

STATES OF JERSEY



DRAFT CRIMINAL PROCEDURE (JERSEY) LAW 201- (P.118/2017): SECOND AMENDMENT

**Lodged au Greffe on 6th March 2018
by the Minister for Home Affairs**

STATES GREFFE

DRAFT CRIMINAL PROCEDURE (JERSEY) LAW 201- (P.118/2017):
SECOND AMENDMENT

1 PAGE 63, ARTICLE 36 –

In paragraph (3) for the words “imposable by the Magistrate under Article 16” substitute the words “imposed by the Magistrate or which the Magistrate could have imposed under Article 16.”.

2 PAGE 65, ARTICLE 39 –

In paragraph (3) after the words “Viscount, if” insert the word “he”.

3 PAGE 70, ARTICLE 50 –

(1) After paragraph (2) insert the following paragraph –

“(3) Where, under paragraph (2), the trial court has communicated its view of the facts to the sentencing court, the sentencing court may sentence the defendant on the basis of the facts so communicated.”.

(2) Renumber existing paragraph (3) as paragraph (4).

4 PAGE 77, ARTICLE 63 –

In paragraph (2)(i) delete the words “who, in the 12 months immediately before being summoned for jury service, has participated in any criminal proceedings”.

5 PAGES 79 – 80, ARTICLE 66 –

For paragraph (8) substitute the following paragraphs –

“(8) A reserve juror must be called to serve on the jury if, at any time up to the point that the Bailiff concludes his or her summing up of the case, the number of jurors is reduced.

(9) The Bailiff –

- (a) may discharge a reserve juror from jury service if he or she is not required to serve on the jury immediately before the commencement of the Bailiff’s summing up of the case; or
- (b) must, when the jury retires to consider its verdict, discharge a reserve juror from jury service.”.

6 PAGE 80, ARTICLE 68 –

In paragraph (1) for the words “a husband and a wife” substitute the words “2 persons married to each other”.

7 PAGES 83 – 84, ARTICLE 75 –

For paragraph (4) substitute the following paragraph –

- “(4) The Judicial Greffier must ask the juror selected under Article 72(6) –
- (a) when the jury is ready to deliver its verdict, whether the defendant is guilty or not guilty of the offence (or each offence, if more than one) charged in the indictment;
 - (b) when the verdict has been delivered in respect of the offence (or each offence) –
 - (i) if the Bailiff has invited the Judicial Greffier to do so, whether the jury is ready to deliver a verdict in respect of an alternative or lesser offence than that charged in the indictment,
 - (ii) whether the jury’s verdict was agreed unanimously or by a majority, and
 - (iii) in the case of a majority guilty verdict, how many jurors were in favour of convicting and how many jurors were in favour of acquitting the defendant.”.

8 PAGE 86, CROSS-HEADING –

In the cross-heading immediately following Article 79(4), for the words “and discontinuance, withdrawal or” substitute the words “, discontinuance or”.

9 PAGES 86 – 87, ARTICLE 81 –

- (1) In paragraph (4)(b) delete the words “where the proceedings are in the Magistrate’s Court,”.
- (2) In paragraph (5) –
 - (a) after the words “Magistrate’s Court” insert the words “or Royal Court (as the case may be)”;
 - (b) for the number “35” substitute the number “14”.
- (3) In paragraph (6)(a) after the word “Magistrate” insert the words “or Judicial Greffier”.

10 PAGE 88, ARTICLE 82 –

For Article 82 substitute the following Article –

“82 Continuation of previous proceedings

- (1) The Attorney General may, at any time, with leave of the court or Court of Appeal progress previously halted criminal proceedings.
- (2) The reference to halted criminal proceedings is a reference to proceedings in relation to offences which the court has, at the request of the prosecution, ordered to be “left on file”.

- (3) Where leave is sought from a court other than the Court of Appeal, unless the court which made the order halting the previous proceedings has expressly ordered otherwise, nothing in this Article shall be taken to prevent the Attorney General from applying for leave of a court other than the one which made the order halting the previous proceedings.”.

11 PAGE 88, ARTICLE 83 –

- (1) In paragraph (2) for the words “paragraph (1)” substitute the words “this Article”.
- (2) For paragraph (3) substitute the following paragraph –
 - “(3) Unused prosecution material must not be disclosed under this Article where, on an application by the prosecution, it appears to the Magistrate or the Bailiff that it is not in the public interest to disclose it, and he or she makes an order to that effect.”.
- (3) In paragraph (5) –
 - (a) for the word “defendant’ ” substitute the word “defendant’s”;
 - (b) delete sub-paragraph (b) and renumber sub-paragraph (c) as sub-paragraph (b).

12 PAGES 89 – 90, ARTICLE 84 –

- (1) For paragraph (3) substitute the following paragraph –
 - “(3) If the defendant has no legal representative the court may, on the application of the defendant or of the court’s own motion, dispense with the requirement to give a defence case statement.”.
- (2) For paragraphs (5) and (6) substitute the following paragraphs –
 - “(5) If it appears to the Magistrate or Bailiff that the defendant has not given a defence case statement in accordance with paragraph (1), or one which complies with the requirements set out in paragraph (2), the Magistrate or Bailiff (as the case may be) may order that –
 - (a) the defendant’s legal representatives; or
 - (b) a defendant in person (where he or she is unrepresented),pay such of the prosecution’s costs as are attributable to the defendant’s failure to comply with paragraph (1) or (2).
 - “(6) A determination under paragraph (5) shall be made as soon as practicable after the date directed by the court, under paragraph (2)(d), for service of the defence case statement has expired.”.
- (3) In paragraph (8) –
 - (a) for the word “defendant’ ” substitute the word “defendant’s”;
 - (b) delete sub-paragraph (b) and renumber sub-paragraph (c) as sub-paragraph (b).

