any court of which the judge was a member or on the hearing of any proceedings preliminary or incidental to any such appeal.

Article 4 of the draft Law would substitute Article 9(1) so that this requirement would apply not only to an *appeal* from a judgment, order *etc.*, but also to a *reference* from or relating to a judgment, order *etc.*

##### *F3 Reference to minors*

Article 13(1)(e)(i) of the Court of Appeal Law contains a reference to orders or judgments concerning “the custody of infants”. The word ‘infant’ is an old word in English legal terminology for a person who has not reached the age of majority. The term has never taken root in Jersey where the correct term is *mineur* – which is best rendered in the English language by the word ‘minor’.

Article 6(3) of the draft Law would therefore substitute in Article 13(1)(e)(i) for the word ‘infants’ the word ‘minors’.

##### *F4 Civil and criminal provisions (clarification of headings)*

Article 19, 39, 40 and 41 of the Court of Appeal Law provide for the making of Rules of Court and, insofar as the criminal jurisdiction of the Court is concerned, for the duties of the Judicial Greffier and the powers which may be exercised by a single judge.

Articles 10, 19, 20 and 21(a) of the draft Law would amend the headings of each of those Articles, respectively, to make it clear to which Part of the Law (civil or criminal) they relate.

##### *F5 References and appeals by Attorney General – heading to Part 4*

Article 25 of the draft Law would merely supply a heading to Part 4 of the Court of Appeal Law (which is the Part that governs references and appeals to the Court of Appeal by the Attorney General).

#### **Conclusion**

This draft Law is really the first thorough overhaul of the Court of Appeal (Jersey) Law 1961 since it was enacted. Many of the reforms – some of them overdue – relate to what may be described as ‘lawyers’ law’ but they are designed to ensure that the machinery of appellate justice Jersey, both criminal and civil, is properly suited to the 21st Century.

#### **Financial/manpower statement**

There are no financial or manpower implications for the States arising from the adoption of this Draft Law.

#### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 6th December 2007 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Court of Appeal (Amendment No. 8) (Jersey) Law 200- are compatible with the Convention Rights.

## Explanatory Note

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This draft Law would amend the Court of Appeal (Jersey) Law 1961 (“the principal Law”). If adopted, it will have the following effect –

*Article 1* provides for the interpretation of references to the principal Law.

*Article 2* provides for the remuneration of ordinary judges of the Court of Appeal to be decided by administrative decision of the Minister for Treasury and Resources. Currently, the remuneration is set by Order made by the Minister.

*Article 3* relates to the right to practise law in the Court of Appeal.

Article 8 of the principal Law restricts that right, in respect of appeals to the Court of Appeal, to the Law Officers and advocates and solicitors of the Royal Court.

The effect of the amendment is to provide for the same restrictions in respect of references by the Attorney General to the Court of Appeal following acquittal in criminal cases, and in respect of proposed references to the Court by the Attorney General in respect of lenient sentences (see below).

The amendments do not affect the right of an acquitted person, or a person who has been sentenced, to act on his or her own behalf.

*Article 4* amends Article 9 of the principal Law. That Article provides that a judge of the Court of Appeal is not to sit on an appeal from a case in which he or she has participated.

The effect of the amendment is to extend that restriction to any review, under Part 4, of a case in which the judge has already participated.

The amendment also provides that if both the Bailiff and the Deputy Bailiff are unable to preside over a sitting of the court, the longest-serving ordinary member of the court shall so preside, unless the members of the court at the sitting determine otherwise.

*Article 5* is concerned with the civil jurisdiction of the Court of Appeal.

That jurisdiction includes all of the appellate jurisdiction and powers formerly vested in the Superior Number of the Royal Court.

The effect of the amendment is to insert in the principal Law a self-contained definition of the jurisdiction of the Court of Appeal – in other words, one that does not refer back to the jurisdiction previously exercised by the Superior Number of the Royal Court.

The jurisdiction of the Court of Appeal, as redefined, will continue to include the power to deal with appeals from decisions of the Royal Court sitting in the latter’s own appellate capacity and at first instance.

*Article 6* relates to limits on rights of appeal to the Court of Appeal in civil matters.

At present, there is a right to appeal in relation to certain matters to the Court only with the leave of either the court whose decision is the subject of the appeal, or the Court of Appeal itself. An exception is made however, where the value of the matter in dispute is £3,000 or more, where appeal is available as of right, without the leave of any court.

One effect of the amendment is to remove that exception, so that in future all such appeals will require the leave of a court.

The amendment also provides that any application to the Court of Appeal for leave to appeal is to be made in the first instance to a single judge of the court instead of the full court.

The judge may grant or refuse leave to appeal, or refer the application for leave to the full court.

The single judge’s decision will be final.

The opportunity is also taken to substitute for “infants” in the principal Law a reference to “minors” (which is now the more commonly used expression).

*Article 7* alters the right of appeal to the Privy Council from a decision of the Court of Appeal.

Currently, there is a right of appeal to the Privy Council from a decision of the Court of Appeal in a civil matter

only with the leave of that court or the special leave of the Privy Council. Such leave is not required, however, if the value of the matter in dispute is £10,000 or more.

The amendment removes that exception.

The amendment also specifies that there is to be no right of appeal in relation to a decision of the Court of Appeal to grant, or to refuse to grant, leave to appeal to the court against a decision of the Royal Court or the Privy Council.

*Article 8* is concerned with the practice and procedure of the Court of Appeal in a civil matter, if no special provision is made in the principal Law or by rules of court.

