



Jersey

# **SEXUAL OFFENCES (JERSEY) LAW 2018**

## **Official Consolidated Version**

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Jersey

## SEXUAL OFFENCES (JERSEY) LAW 2018

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Jersey

## SEXUAL OFFENCES (JERSEY) LAW 2018

A **LAW** to make new provision about sexual offences, to amend the law relating to certain sexual acts, to amend the [Sex Offenders \(Jersey\) Law 2010](#), and for connected purposes

Commencement [[see endnotes](#)]

### PART 1

#### INTERPRETATION AND GENERAL

#### 1 Interpretation

- (1) In this Law –
  - “adult” means a person aged 18 or older;
  - “child” means a person aged 17 or younger;
  - “consent” has the meaning given by Article 2;
  - “female genital mutilation” has the meaning given by Article 28(2);
  - “female genital mutilation offence” has the meaning given by Article 30(1);
  - “gain” has the meaning given by Article 21;
  - “Minister” means the Minister for Justice and Home Affairs;
  - “payment” has the meaning given by Article 21;
  - “penetration” is to be construed in accordance with paragraph (3);
  - “reasonable belief” is to be construed in accordance with Article 3;
  - “sexual” is to be construed in accordance with paragraph (2);
  - “touch” is to be construed in accordance with paragraph (4);
  - “vagina” includes the vulva.<sup>1</sup>
- (2) For the purpose of this Law an act (including penetration, touching or communication) is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual.
- (3) A reference in this Law to “penetration” is to a continuing act from entry to withdrawal.
- (4) For the purpose of this Law, touching another person includes –
  - (a) ejaculating semen onto the other person; and

- (b) emitting urine, faeces or saliva onto the other person.
- (5) A reference in this Law to a part of the body includes reference to such a part surgically constructed, whether through gender reassignment surgery or otherwise.
- (6) In this Law –
  - (a) a reference to a person “aged 16 or younger” is to a person who has not attained his or her 17th birthday;
  - (b) a reference to a person “aged 16” is to a person who has attained his or her 16th birthday but has not attained his or her 17th birthday;
  - (c) a reference to a person “aged 13, 14 or 15” is to a person who has attained his or her 13th birthday but has not attained his or her 16th birthday; and
  - (d) a reference to a person “aged 16 or older” is to a person who has attained his or her 16th birthday,and references to persons of other ages are to be construed accordingly.

## 2 Interpretation: consent

- (1) This Article applies for the purpose of construing references to consent in Part 2.
- (2) Consent means free agreement.
- (3) Agreement to an act is not free agreement if the complainant agrees because –
  - (a) violence is used or threatened by any person against the complainant or any other person;
  - (b) the complainant is unlawfully detained by the defendant;
  - (c) the complainant is mistaken, as a result of deception by the defendant, as to the nature or purpose of the act; or
  - (d) the defendant induces the complainant to agree to the act by impersonating another person.
- (4) For the purpose of paragraph (3), the complainant is the person whose consent to an act is required, and the defendant is the person who is required to believe that the complainant consents to the act.
- (5) Paragraph (3) does not limit other reasons for which agreement might not be free.
- (6) A person does not consent to an act if, at the time of the act or of the alleged consent, the person –
  - (a) is asleep or unconscious;
  - (b) is incapable because of the effect of alcohol or any other substance (whether voluntarily consumed or otherwise) of consenting to the act; or
  - (c) otherwise lacks capacity, within the meaning of the [Capacity and Self-Determination \(Jersey\) Law 2016](#), to consent to the act.
- (7) A person’s consent to an act is not to be taken as implied merely by –
  - (a) that person’s consent to another act;
  - (b) a purported expression or indication of that person’s consent to the act, if the expression or indication is given by another person; or
  - (c) another person’s consent to that act, given by that other person on his or her own behalf.
- (8) Consent to an act –

- (a) may be taken back at any time before the act; and
- (b) in the case of a continuing act, may be taken back at any time during the act, and accordingly, if the act takes place or continues after the consent has been taken back, it does so without consent.

