

STATES OF JERSEY



DRAFT SEXUAL OFFENCES (CONSEQUENTIAL AMENDMENTS) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 24th September 2018
by the Minister for Home Affairs

STATES GREFFE



Jersey

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REPORT

These draft Regulations make the necessary amendments to integrate the Sexual Offences (Jersey) Law 2018 into the wider legislative framework.

The underlying reason for these changes is that the primary Law will amend and abolish offences which are currently referenced in existing legislation, and will create new sexual offences in their place, and thus where other legislation relies on the names and descriptions of offences under the old sexual offences legislation and customary law, this must be changed.

In addition, the amendments are drafted so that where necessary they refer to the abolished offences. This is necessary for 2 reasons –

- Firstly, where criminal convictions must be declared or where they make a person ineligible to do certain things (such as working with children), the old offences must not be forgotten.
- Secondly, where procedure is concerned, a person must be charged with an offence that existed when the act was done, so a rape committed in July 2018 could be prosecuted in July 2020 under the old customary offence of rape. The procedural law in place in 2020 must then recognise these older offences.

In summary, these amendments are not intended to make any fundamental changes to the legislation in question. They are as follows –

Employment (Jersey) Law 2003

When the Tribunal sits for a hearing it may, if it chooses, do so in private if the matter under discussion concerns ‘sexual misconduct’. Sexual misconduct will now include sexual offences or allegations of those offences that are created in the primary Law. This amendment would accommodate that change.

Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002

A Court may decide that the victim of a sexual offence should remain anonymous. The amendment would rebuild the list of offences where the Court has this option, reflecting the changes made by the primary Law.

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

In many cases a Court will decide that special protection should be given to children giving evidence. This includes cases concerning sexual offences, and so this Law is revised to reflect the new offences.

Places of Refreshment (Jersey) Law 1967

The Minister for Economic Development, Tourism, Sport and Culture may (*not must*) refuse an application for registration of a Place of Refreshment if the applicant has been convicted of certain offences. This includes the *Loi (1895) modifiant le droit criminel*, which has historically described many sexual offences. This amendment reflects the repeal of that *Loi* and instead points to any offence captured by the Sex Offenders (Jersey) Law 2010, which is itself amended by the primary Law.

Children (Jersey) Law 2002

This Law acts to disqualify people from working with children if they have ever been convicted of certain offences. The amendment replaces the old references with a new list based on sexual offences under the primary Law when committed against children, and the relevant offences captured by the Sex Offenders (Jersey) Law 2010.

Matrimonial Causes Rules 2005

These Rules provide that a person has cause for divorce if the other party commits adultery. Adultery is a customary law concept, which included the customary law offence of rape. This position is complicated by the changed definition of rape, so the relevant amendments have taken into consideration those elements of the new rape offence which still constitute adultery.

Connétables (Jersey) Law 2008 and States of Jersey Law 2005

The amendments to the above named Laws both serve the same purpose – to define a list of offences that a candidate for election must declare even if they would normally be treated as ‘spent’ under the Rehabilitation of Offenders (Jersey) Law 2001. These Laws now simply point to the Sex Offenders (Jersey) Law 2010 as the definition for the sexual offences.

Terrorism (Jersey) Law 2002 and Police Procedures and Criminal Evidence (Jersey) Law 2003

Again, these amendments both serve the same purpose. These Laws seek to define which crimes are especially ‘serious’, to determine what powers the police can exercise. The references to the now abolished customary offences are removed, and the new equivalents are added, including any sexual offences against a child. It will also capture sexual offences committed overseas, where they would be ‘serious’ if they had been committed in Jersey.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations would make amendments that are consequential on the Sexual Offences (Jersey) Law 2018 (the “new Law”), to update references in other enactments to sexual offences that are repealed by the Law, by substituting new equivalents.