13 PAGE 98, ARTICLE 98 –

After paragraph (3) add the following paragraph –

“(4) The court may order the arrest of a person who fails to attend before the court on the day and at the time so warned, and a person so arrested may be remanded by the court, in custody or on bail, until such time as the court may appoint for receiving his or her evidence.”.

14 PAGES 107 – 108, ARTICLE 108 –

In paragraph (10)(b) delete clause (ii) and renumber the subsequent clauses.

15 PAGE 143, SCHEDULE 3 –

In substituted Article 82G(1) delete the words “it is evidence that”.

MINISTER FOR HOME AFFAIRS

REPORT

Following the debate on the principles of the Draft Criminal Procedure (Jersey) Law 201- ([P.118/2017](#)) on 18th January 2018, the Attorney General and I have had a number of meetings with the Criminal Justice Sub-Panel, and together we have agreed a number of changes to improve the legislation.

The changes are as follows –

1. In Article 36, where the Royal Court hears an appeal from the Magistrate's Court, if the Royal Court considers that there should be a change to the sentence it will not be able to impose a sentence more severe than the Magistrate could have imposed for that offence – currently a £10,000 fine and/or 12 months' imprisonment. As drafted, it allows a more severe sentence to be passed.
2. In Article 39, the word 'he' was missed from the phrase 'he or she', and this is corrected.
3. In Article 50, where sentencing for an offence is passed to a different court to that which conducted the trial (e.g. the Inferior Number conducted a trial, the Superior Number sentences), the trial court may pass on its own view of any facts in dispute to the sentencing court. The amendment clarifies that the sentencing court may rely on that view for sentencing. This was considered to be implicit in the drafting already, but this amendment will avoid any potential argument.
4. In Article 63, advocates, solicitors, prosecutors and Centeniers are fully exempted from jury service, regardless of whether they have had any recent involvement with criminal proceedings. This change follows discussions with the Sub-Panel and a concern that lawyers or Centeniers might be perceived to have undue influence on a jury.
5. Article 66 provides for reserve jurors, who will be called onto a jury if the number of jurors drops below 12. Previously, these additional people would be discharged when the Bailiff was about to sum up the case, but they can now be retained for the summing-up, as in more complex cases that process can be more than one day long, and so it is possible that a juror might drop out at that stage.
6. In Article 68 the previously correct term 'husband and a wife' has been replaced with the now-more appropriate '2 persons married to each other', following the passage of the Marriage and Civil Status Law.
7. Article 75 had required that the Judicial Greffier ask the chair of the jury whether a defendant is guilty of a lesser offence than the one charged (e.g. common assault where the charge was grave and criminal assault). Concerns were raised that this would be unnecessary in some cases where a lesser charge would be nonsensical, leading to confusion amongst the jury. The amendment will provide that the court will ask the Judicial Greffier to inquire about lesser offences only where it feels it necessary to do so.
8. The italicised heading (called a cross-heading) following Article 79 is amended, as the term 'withdrawal' has been removed by the amendment to Article 82 (see below).

9. Article 81 deals with the situation in which the Attorney General wishes to stop a prosecution. Paragraphs 4, 5 and 6 are amended to remove an unnecessary distinction between the Magistrate's Court and the Royal Court in terms of the right of the defendant to object to a case being stopped. After amendment both Courts are treated in the same way. The time limit for a defendant to challenge a decision to stop a case has been reduced from 35 to 14 days to allow more certainty in the process. Fourteen days is recognised to be a reasonable time period to make an application to a court.
10. Article 82 allows the Attorney General to recommence criminal proceedings with the leave of the court. As drafted it creates an unnecessary distinction between 'discontinuance' and 'withdrawal', so this has been resolved by the replacement of Article 82 with a simplified version that does not refer to withdraw.
11. Article 83 deals with the requirement for the prosecution to disclose material that it has collected on a case but not used, especially where this harms the prosecution or helps the defence. It provides the power to withhold that material in special circumstances where the public interest is threatened. As drafted, this power had rested with the prosecution; as amended, it rests with the court. In addition, an amendment is made to read correctly with the amendment to Article 82 by removing reference to 'withdrawal'. A small typographical error is also corrected.
12. Article 84 requires the defendant to submit their case to the court by means of a 'Defence Case Statement'. The court had been empowered to do away with this requirement for unrepresented defendants 'in exceptional circumstances'; the amendment allows this to be done for unrepresented defendants in any circumstances the court sees fit. In addition, the defence's liability for any additional costs resulting from the failure to submit that Statement is limited only to the costs arising from doing so. On one reading of the original Article those costs could be much wider in some circumstances. In addition, an amendment is made to read correctly with the amendment to Article 82 by removing reference to 'withdrawal'. A small typographical error is also corrected.
13. Article 98 provides sanctions against witnesses who do not turn up to court. There had been concerns that as drafted these sanctions were weaker than those available to the courts at the current time. The amended Article will allow witnesses who have been warned to attend court to be arrested if they do not attend.
14. Article 108 makes reference to 'withdrawal' in a clause, and this is removed as per the amendment to Article 82 (see above).
15. Schedule 3 makes consequential amendments to the Police Procedures and Criminal Evidence (Jersey) Law 2003. It adds an additional Article 82G to that Law, which provides for rules around where evidence can be adduced. The rule in Article 82G(1) concerning evidence of bad character contains unnecessary words, which are removed.

I would like to express my sincere thanks to the Sub-Panel for its efforts in considering the legislation. The Department, the Law Officers, the Panel and its officer have worked together to make improvements to this draft Law, and this process has been extremely productive, and has no doubt strengthened and improved it. In my opinion this has been an excellent example of the critical friend in action.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for Home Affairs, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this proposed amendment.