At present, the Court of Appeal is to exercise its jurisdiction in those circumstances as nearly as may be as the Superior Number of the Royal Court would have done on an appeal from the Inferior Number of that court.

The effect of the amendment is to require the Court of Appeal to do so instead in such manner as it considers just and convenient.

*Article 9* relates to powers that may be exercised by a single judge of the Court of Appeal pending the hearing of an appeal in a civil matter.

The effect of the amendment is to provide explicitly that an appeal that is “pending” includes an application for leave to appeal or for an order authorizing service of a notice of appeal, if the determination of such an application is itself pending.

The amendment will take account of the decision of the Court of Appeal in *Classic Trading Co. -v- Declercq* (1992) J.L.R. 34.

*Article 10* amends Article 19 of the principal Law in consequence of the insertion, by Article 28 of this draft Law of the proposed new Article 46D(g) in the principal Law.

*Article 11* makes a drafting adjustment to Article 23 of the principal Law to ensure consistency of language in Part 3 of that Law in describing the imposition of sentences.

*Article 12* relates to appeals against sentence.

Under Article 24 of the principal Law, a person has a right of appeal with the leave of the Court of Appeal against the sentence passed on the person on conviction (unless the sentence is fixed by law).

The effect of the first amendment is to widen the right of appeal to include the case in which the sentence is passed in subsequent proceedings (unless it is fixed by law). The amendment follows the change made in English law by section 9 of the Criminal Appeal Act 1968.

Article 24 (as amended in 2005 by the Criminal Justice (Mandatory Minimum Periods of Actual Imprisonment, Jersey) Law 2005) gave the Attorney General a right of appeal, against an order under the 2005 Law, if it did not impose a mandatory minimum period of imprisonment of sufficient length. These grounds would be subsumed by the right of review in new Article 45A (below). The right under Article 24 is accordingly being repealed.

*Article 13* inserts a new provision in the principal Law to the effect that an order made by the Court of Appeal or the Superior Number of the Royal Court on an appeal in a criminal matter shall have the same effect and may be enforced as if it were made by the court from whose decision the appeal is brought.

*Article 14* is concerned with the time for appealing in a criminal matter.

At present, a person who wishes to appeal or to seek leave to appeal against conviction or sentence must give notice within 10 days of being convicted.

One effect of the amending Article is to extend the time for appealing or seeking leave to appeal from 10 days to 28 days. The longer time will be the same as that given to the Attorney General on references for the review of sentences under new Article 45A, and on appeals under new Article 45D in respect of confiscation orders (see below).

Another effect of the amendment is that the period of 28 days will, in the case of an appeal or application for leave to appeal against sentence, run from the date of sentencing.

The opportunity is also taken to remove obsolete references to capital punishment and corporal punishment from Article 32 of the principal Law.

*Article 15* relates to the provision to the Court of Appeal, by the presiding judge in a criminal trial, of the notes of the trial and a report giving the judge’s opinion on the case.

At present, this is a mandatory requirement.

The effect of the amendment is to provide instead that the presiding judge shall have a discretionary power to provide a report on the case, and that the Court of Appeal shall itself have a discretion to require the judge to do so.

The amendment also provides that rules of court may prescribe the parties to whom copies of the report are to be given.

*Article 16* is concerned with the right of an appellant to be present on the hearing of his or her appeal, in a criminal case, where it only involves a point of law.

At present, the appellant is only entitled to be present – in other words, to attend as of right – if he or she does not have a lawyer or if rules of court give the appellant a right to be present.

The effect of the amendment is to remove this limitation.

The amendment does not alter the existing limitations, in Article 36 of the principal Law, on the appellant's right to be present at proceedings that are preliminary or incidental to the appeal.

*Article 17* relates to the granting of bail pending appeal in a criminal case.

At present, the Royal Court has the power to grant such bail.

The effect of the amendment is to provide instead that the Court of Appeal will have power to grant or revoke bail.

*Article 18* relates to the calculation of the length of a sentence of imprisonment where the convicted person has spent time in custody pending the determination of his or her appeal.

At present, the following rules apply –

- (a) If under prison rules the person is specially treated as an appellant, 6 weeks of the time spent in custody pending appeal are to be disregarded when calculating the time served under the sentence of imprisonment.
- (b) However, paragraph (a) does not apply if leave to appeal has been granted, or the trial judge has certified that it is a fit case for appeal against conviction, or the Court of Appeal itself directs that the whole or part of the period of 6 weeks is to be taken into account.

The effect of the amendment is to provide instead that time spent in custody pending the determining of an appeal is to be taken into account in reckoning the length of the sentence served, unless the Court of Appeal directs otherwise.

The court must state its reasons for such a direction. In any event, it may not give that direction if leave to appeal has been granted, or if the trial judge has certified that it is a fit case for appeal.

*Article 19* amends Article 39 of the principal Law in consequence of the insertion, by Article 28 of this draft Law of the proposed new Article 46B in the principal Law.

*Article 20* amends Article 40 of the principal Law in consequence of the insertion, by Article 28 of this draft Law of the proposed new Article 46D(g) in the principal Law.

*Article 21* amends Article 41 of the principal Law, to allow a single judge of the Court of Appeal to exercise its powers in respect of the granting and revoking of bail in a criminal case.

It also amends that Article, in consequence of the insertion, by Article 28 of this draft Law, of the proposed new Article 46C in the principal Law.

*Article 22* enables a record of proceedings at a trial on indictment to be taken by electronic means. The opportunity is also taken to update a reference to States' revenue so as to reflect terminology now used.