### **3 Interpretation: defences and reasonable belief in consent, age or absence of exploitation**

- (1) For the purpose of any provision of this Law under which a defendant is required to show a fact to establish a defence, the defendant is to be taken to have shown the fact if –
  - (a) sufficient evidence of the fact is adduced to raise an issue with respect to it; and
  - (b) the contrary is not proved beyond reasonable doubt.
- (2) Paragraph (3) applies if, in proceedings under this Law, a question arises as to whether the defendant reasonably believed that another person consented to an act.
- (3) The question is to be determined having regard to all the circumstances, including in particular –
  - (a) whether the defendant had taken any steps to ascertain whether the other person consented to the act; and
  - (b) if so, what those steps were.
- (4) Paragraph (5) applies if in proceedings under this Law a question arises, other than in a defence under Article 13(3), as to whether the defendant reasonably believed that another person was of or older than a particular age.
- (5) The question is to be determined having regard to all the circumstances, including in particular –
  - (a) whether the defendant had taken any steps to ascertain the age of the other person; and
  - (b) if so, what those steps were.
- (6) Paragraph (7) applies if, in proceedings under Article 22, a question arises as to whether the defendant reasonably believed that no person had engaged in any exploitative conduct in relation to the prostitution service.
- (7) The question is to be determined having regard to all the circumstances, including in particular –
  - (a) whether the defendant had taken any steps to ascertain whether any person had engaged in any exploitative conduct; and
  - (b) if so, what those steps were.

### **4 Accessories and children**

- (1) A child aged 15 or younger is not guilty, whether under customary law or Article 1 of the [Criminal Offences \(Jersey\) Law 2009](#), of an offence of aiding, abetting, counselling, procuring or inciting the commission by an adult of an offence under this Law against that child.
- (2) Paragraph (3) applies to an offence, whether under customary law or under Article 1(1)(a) of the [Criminal Offences \(Jersey\) Law 2009](#), of aiding, abetting or

counselling the commission against a child of an offence under Part 3, 4, 5 or 6 of this Law.

- (3) A person is not guilty of the offence if the person –
  - (a) acts for the purpose of –
    - (i) protecting the child from sexually transmitted infection,
    - (ii) protecting the physical safety of the child,
    - (iii) preventing the child from becoming pregnant, or
    - (iv) promoting the child's emotional well-being by the giving of advice; and
  - (b) does not act for the purpose of –
    - (i) obtaining sexual gratification for that person or for any other person,
    - (ii) causing humiliation, distress or alarm to any person, or
    - (iii) causing or encouraging the act that constitutes the offence against the child, or the involvement of the child in that act.
- (4) The States may by Regulations amend paragraphs (2) and (3).
- (5) Paragraphs (1) to (3) do not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting, counselling, procuring or inciting the commission of an offence under this Law.

## PART 2

### NON-CONSENSUAL OFFENCES

#### 5 Rape

- (1) A person ("D"), who intentionally penetrates the vagina, anus or mouth of another person ("C") with D's penis, commits an offence if –
  - (a) C does not consent to the penetration; and
  - (b) D does not reasonably believe that C consents.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for life and to a fine.

#### 6 Sexual penetration without consent

- (1) A person ("D"), who intentionally penetrates the vagina or anus of another person ("C") with a part of D's body or with anything else, commits an offence if –
  - (a) the penetration is sexual;
  - (b) C does not consent to the penetration; and
  - (c) D does not reasonably believe that C consents.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for life and to a fine.



**7 Sexual touching without consent**

- (1) A person (“D”), who intentionally touches another person (“C”), commits an offence if –
  - (a) the touching is sexual;
  - (b) C does not consent to the touching; and
  - (c) D does not reasonably believe that C consents.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for 10 years and to a fine.

**8 Causing sexual act without consent**

- (1) A person (“D”), who intentionally causes another person (“C”) to engage in an act, commits an offence if –
  - (a) the act is sexual;
  - (b) C does not consent to engaging in the act; and
  - (c) D does not reasonably believe that C consents.
- (2) A person guilty of an offence under paragraph (1) is liable –
  - (a) to imprisonment for life and to a fine, if the act caused involved –
    - (i) penetration of C’s anus or vagina,
    - (ii) penetration of C’s mouth with a person’s penis,
    - (iii) penetration of a person’s anus or vagina with a part of C’s body or by C with anything else, or
    - (iv) penetration of a person’s mouth with C’s penis; or
  - (b) in any other case, to imprisonment for 10 years and to a fine.
- (3) For the purpose of paragraph (1), and without limiting that paragraph, it is irrelevant whether any other person or persons (whether or not including D) also engage in the act.

**PART 3****OFFENCES BY ADULTS AGAINST CHILDREN AGED 12 OR YOUNGER****9 Penile penetration, sexual penetration or sexual touching of a young child**

- (1) An adult commits an offence, and is liable to imprisonment for life and to a fine, if –
  - (a) the adult intentionally penetrates the vagina, anus or mouth of another person with the adult’s penis; and
  - (b) the other person is a child aged 12 or younger.
- (2) An adult commits an offence, and is liable to imprisonment for life and to a fine, if –
  - (a) the adult intentionally penetrates the vagina or anus of another person with a part of the adult’s body or with anything else;
  - (b) the penetration is sexual; and

- (c) the other person is a child aged 12 or younger.
- (3) An adult commits an offence, and is liable to imprisonment for 14 years and to a fine, if –
  - (a) the adult intentionally touches another person;
  - (b) the touching is sexual; and
  - (c) the other person is a child aged 12 or younger.