The new Law itself makes consequential amendments to the Protection of Children (Jersey) Law 1994, the Marriage and Civil Status (Jersey) Law 2001 and the Sex Offenders (Jersey) Law 2010 (the “Sex Offenders Law”). The new Law also repeals the Sexual Offences (Jersey) Law 2007 and 3 older Laws in French, the Loi (1895) modifiant le droit criminel, the Loi (1915) modifiant le droit criminel and the Loi (1938) modifiant le droit criminel (sodomie et bestialité), all of which created offences. The new Law repeals the customary law offences of rape, *sodomie*, gross indecency, incest and *bestialité*, but it does not repeal or limit any other customary law offences, including indecent assault, indecent exposure and outraging public decency. Other legislation contains references to these offences, mostly in lists of sexual offences for various purposes including to determine whether an offence is serious, to require relevant convictions to be disclosed, or to protect privacy of victims. These Regulations therefore make amendments to align those references with the new scheme of offences under the new Law.

Regulation 1 amends Article 90(11) of the Employment (Jersey) Law 2003, which defines a sexual offence, but only as part of a broader definition of sexual misconduct, for the purpose of the Tribunal’s discretion to restrict reporting in cases that involve allegations of sexual misconduct. The list of old offences is replaced by a list covering any offence under the new Law and any other “relevant” offence under the Sex Offenders Law (as amended by the new Law).

Regulation 2 amends the Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002, which gives anonymity to victims of sexual offences, unless the court orders otherwise. The list of sexual offences in Article 2 is updated, and the special rules in Article 5 for the customary law offence of sodomy (which is abolished by the new Law) are removed, while the rules for incest are updated.

Regulation 3 amends Article 2 of, and the Schedule to, the Criminal Justice (Evidence of Children) (Jersey) Law 2002, which gives the court powers to protect children when giving evidence in criminal proceedings. References to sexual offences are updated in Article 2, for giving of evidence through television links, and in the Schedule, which relates to the powers to proceed in a child’s absence or to take a child’s deposition under Articles 6 and 7.

Regulation 4 amends Article 8(2)(b) of the Places of Refreshment (Jersey) Law 1967, which gives a power to refuse registration of a place of refreshment if the applicant has been convicted of certain offences. The amendment updates the reference to sexual offences.

Regulation 5 amends paragraph 2 of Schedule 4 to the Children (Jersey) Law 2002, which sets out the offences that have to be disclosed by an applicant for registration of a voluntary home, under Article 54(2), and by a person fostering a child privately, under Article 62 (in each case the Minister can consent to the application or fostering once the disclosure is made). The amendment updates the references in the list to sexual offences.

Regulation 6 amends Rule 6(2) of the Matrimonial Causes Rules 2005, which provides that in a petition for adultery the other party should not be made a co-respondent if the petition alleges a rape of that party. That is updated to cover any offence the facts of which also constitute adultery.

Regulation 7 amends Article 4A of the Connétables (Jersey) Law 2008, which lists convictions (spent or otherwise) that must be declared by a candidate. The amendment replaces the sexual offences with a reference to offences that are “relevant offences” within the meaning of the Sex Offenders Law, and updates the provision about the treatment of the former offence of sodomy (if it was committed between 12th January 2007 and its abolition by the new Law).

Regulation 8 amends Article 9 of the States of Jersey Law 2005, to make exactly the same changes in relation to candidates for Senator or Deputy as those described above in relation to candidates for Constable.

Regulation 9 amends paragraph 9(2) of Schedule 9 to the Terrorism (Jersey) Law 2002, which lists offences that are always treated as serious (for the purpose of authorising delay of rights to have a person informed of detention, and rights of access to legal advice). The amendments update the references in the list to sexual offences.

Regulation 10 amends Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003, to make equivalent changes in relation to that Law to those described above in relation to the Terrorism (Jersey) Law 2002. The definition of serious offence is relevant to vehicle check powers under Article 13, powers to authorize entry and search of premises under Article 15, powers of entry and search after arrest under Article 20, as well as the rights to have a person informed of detention (under Article 52) and to have access to legal advice (under Article 54).

Regulation 11 provides the name by which these Regulations may be cited, and would bring them into force on the commencement of the Sexual Offences (Jersey) Law 2018.