*Article 23* amends Article 43 of the principal Law. If a right of appeal lies to the Court of Appeal against a conviction on indictment in the Royal Court, or against the sentence, the Secretary of State may at any time refer the conviction or sentence to the Court of Appeal.

The effect of this Article is to vest that power in the Lieutenant-Governor of Jersey instead of the Secretary of State.

The amendment also removes an obsolete reference to capital punishment.

*Article 24* amends Article 44 of the principal Law. In that Article, the expression "sentence" is defined for the

purposes of Part 3 of the principal Law to include any order of a court (including an order of banishment) made on a conviction “with reference to the person convicted, or the person’s wife or children”. This wording is similar to that in section 21 of the Criminal Appeal Act 1907 of the United Kingdom.

One effect of the amendment is to provide instead that the expression “sentence” includes any order made by a court “when dealing with the person convicted”. This follows wording now used in section 50(1) of the Criminal Appeal Act 1968 of the United Kingdom.

The amendment also specifies a confiscation order (as defined in the Drug Trafficking Offences (Jersey) Law 1988 or the Proceeds of Crime (Jersey) Law 1999) as a particular kind of order that for the purposes of Part 3 of the principal Law is a “sentence”.

*Article 25* replaces the heading to Part 4 of the principal Law. Part 4 at present deals with the reference of a pair of law by the Attorney General to the Court of Appeal following an acquittal in a criminal trial.

Replacing the Part heading takes account of proposals for the review of sentences on the Attorney General’s application, and of appeals by the Attorney General in respect of confiscation orders under the Drug Trafficking Offences (Jersey) Law 1988 and the Proceeds of Crime (Jersey) Law 1999. (See further below.)

*Article 26* amends Article 45 of the principal Law so as to update a reference to the States’ annual income, to reflect terminology now used.

*Article 27* inserts new Articles, relating to applications by the Attorney General for the review of sentences and appeals by the Attorney General in respect of confiscation orders.

The provisions relating to the review of sentences are based on section 36 of the Criminal Justice Act 1988 of the United Kingdom, and Schedule 3 to that Act. Those in respect of appeals in respect of confiscation orders are based on sections 31 and 32 of the Proceeds of Crime Act 2002 of the United Kingdom.

The new provisions are as follows –

**Article 45A– Reference to Court of Appeal for review of sentence**

Under this Article, the Attorney General may apply to the Court of Appeal for leave to refer to that court for review, on the ground that it is unduly lenient, a sentence imposed in a criminal case by the Royal Court.

The Article only applies in respect of an offence if the maximum permissible penalty is a term of one or more years, or the States have by Regulations declared it to be an offence to which the Article applies.

It does not apply in respect of confiscation orders.

**Article 45B– Court’s powers on reference under Article 45A by Attorney General**

This Article provides that on such a reference, the Court of Appeal may quash the sentence imposed by the lower court, and substitute a sentence that the Court of Appeal considers appropriate. The Court of Appeal shall not, in making the decision as to sentence, take into account the fact that the person is being sentenced twice for the same offence.

The substituted sentence must be one that the Royal Court could lawfully have imposed.

**Article 45C– Calculation of sentence passed on review**

This Article provides for the way in which a sentence passed by the Court of Appeal under Article 45B is to be calculated.

Unless the Court of Appeal directs otherwise, the sentence that is substituted is to run from the time it would have begun to run if imposed in the proceedings in the Royal Court. However, this provision does not apply where the Court of Appeal substitutes a custodial sentence for a non-custodial sentence.

If he or she is in custody pending the hearing of the reference for a review, the defendant’s time spent waiting for the determination of the reference will be reckoned as part of the term of the sentence.

**Article 45D– Appeal by Attorney General in respect of confiscation order**



Under this Article, the Attorney General may with the leave of the Court of Appeal bring an appeal to that court against the terms of a confiscation order made by the Royal Court or against a refusal by the Royal Court to make a confiscation order.

However, the Article does not give the Attorney General a right of appeal against a refusal to make a confiscation order –

- where the defendant has absconded or died, or
- on a reconsideration of a case in which a confiscation order was not considered initially, or
- on a reconsideration of a determination that a defendant has not benefited.

#### **Article 45E– Court’s powers on appeal by Attorney General**

This Article gives the Court of Appeal jurisdiction, on an appeal by the Attorney General, to confirm, quash or vary a confiscation order already made by the Royal Court.

It also enables the Court of Appeal, on an appeal by the Attorney General against a decision by the Royal Court not to make a confiscation order, either to make such an order itself or to direct the Royal Court to reconsider whether to do so.

#### **Article 45F– Matters to be taken into account on appeal in respect of confiscation order**

This Article stipulates matters that are to be taken into account by the Court of Appeal, or the Royal Court, on an appeal by the Attorney General in respect of a confiscation order.

*Article 28* substitutes for Article 46 of the principal Law (relating to rules of court for the purposes of Part 4 of that Law) several procedural and general provisions relating to that Part. The new Articles will continue to provide for rules of court.

The new provisions are as follows –

#### **Article 46– Right of person to be present**

This Article entitles a defendant to be present at the hearing of a reference for the review of his or her sentence or of an appeal by the Attorney General in respect of a confiscation order. The Court may nevertheless proceed in the defendant’s absence if for any reason he or she does not wish to exercise that right.

The defendant will not be entitled to be present at the hearing of the Attorney General’s initial application for permission to bring the reference or appeal to the Court of Appeal, or at other preliminary hearings, unless the Court decides otherwise.

#### **Article 46A– Time for proceedings under Part 4**

This Article provides that notice of proceedings by the Attorney General under Part 4 must be given within 28 days after the defendant has been sentenced. However, the court may grant an extension of time.