## **10 Causing or inciting a sexual act with a young child**

- (1) An adult commits an offence if –
  - (a) the adult intentionally causes or incites another person to engage in an act;
  - (b) the act is sexual; and
  - (c) the other person is a child aged 12 or younger.
- (2) An adult guilty of an offence under paragraph (1) is liable –
  - (a) to imprisonment for life and to a fine, if the offence was one of causing engagement in an act and the act involved –
    - (i) penetration of the child’s anus or vagina,
    - (ii) penetration of the child’s mouth with a person’s penis,
    - (iii) penetration of a person’s anus or vagina with a part of the child’s body or by the child with anything else, or
    - (iv) penetration of a person’s mouth with the child’s penis; or
  - (b) in any other case, to imprisonment for 14 years and to a fine.
- (3) For the purpose of paragraphs (1) and (2), and without limiting those paragraphs, it is irrelevant whether any other person or persons (whether or not including the adult) also engage in the act.

## **PART 4**

### **OFFENCES BY ADULTS AGAINST CHILDREN AGED 13 TO 15**

## **11 Unlawful sexual intercourse with, sexual penetration of or sexual touching of an older child**

- (1) An adult commits an offence if –
  - (a) the adult intentionally penetrates the vagina, anus or mouth of another person with the adult’s penis; and
  - (b) the other person is aged 13, 14 or 15.
- (2) An adult commits an offence if –
  - (a) the adult intentionally penetrates the vagina or anus of another person with a part of the adult’s body or with anything else;
  - (b) the penetration is sexual; and
  - (c) the other person is aged 13, 14 or 15.
- (3) An adult commits an offence if –

- (a) the adult intentionally touches another person;
  - (b) the touching is sexual; and
  - (c) the other person is aged 13, 14 or 15.
- (4) It is a defence, in relation to each of the offences under this Article, for the defendant to show that the defendant reasonably believed that the other person was aged 16 or older.
- (5) An adult guilty of an offence under this Article is liable to imprisonment for 10 years and to a fine.

## **12 Causing or inciting a sexual act with an older child**

- (1) An adult commits an offence, and is liable to imprisonment for 10 years and to a fine, if –
  - (a) the adult intentionally causes or incites another person to engage in an act;
  - (b) the act is sexual; and
  - (c) the other person is aged 13, 14 or 15.
- (2) For the purpose of paragraph (1), and without limiting that paragraph, it is irrelevant whether any other person or persons (whether or not including the adult) also engage in the act.
- (3) It is a defence for the defendant to show that the defendant reasonably believed that the other person was aged 16 or older.

## **PART 5**

### **OTHER OFFENCES AGAINST CHILDREN AGED 15 OR YOUNGER**

## **13 Unlawful sexual act between children**

- (1) A child commits an offence, and is liable to imprisonment for 5 years and to a fine, if –
  - (a) that child intentionally –
    - (i) touches another person,
    - (ii) engages in any other act with another person,
    - (iii) causes another person to engage in an act, or
    - (iv) incites another person to engage in an act;
  - (b) the touching or the act is sexual; and
  - (c) the other person is aged 15 or younger.
- (2) For the purpose of paragraph (1)(a), it is irrelevant whether the touching or the act also forms part of an offence committed by the other person.
- (3) It is a defence for the defendant to show that –
  - (a) the other person was aged 13 or older; and
  - (b) the defendant reasonably believed that the other person was aged 16 or older.

**14 Causing a child to watch or be present during a sexual act**

- (1) An adult commits an offence if –
  - (a) the adult intentionally engages in an act;
  - (b) the act is sexual;
  - (c) for the purpose of obtaining sexual gratification or of causing humiliation, distress or alarm, the adult engages in the act when another person is present or is in a place from which the adult can be observed; and
  - (d) the other person is aged 15 or younger.
- (2) An adult commits an offence if –
  - (a) for the purpose of obtaining sexual gratification or of causing humiliation, distress or alarm, the adult intentionally causes another person (“C”) –
    - (i) to watch a third person engaging in an act, or
    - (ii) to look at an image of any person engaging in an act;
  - (b) the act is sexual; and
  - (c) C is aged 15 or younger.
- (3) It is a defence, in relation to each of the offences under this Article, for the defendant to show that –
  - (a) the other person was aged 13 or older; and
  - (b) the defendant reasonably believed that the other person was aged 16 or older.
- (4) An adult guilty of an offence under paragraph (1) or (2) is liable to imprisonment for 10 years and to a fine.