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Jersey

DRAFT SEXUAL OFFENCES (CONSEQUENTIAL AMENDMENTS) (JERSEY) REGULATIONS 201-

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

THE STATES make these Regulations under Article 46 of the Sexual Offences (Jersey) Law 2018¹ –

1 Employment (Jersey) Law 2003

In Article 90(11) of the Employment (Jersey) Law 2003², for the definition “sexual offence” there is substituted –

“ “sexual offence” means –

- (a) an offence under the Sexual Offences (Jersey) Law 2018³;
- (b) any other offence that is a relevant offence within the meaning of the Sex Offenders (Jersey) Law 2010⁴;
- (c) an offence of attempting to commit an offence in sub-paragraph (a) or (b);
- (d) an offence of conspiracy or incitement to commit an offence in sub-paragraph (a) or (b); or
- (e) an offence of aiding, abetting, counselling or procuring an offence in sub-paragraph (a), (b) or (c).”.

2 Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002

In the Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002⁵ –

(a) for Article 2(a) to (f) there is substituted –

- “(a) an offence under the Sexual Offences (Jersey) Law 2018⁶, or under a provision of an enactment or customary law repealed or abolished by that Law (if the offence is alleged to have been committed before that repeal or abolition);
- (b) a customary law offence of indecent assault or indecent exposure;
- (c) an offence under Article 2 of the Protection of Children (Jersey) Law 1994⁷;

- (d) an offence under Articles 75 or 76 of the Mental Health (Jersey) Law 2016⁸, or an offence under Article 38 of the Mental Health (Jersey) Law 1969⁹ (if the offence is alleged to have been committed before the repeal of that Law);”;
- (b) in the heading of Article 5, “or sodomy” is deleted;
- (c) in Article 5(1) for “incest is alleged to have been committed if that person is accused of having committed incest against the other person who is alleged to have committed incest” there is substituted “an offence under Article 34 of the Sexual Offences (Jersey) Law 2018 is alleged to have been committed, if that person is accused of having committed an offence under that Article against the other person who is alleged to have committed the offence”;
- (d) Article 5(2) is deleted;
- (e) in Article 5(3) for “Paragraph (1) or (2)” there is substituted “Paragraph (1)”;
- (f) in Article 5(4) for “a reference to incest includes an attempt to commit that offence and a reference to sodomy includes an attempt to commit that offence” there is substituted “a reference to an offence under Article 34 of the Sexual Offences (Jersey) Law 2018 includes a customary law offence of incest (if alleged to have been committed before the abolition of that offence), and an attempt to commit either of those offences”.

3 Criminal Justice (Evidence of Children) (Jersey) Law 2002

In the Criminal Justice (Evidence of Children) (Jersey) Law 2002¹⁰ –

- (a) for Article 2(1)(b)(ii) and (iii) there is substituted –
 - “(ii) the Sexual Offences (Jersey) Law 2018¹¹, or under a provision of an enactment or customary law repealed or abolished by that Law,
 - (iii) Part 10 of the Mental Health (Jersey) Law 2016¹², or Article 37 or 38 of the Mental Health (Jersey) Law 1969¹³ (if the offence is alleged to have been committed before the repeal of that Law), or”;
- (b) for Article 2(1)(c) there is substituted –
 - “(c) a customary law offence of indecent assault, indecent exposure, or outraging public decency; or”;
- (c) in the Schedule, for the third, fourth and fifth paragraphs there is substituted –
 - “An offence under the Sexual Offences (Jersey) Law 2018, or an offence repealed or abolished by that Law, or an attempt to commit either of those descriptions of offence.
 - A customary law offence of indecent assault or indecent exposure, or an attempt to commit such an offence.
 - An offence under any of Articles 74 to 76 of the Mental Health (Jersey) Law 2016, or an offence under Article 38 of the Mental

Health (Jersey) Law 1969 (if the offence is alleged to have been committed before the repeal of that Law), or an attempt to commit either such an offence.

An offence under Article 11(14) of the Sex Offenders (Jersey) Law 2010¹⁴.”.

4 Places of Refreshment (Jersey) Law 1967

In Article 8(2)(b) of the Places of Refreshment (Jersey) Law 1967¹⁵ –

- (a) after “fraud or dishonesty,” there is inserted “of any relevant offence within the meaning of the Sex Offenders (Jersey) Law 2010¹⁶,”;
- (b) clause (i) is deleted.