#### **Article 46B– Duties of Judicial Greffier under Part 4**

This Article sets out the duties of the Judicial Greffier on receiving notice of proceedings under Part 4.

#### **Article 46C– Powers under Part 4 which may be exercised by a single judge**

This Article sets out the powers that may be exercised by a single judge in proceedings under Part 4. These correspond to those exercisable by a single judge in proceedings under Part 3 of the principal Law.

#### **Article 46D– Supplementary provisions as to Part 4**

This Article applies machinery provisions in Part 3 of the principal Law (which relates to appeals by defendants) to references and appeals under Part 4. They include provisions relating to rules of court.

#### **Article 46E– Interpretation of Part 4**

This Article contains interpretative provisions for Part 4. In particular, where the person to whom the Attorney General's reference or appeal relates was sentenced by the Inferior Number of the Royal Court after being convicted by the Inferior Number or by a jury on indictment, the Attorney General's right to seek a review under new Article 45A or an appeal under new Article 45D is to be construed as lying to the Superior Number of the Royal Court instead of the Court of Appeal. This provision is intended to correspond to that already contained in the proviso to Article 24 of the principal Law in respect of a defendant's right of appeal against sentence.

*Article 29* is a consequential amendment to the Criminal Justice (Community Service Orders) (Jersey) Law 2001.

*Article 30* amends the Royal Court (Jersey) Law 1948 so as to provide for the remuneration of the Commissioners of the Royal Court to be determined by administrative decision of the Minister for Treasury and Resources, rather than by Order.

*Article 31* provides for the manner in which the amending Law may be cited, and for its provisions to come into force on a day or days to be appointed by the States, by Act. Different days may be appointed for different provisions.





Jersey

# DRAFT COURT OF APPEAL (AMENDMENT No. 8)(JERSEY) LAW 200

## Arrangement

### Article

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<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 6 amended</u>
<u>3</u>	<u>Article 8 amended</u>
<u>4</u>	<u>Article 9 amended</u>
<u>5</u>	<u>Article 12 amended</u>
<u>6</u>	<u>Article 13 amended</u>
<u>7</u>	<u>Article 14 substituted</u>
<u>8</u>	<u>Article 15 amended</u>
<u>9</u>	<u>Article 18 amended</u>
<u>10</u>	<u>Article 19 amended</u>
<u>11</u>	<u>Article 23 amended</u>
<u>12</u>	<u>Article 24 amended</u>
<u>13</u>	<u>Article 30A inserted</u>
<u>14</u>	<u>Article 32 amended</u>
<u>15</u>	<u>Article 33 replaced</u>
<u>16</u>	<u>Article 36 amended</u>
<u>17</u>	<u>Article 37 amended</u>
<u>18</u>	<u>Article 37A inserted</u>
<u>19</u>	<u>Article 39 amended</u>
<u>20</u>	<u>Article 40 amended</u>
<u>21</u>	<u>Article 41 amended</u>
<u>22</u>	<u>Article 42 amended</u>
<u>23</u>	<u>Article 43 amended</u>
<u>24</u>	<u>Article 44 amended</u>
<u>25</u>	<u>Heading to Part 4 replaced</u>
<u>26</u>	<u>Article 45 amended</u>
<u>27</u>	<u>Articles 45A to 45F inserted</u>
<u>28</u>	<u>Article 46 substituted, Articles 46A to 46E inserted</u>
<u>29</u>	<u>Criminal Justice (Community Service Orders) (Jersey) Law 2001 amended</u>
<u>30</u>	<u>Royal Court (Jersey) Law 1948 amended</u>
<u>31</u>	<u>Citation and commencement</u>





Jersey

## **DRAFT COURT OF APPEAL (AMENDMENT No. 8)(JERSEY) LAW 200**

A LAW to amend further the Court of Appeal (Jersey) Law 1961.

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*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 –

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### **1 Interpretation**

In this Law, “principal Law” means the Court of Appeal (Jersey) Law 1961<sup>[1]</sup>.

### **2 Article 6 amended**

In Article 6 of the principal Law–

- (a) in paragraph (1), for the words “prescribed by Order made” there shall be substituted the word “determined”;
- (b) paragraph (3) shall be deleted.

### **3 Article 8 amended**

In Article 8 of the principal Law–

- (a) in paragraph (1), for the words “to the Court of Appeal and any proceedings preliminary or incidental thereto” there shall be substituted the words “or reference to the Court of Appeal and any proceedings preliminary or incidental to such an appeal or reference”;
- (b) in paragraph (2), after the words “such appeals” there shall be inserted the word “, references”.

### **4 Article 9 amended**

In Article 9, for paragraphs (1), (2) and (3) of the principal Law there shall be substituted the following paragraphs –

“(1) The Court of Appeal shall be convened by the Bailiff or, in the absence of the Bailiff, by the Deputy Bailiff.

(1A) The Court of Appeal shall be duly constituted if it consists of an uneven number of

judges, but not less than 3.

(1B) However, no judge of the Court of Appeal shall sit on –

- (a) the hearing of an appeal or reference from or relating to a judgment, order, conviction or sentence pronounced, made or passed by any court of which the judge was a member; or
- (b) the hearing of any proceedings preliminary or incidental to any such appeal or reference.

(2) Subject to paragraph (3), the Bailiff shall be the President of the Court of Appeal.

(3) At any sitting of the Court of Appeal –

- (a) if the Bailiff is unable to act, the Deputy Bailiff shall preside; and
- (b) if the Bailiff and the Deputy Bailiff are unable to act, the ordinary member of the Court who has the longest service as such a member shall preside, unless the members of the Court at the sitting decide otherwise.”.

## 5 Article 12 amended

(1) Article 12(1) of the principal Law shall be repealed.

(2) For Article 12(2) there shall be substituted the following paragraph–

“(2) Subject as otherwise provided in this Law or in any other enactment, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the Royal Court (not being an order or decision of the Judicial Greffier) when exercising jurisdiction in any civil cause or matter.”.

(3) In Article 12(3), after the word “trial” in each place where it occurs there shall be inserted the words “or hearing”.

## 6 Article 13 amended

(1) Article 13 of the principal Law shall be renumbered as paragraph (1) of that Article.

(2) In Article 13(1) of the principal Law (as so renumbered)–

- (a) sub-paragraph (d) shall be deleted;
- (b) in sub-paragraph (e)(i), for the word “infants” there shall be substituted the word “minors”.

(3) After Article 13(1) of the principal Law (as so renumbered) there shall be added the following paragraphs –

“(2) An application to the Court of Appeal for leave pursuant to paragraph (1)(e) shall be made to a single judge of that Court.

(3) Subject to paragraph (4), the single judge’s decision on the application shall be final.

(4) The single judge may at any stage refer the application to the full Court of Appeal for decision.”.

## 7 Article 14 substituted

For Article 14 of the principal Law there shall be substituted the following Article–

### “14 Appeals from the decisions of Court of Appeal

(1) No appeal shall lie from a decision of the Court of Appeal under this Part without the leave of the Court or the special leave of Her Majesty in Council.

- (2) No appeal shall lie from a decision of the Court of Appeal to grant, or to refuse to grant, leave to appeal.”.

**8 Article 15 amended**

In Article 15 of the principal Law, for the words “as nearly as may be in the same manner as that in which the Superior Number of the Royal Court might hitherto have exercised jurisdiction on an appeal from the Inferior Number thereof” there shall be substituted the words “in such manner as the Court of Appeal considers just and convenient”.

**9 Article 18 amended**

After Article 18(2) of the principal Law there shall be added the following paragraph–

- “(3) For the purposes of paragraph (1), an appeal is pending if–
- (a) an application has been made to the Court of Appeal for leave to appeal, but has not been determined;
  - (b) an application has been made to that Court for an order authorizing (by whatever means) service of a notice of appeal, but has not been determined; or
  - (c) an appeal has been brought, but has not been determined.”.

**10 Article 19 amended**

In Article 19 of the principal Law, in the heading, at the end, there shall be added the words “**under Part 2**”.

**11 Article 23 amended**

In Article 23 of the principal Law, in the proviso, the words “pronounced or” shall be deleted.

**12 Article 24 amended**

(1) For Article 24(1)(c) of the principal Law there shall be substituted the following sub-paragraph –

- “(c) with the leave of the Court of Appeal, against any sentence passed on the person for the offence (whether passed on his or her conviction or in subsequent proceedings), unless the sentence is one fixed by law:”.

(2) Article 24(3) of the principal Law shall be repealed.

**13 Article 30A inserted**

After Article 30 of the principal Law there shall be inserted the following Article–

**“30A Effect of order**

Subject to the other provisions of this Part, an order made by the Court of Appeal or by the Superior Number of the Royal Court on any appeal under this Part shall have the like effect and be enforced in the like manner as if it had been made by the court from which the appeal lies.”.

**14 Article 32 amended**



(1) For Article 32(1) of the principal Law, there shall be substituted the following paragraphs–

“(1) A person who wishes –

- (a) to appeal under this Part; or
- (b) to obtain leave to appeal under this Part,

shall give notice of appeal or (as the case may be) notice of application for leave to appeal, in such manner as may be prescribed by rules of court.

(1A) Notice of appeal against conviction, or notice of application for leave to appeal against conviction, shall be given within 28 days of the date of the conviction.

(1B) Notice of appeal against sentence, or notice of application for leave to appeal against sentence, shall be given within 28 days of the date on which the sentence is passed”.

(2) In Article 32(3) of the principal Law, the words “Except in the case of a conviction involving sentence of death,” shall be deleted.

## 15 Article 33 replaced

For Article 33 of the principal Law there shall be substituted the following Article–

### “33 Judge’s report on appeal

(1) This Article applies in the case of –

- (a) an appeal by a person against conviction;
- (b) an appeal by a person against sentence; or
- (c) an application by a person for leave to appeal against conviction or sentence.

(2) The President of the court before which the person is convicted, or sentenced, as the case may be, may furnish to the Court of Appeal a report giving the President’s opinion upon the case or upon any point arising in the case.

(3) The President of the court before which the person is convicted, or sentenced, as the case may be, shall furnish such a report to the Court of Appeal if required by the Court of Appeal to do so.

(4) Rules of court may prescribe –

- (a) parties to whom copies of a report furnished under this Article shall be given; and
- (b) the manner in which the copies shall be so given.”.

## 16 Article 36 amended

For Article 36(1) of the principal Law there shall be substituted the following paragraphs–

“(1) An appellant, notwithstanding that he or she is in custody, shall be entitled to be present (if the appellant desires it) –

- (a) on the hearing of the appeal under this Part; and
- (b) on the hearing of any application for leave to appeal under this Part.

(1A) However, an appellant shall not be entitled to be present at proceedings preliminary or incidental to the appeal, except where –

- (a) rules of court provide that he or she shall have the right to be present;
- (b) the Court of Appeal gives the appellant leave to be present; or
- (c) he or she is not legally represented.”.