5 Children (Jersey) Law 2002

In paragraph 2 of Schedule 4 to the Children (Jersey) Law 2002¹⁷, for subparagraphs (c) to (e), there is substituted –

- “(c) an offence against a child under the Sexual Offences (Jersey) Law 2018¹⁸;
- (d) an offence against a child under any provision of an enactment or of customary law that was repealed by the Sexual Offences (Jersey) Law 2018;
- (e) any other offence that is a relevant offence within the meaning of the Sex Offenders (Jersey) Law 2010¹⁹.”.

6 Matrimonial Causes Rules 2005

In Rule 6(2) of the Matrimonial Causes Rules 2005²⁰, for “rape upon a named person”, there is substituted “an offence upon a named person, being an offence the facts of which also constitute adultery”.

7 Connétables (Jersey) Law 2008

In Article 4A of the Connétables (Jersey) Law 2008²¹ –

- (a) in paragraph (1)(c), for clauses (iv) to (vi) there is substituted –
 - “(iv) any offence that is a relevant offence within the meaning of the Sex Offenders (Jersey) Law 2010²²,”;
- (b) in paragraph (1A)(b), for “would not be an offence” there is substituted “would not have been an offence”.

8 States of Jersey Law 2005

In Article 9 of the States of Jersey Law 2005²³ –

- (a) in paragraph (1)(c), for clauses (iv) to (vi) there is substituted –

- “(iv) any offence that is a relevant offence within the meaning of the Sex Offenders (Jersey) Law 2010²⁴,”;
- (b) in paragraph (1A)(b), for “would not be an offence” there is substituted “would not have been an offence”.

9 Terrorism (Jersey) Law 2002

In paragraph 9(2) of Schedule 9 to the Terrorism (Jersey) Law 2002²⁵ –

- (a) clauses (a)(iv), (a)(vi) and (a)(vii) are deleted;
- (b) for clause (b)(ii) there is substituted –
 - “(ii) Articles 5 to 7, 9 to 12, and 14 to 18 of the Sexual Offences (Jersey) Law 2018²⁶,
 - (iia) Articles 28, 29, 35 and 36 of the Sexual Offences (Jersey) Law 2018, if the offence is against a child,
 - (iib) Article 40 of the Sexual Offences (Jersey) Law 2018, if the relevant offence for the purpose of that Article is an offence under a provision mentioned in sub-clause (ii) or (iia).”.

10 Police Procedures and Criminal Evidence (Jersey) Law 2003

In Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003²⁷ –

- (1) in Part 1, paragraphs 4, 6 and 7 are deleted;
- (2) in Part 2, for paragraph 2 there is substituted –
 - “2. Articles 5 to 7, 9 to 12, and 14 to 18 of the Sexual Offences (Jersey) Law 2018²⁸.
 - 2a. Articles 28, 29, 35 and 36 of the Sexual Offences (Jersey) Law 2018, if the offence is against a child.
 - 2b. Article 40 of the Sexual Offences (Jersey) Law 2018, if the relevant offence for the purpose of that Article is an offence under a provision mentioned in paragraph 2 or 2a.”.

11 Citation and commencement

These Regulations may be cited as the Sexual Offences (Consequential Amendments) (Jersey) Regulations 201- and come into force on the commencement of the Sexual Offences (Jersey) Law 2018²⁹.

1	<i>L.20/2018</i>
2	<i>chapter 05.255</i>
3	<i>L.20/2018</i>
4	<i>chapter 23.815</i>
5	<i>chapter 08.160</i>
6	<i>L.20/2018</i>
7	<i>chapter 08.790</i>
8	<i>L.29/2016</i>
9	<i>chapter 20.650</i>
10	<i>chapter 08.250</i>
11	<i>L.20/2018</i>
12	<i>L.29/2016</i>
13	<i>chapter 20.650</i>
14	<i>chapter 23.815</i>
15	<i>chapter 11.600</i>
16	<i>chapter 23.815</i>
17	<i>chapter 12.200</i>
18	<i>L.20/2018</i>
19	<i>chapter 23.815</i>
20	<i>chapter 12.650.50</i>
21	<i>chapter 16.250</i>
22	<i>chapter 23.815</i>
23	<i>chapter 16.800</i>
24	<i>chapter 23.815</i>
25	<i>chapter 17.860</i>
26	<i>L.20/2018</i>
27	<i>chapter 23.750</i>
28	<i>L.20/2018</i>
29	<i>L.20/2018</i>