**17 Article 37 amended**

- (1) In Article 37 of the principal Law, in the heading, the words “**and computation of sentence**” shall be deleted.
- (2) For Article 37(2) of the principal Law there shall be substituted the following paragraphs—
  - “(2) The Court of Appeal may, if it thinks fit –
    - (a) on the application of the appellant at any stage of the proceedings prior to the determination of the appeal, grant the appellant bail pending the determination of the appeal; or
    - (b) revoke bail granted to the appellant by any court.
  - (2A) Paragraph (2) is without prejudice to Article 28(3)”.
- (3) Article 37(4) of the principal Law shall be repealed.

**18 Article 37A inserted**

After Article 37 of the principal Law there shall be inserted the following Article—

**“37A Time spent in custody pending appeal**

- (1) The time during which an appellant is in custody pending the determination of the appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which the appellant is for the time being subject.
- (2) Where the Court of Appeal gives a contrary direction under paragraph (1), it shall state its reasons for doing so.
- (3) The Court of Appeal shall not give such a direction where –
  - (a) leave to appeal is granted under this Part; or
  - (b) any such certificate as is mentioned in Article 24(1)(b) has been given for the purposes of the appeal.”.

**19 Article 39 amended**

In Article 39 of the principal Law, in the heading, at the end, there shall be added the words “**under Part 3**”.

**20 Article 40 amended**

In Article 40 of the principal Law—

- (a) in the heading, at the end, there shall be added the words “**under Part 3**”;
- (b) in paragraph (1), for the words “Prison Board” there shall be substituted the words “Minister for Home Affairs”.

**21 Article 41 amended**

In Article 41 of the principal Law—

- (a) in the heading, after the word “**Powers**”, there shall be inserted the words “**under Part 3**”;

- (b) after the words “may be given,” there shall be inserted the words “to grant or revoke bail or”;
- (c) the words “or to give directions under sub-paragraph (b) of the proviso to Article 37(4) shall be deleted.

**22 Article 42 amended**

In Article 42 of the principal Law–

- (a) in paragraph (4), for the words “General Revenues of the States” there shall be substituted the words “consolidated fund”;
- (b) after paragraph (5) there shall be added the following paragraph–
  - “(6) Any reference in this Article to a shorthand note includes a reference to a record of the proceedings by electronic means.”.

**23 Article 43 amended**

In Article 43 of the principal Law–

- (a) the words “(other than sentence of death)” shall be deleted;
- (b) for the words “the Secretary of State may, if the Secretary thinks fit” there shall be substituted the words “the Lieutenant-Governor may, if he or she thinks fit”;
- (c) in paragraph (b), for the words “if the Secretary desires” there shall be substituted the words “if the Lieutenant-Governor desires”;
- (d) in paragraph (b), for the words “furnish the Secretary of State” there shall be substituted the words “furnish the Lieutenant-Governor”.

**24 Article 44 amended**

- (1) In Article 44(1) of the principal Law, after the definition “appellant” there shall be inserted the following definition –

“ ‘confiscation order’ means a confiscation order as defined in Article 1(1) of the Drug Trafficking Offences (Jersey) Law 1988 or in Article 1(1) of the Proceeds of Crime (Jersey) Law 1999;”.

- (2) In Article 44(1) of the principal Law, for the definition “sentence” there shall be substituted the following definition –

“ ‘sentence’ includes any order (including an order of banishment or a confiscation order) made by a court when dealing with the person convicted, and the power of the Court of Appeal to pass a sentence includes a power to make any such order.”.

**25 Heading to Part 4 replaced**

For the heading “PART 4” in the principal Law there shall be substituted the following heading –

**“PART 4**  
REFERENCES AND APPEALS BY THE ATTORNEY GENERAL”.

**26 Article 45 amended**

In Article 45(3) of the principal Law, for the words “Annual Income” there shall be substituted the words “consolidated fund”.

## 27 Articles 45A to 45F inserted

After Article 45 of the principal Law there shall be inserted the following Articles–

### **“45A Reference to Court of Appeal for review of sentence**

- (1) This Article applies to any case in which sentence is passed on a person for –
  - (a) an offence for which the person is liable to imprisonment for a term of 12 months or longer (whether or not it is one for which he or she is also liable to any other penalty); or
  - (b) an offence to which this Article applies by reason of Regulations made under paragraph (5).
- (2) However, this Article shall not apply in respect of a confiscation order.
- (3) If it appears to the Attorney General –
  - (a) that the sentencing of a person in any proceedings in the Royal Court has been unduly lenient; and
  - (b) that the case is one to which this Article applies,the Attorney General may, with the leave of the Court of Appeal, refer the case to the Court of Appeal for it to review the sentencing of that person.
- (4) Without prejudice to the generality of paragraph (3), the condition specified in subparagraph (a) of that paragraph may be satisfied if it appears to the Attorney General that the Royal Court –
  - (a) erred in law as to its powers of sentencing; or
  - (b) failed to impose a sentence which it was required by law to impose.
- (5) The States may by Regulations declare that this Article shall apply to an offence.

### **45B Court’s powers on reference under Article 45A by Attorney General**

- (1) On a reference under Article 45A, the Court of Appeal may–
  - (a) quash any sentence passed on the person for the offence (whether passed on his or her conviction or in subsequent proceedings); and
  - (b) in place of it pass such sentence as the Court thinks appropriate for the case and as the Royal Court had power to pass when dealing with the person.
- (2) In deciding under paragraph (1) the appropriate sentence to pass on a person for an offence, the Court of Appeal shall not make any allowance for the fact that the person is being sentenced for a second time in relation to the offence.

### **45C Calculation of sentence passed on review**

- (1) The term of any sentence passed by the Court of Appeal under Article 45B shall, unless the Court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings in respect of which the reference was made.
- (2) Paragraph (1) shall not apply to a custodial sentence which is passed in place of a non-custodial sentence.

- (3) The time during which a person whose case has been referred for review under Article 45A is in custody pending its review shall be reckoned as part of the term of any sentence to which he or she is for the time being subject.

#### **45D Appeal by Attorney General in respect of confiscation order**

- (1) This Article applies to any case in which –
  - (a) sentence is passed by the Royal Court on a person for an offence; and
  - (b) in passing the sentence, the Royal Court has jurisdiction to make a confiscation order.
- (2) If in a case to which this Article applies the Royal Court makes a confiscation order, the Attorney General may appeal to the Court of Appeal in respect of the order.
- (3) If in a case to which this Article applies the Royal Court decides not to make a confiscation order, the Attorney General may appeal to the Court of Appeal against the decision.
- (4) Paragraphs (2) and (3) shall not apply to an order or decision made by virtue of any of Articles 9, 12 and 13 of the 1988 Law or of any of Articles 9, 12 and 13 of the 1999 Law.
- (5) An appeal to the Court of Appeal under this Article lies only with the leave of the Court of Appeal.

#### **45E Court's powers on appeal by Attorney General**

- (1) On an appeal under Article 45D(2), the Court of Appeal may confirm, quash or vary the confiscation order.
- (2) On an appeal under Article 45D(3), the Court of Appeal may confirm the decision, or if it believes that the decision is wrong –
  - (a) may itself proceed under paragraphs (2) to (7) (inclusive) of Article 3 of the 1988 Law or paragraphs (3) to (8) (inclusive) of Article 3 of the 1999 Law, as the case may be; or
  - (b) may direct the Royal Court to proceed afresh under Article 3 of the 1988 Law or Article 3 of the 1999 Law, as the case may be.
- (3) In directing the Royal Court under paragraph (2) to proceed afresh, the Court of Appeal may also give other directions, and if it does so the Royal Court shall comply with those directions in proceeding afresh in pursuance of this Article.

#### **45F Matters to be taken into account on appeal in respect of confiscation order**

- (1) This Article applies if –
  - (a) the Court of Appeal makes or varies a confiscation order pursuant to Article 45E; or
  - (b) the Royal Court makes or varies a confiscation order in pursuance of a direction under paragraph (2) of that Article.
- (2) The court, in doing so, shall have regard –
  - (a) to any fine imposed on the respondent in respect of the offence (or any of the offences) concerned;
  - (b) in the case of an order under the 1988 Law, to any order which is specified in either of clauses (ii) and (iii) of Article 10(1)(a) of that Law and has been made

against the respondent in respect of the offence concerned (or any of the offences concerned); and

(c) in the case of an order under the 1999 Law, to any order which is specified in either of clauses (ii) and (iii) of Article 10(1)(a) of that Law and has been made against the respondent in respect of the offence concerned (or any of the offences concerned).

(3) However, the court is not required to have regard to an order to which paragraph (2) refers where the order has already been taken into account by the Royal Court in deciding for the purposes of –

(a) Article 8 of the 1988 Law; or

(b) Article 4 of the 1999 Law,

as the case may be, the amount which might be realized.

(4) If, in a case in which the court is proceeding under the 1999 Law, an order has been made against the respondent in respect of the offence concerned (or any of the offences concerned) under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994<sup>[2]</sup> –

(a) the court shall have regard to the order; and

(b) Article 3(7) of the 1999 Law shall not apply.

(5) In a case in which the court is proceeding under the 1988 Law, in Article 5(3) of that Law –

(a) the assumption in sub-paragraph (a) of that paragraph does not apply with regard to property first held by the respondent on or after the relevant date;

(b) the assumption in sub-paragraph (b) of that paragraph does not apply with regard to expenditure incurred by the respondent on or after that date; and

(c) the assumption in sub-paragraph (c) of that paragraph does not apply with regard to property received (or assumed to have been received) by the respondent on or after that date.

(6) In a case in which the court is proceeding under the 1999 Law, in Article 5(5) of that Law –

(a) the assumptions in sub-paragraph (a) of that paragraph do not apply with regard to property first held by the respondent on or after the relevant date;

(b) the assumption in sub-paragraph (b) of that paragraph does not apply with regard to expenditure incurred by the respondent on or after that date; and

(c) the assumption in sub-paragraph (c) of that paragraph does not apply with regard to property received (or assumed to have been received) by the respondent on or after that date.

(7) In this Article –

‘court’ means –

(a) the Court of Appeal, if that court is itself proceeding under paragraphs (2) to (7) (inclusive) of Article 3 of the 1988 Law or paragraphs (3) to (8) (inclusive) of Article 3 of the 1999 Law pursuant to Article 45E(2)(a); or

(b) the Royal Court, if that court is proceeding afresh under either of those Articles, on the direction of the Court of Appeal pursuant to Article 45E(2)(b);

‘relevant date’ means the date on which the Royal Court decided not to make a confiscation order.”.

**28 Article 46 substituted Articles 46A to 46E inserted**

For Article 46 of the principal Law there shall be substituted the following Articles—

**“46 Right of person to be present**

- (1) Notwithstanding that he or she is in custody –
  - (a) a person whose sentencing is the subject of a reference to the Court of Appeal under Article 45A; or
  - (b) a respondent in an appeal under Article 45D,shall be entitled to be present (if he or she desires it) on the hearing of the matter.
- (2) However, paragraph (1) is subject to paragraphs (3) and (4).
- (3) A person in custody shall not be entitled to be present on any proceedings preliminary or incidental to a reference under Article 45A or to an appeal under Article 45D, unless the Court of Appeal gives the person leave to be present.
- (4) The power of the Court of Appeal to pass sentence on a person under Article 45B or to make any order under Article 45E may be exercised although he or she is not present.

**46A Time for proceedings under Part 4**

- (1) Notice of –
  - (a) a reference to the Court of Appeal under Article 45;
  - (b) an application for leave to refer a case to the Court of Appeal under Article 45A or
  - (c) an application for leave to appeal to the Court of Appeal under Article 45D,shall be given within 28 days from the day on which the sentence or the last of the sentences in the case was passed.
- (2) The time during which notice of –
  - (a) a reference; or
  - (b) an application for leave to refer a case or for leave to appeal,may be given may be extended at any time by the Court of Appeal.

**46B Duties of Judicial Greffier under Part 4**

If the Judicial Greffier is given notice of a reference under Article 45, an application or reference under Article 45A or an application or appeal under Article 45D, he or she shall—

- (a) take all necessary steps for obtaining a hearing of the matter; and
- (b) obtain and lay before the Court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the matter.

**46C Powers under Part 4 which may be exercised by a single judge**

- (1) In respect of any application, reference or appeal under this Part –
  - (a) the power of the Court of Appeal to give leave to refer a case to it or to appeal to it;

- (b) the power of the Court under Article 46 to give leave to a person to be present at any proceedings in any case where the person is not entitled to be present without leave;
- (c) the power of the Court under Article 46A(2) to extend the time for giving notice and
- (d) such other powers to determine matters preliminary or incidental to the reference as may be prescribed,

may be exercised by any single judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions.

- (2) If the single judge refuses an application to exercise any power to which paragraph (1) refers, the applicant shall be entitled to have the application determined by the Court of Appeal as duly constituted for the hearing and determining of references under either of Articles 45 and 45A or appeals under Article 45D.

#### **46D Supplementary provisions as to Part 4**

In respect of any application, reference or appeal under this Part –

- (a) Article 29 shall apply to any judgment of the Court of Appeal as that Article applies to a judgment of the Court under Part 3;
- (b) the Court of Appeal shall, for the purposes of and subject to the provisions of this Part, have the same powers as are conferred on it by Article 30 for the purposes of Part 3;
- (c) subject to the provisions of this Part, Article 30A shall apply to any order made by the Court of Appeal as it applies under Part 3 to an order made by it on any appeal;
- (d) Article 33 shall apply as it applies under Part 3 to an appeal and an application for leave to appeal;
- (e) the Court of Appeal shall for the purposes of this Part have the same powers as are conferred on it by Article 34 for the purposes of Part 3;
- (f) Article 35 shall apply to an acquitted person to whom Article 45 refers and to a person to whom Article 45A(1) refers as it applies to an appellant under Part 3; and
- (g) Article 40 shall apply as it applies in relation to appeals under Part 3 to the Court of Appeal and as it applies to appeals generally under that Part.

#### **46E Interpretation of Part 4**

- (1) In this Part –

‘1988 Law’ means the Drug Trafficking Offences (Jersey) Law 1988<sup>[3]</sup>;

‘1999 Law’ means the Proceeds of Crime (Jersey) Law 1999<sup>[4]</sup>;

‘respondent’ means a person in whose case the making, or not making, of a confiscation order is the subject of an appeal under Article 45D.

- (2) Expressions which –

- (a) are used in this Part; and
- (b) are also used in Part 3,

shall have the same respective meanings as they have in Part 3.

- (3) Notwithstanding Articles 45A and 45D, where the person to whose sentencing either of those Articles refers was –



- (a) convicted and sentenced by the Inferior Number of the Royal Court; or
- (b) sentenced by that court in pursuance of powers conferred by any enactment mentioned in Article 25,

the reference under Article 45A or the appeal under Article 45D (as the case may be) shall lie to the Superior Number of the Royal Court and accordingly, in relation to such a matter, references in this Part (other than Article 46D(a)) to the Court of Appeal shall unless the context otherwise requires, be construed as references to the Superior Number of the Royal Court.”.

## **29 Criminal Justice (Community Service Orders) (Jersey) Law 2001 amended**

Article 9(6) of the Criminal Justice (Community Service Orders) (Jersey) Law 2001<sup>[5]</sup> shall be repealed.

## **30 Royal Court (Jersey) Law 1948 amended**

In Article 10(8) of the Royal Court (Jersey) Law 1948<sup>[6]</sup>, for the words “as may be prescribed, after consultation with the Bailiff, by Order made by the Finance and Economics Committee” there shall be substituted the words “as may be determined, after consultation with the Bailiff, by the Minister for Treasury and Resources.

## **31 Citation and commencement**

- (1) This Law may be cited as the Court of Appeal (Amendment No. 8) (Jersey) Law 200.
- (2) This Law shall come into force on such day or days as the States may by Act appoint, and different days may be appointed for different provisions of this Law.

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- [\[1\]](#) *chapter 07.245*
- [\[2\]](#) *chapter 08.200*
- [\[3\]](#) *chapter 08.580*
- [\[4\]](#) *chapter 08.780*
- [\[5\]](#) *chapter 08.180*
- [\[6\]](#) *chapter 07.770*