**15 Sexual grooming of a child**

- (1) An adult commits an offence, and is liable to imprisonment for a term of 10 years and to a fine, if –
  - (a) having met or communicated with another person on at least one earlier occasion, the adult –
    - (i) intentionally meets the other person, or
    - (ii) travels with the intention of meeting the other person in any part of the world;
  - (b) at the time, the adult intends to do anything to or in respect of the other person, during or after the meeting and in any part of the world, which if done will involve the commission by the adult of a relevant offence; and
  - (c) the other person is aged 15 or younger.
- (2) In paragraph (1), the reference to the adult having met or communicated with the other person is a reference to the adult –
  - (a) having met the other person in any part of the world; or
  - (b) having communicated with the other person by any means from, to or in any part of the world.
- (3) For the purpose of paragraph (1)(b) a relevant offence is any of the following –
  - (a) an offence under this Law;
  - (b) a customary law offence of indecent assault or indecent exposure;

- (c) an offence under –
    - (i) Article 38(2)(a) or (b) (having or procuring unlawful sexual intercourse with a mental patient) of the Mental Health (Jersey) Law 1969, or
    - (ii) any of Articles 74 to 76 (sexual offences: prohibited acts, relationship of care, coercion) of the [Mental Health \(Jersey\) Law 2016](#);
  - (d) an offence under Article 2 (taking, possessing or distributing indecent photographs, etc. of children) of the [Protection of Children \(Jersey\) Law 1994](#);
  - (e) an offence under Article 61 of the [Customs and Excise \(Jersey\) Law 1999](#) in so far as the offence relates to goods prohibited to be imported under Article 2 of the [Customs and Excise \(Import and Export Control\) \(Jersey\) Order 2006](#) that are indecent photographs of persons who are or appear to be aged under 16 years;
  - (f) an offence under Article 11(14) (breach of child protection order, interim child protection order or prescribed order) of the [Sex Offenders \(Jersey\) Law 2010](#); and
  - (g) an offence, whether under customary law or under Article 1 of the [Criminal Offences \(Jersey\) Law 2009](#), of aiding, abetting, counselling or procuring an offence falling within any of the preceding sub-paragraphs, or of conspiring or attempting to commit, or of inciting another to commit, such an offence.
- (4) The States may by Regulations amend paragraph (2).
- (5) An adult commits an offence, and is liable to imprisonment for a term of 5 years and to a fine, if –
- (a) the adult intentionally communicates, by any means, with another person (irrespective of whether the other person is in Jersey or elsewhere);
  - (b) the adult does so for the purpose of obtaining sexual gratification;
  - (c) the communication –
    - (i) is sexual, or
    - (ii) is intended to encourage the other person to make a communication (whether or not to the adult) that is sexual; and
  - (d) the other person is aged 15 or younger.
- (6) It is a defence, in relation to each of the offences under this Article, for the defendant to show that –
- (a) the other person was aged 13 or older; and
  - (b) the defendant reasonably believed that the other person was aged 16 or older.

## **16 Paying for sexual service by a child**

- (1) A person (“D”) commits an offence, and is liable to imprisonment for 14 years and to a fine, if –
- (a) D intentionally obtains a service consisting of the performance of a sexual act by another person (“C”);
  - (b) D makes or promises payment for that service, knows or believes that another person has done so, or intends that another person will do so; and
  - (c) C is a child.

- (2) For the purpose of paragraph (1) it is irrelevant –
  - (a) whether C performs the act on one occasion or more;
  - (b) whether or not C is compelled to perform the act; and
  - (c) whether the payment is to C or to any other person.
- (3) It is a defence for D to show that –
  - (a) C was aged 16 or older; and
  - (b) D reasonably believed that C was an adult.

## **17 Causing, inciting or controlling prostitution or pornography involving a child**

- (1) A person (“D”) commits an offence, and is liable to imprisonment for 14 years and to a fine, if, in relation to another person (“C”) –
  - (a) whether or not for gain, D intentionally –
    - (i) causes or incites C’s sexual exploitation in any part of the world,
    - (ii) controls any of the activities of C relating to C’s sexual exploitation in any part of the world, or
    - (iii) arranges or facilitates C’s sexual exploitation in any part of the world; and
  - (b) C is a child.
- (2) For the purpose of paragraph (1), C is sexually exploited if either or both of paragraphs (3) and (4) applies.
- (3) This paragraph applies if –
  - (a) an indecent photograph of C is recorded; or
  - (b) a photograph of C is recorded, when D knows or intends that it will be used to make an indecent pseudo-photograph or a prohibited image.
- (4) This paragraph applies if –
  - (a) C performs, or offers to perform, a sexual act for another person (whether D or any other person);
  - (b) payment is made or promised, by any person, in return for the act.
- (5) In paragraph (3) the expressions “indecent photograph”, “indecent pseudo-photograph” and “prohibited image” have the same meaning as in the [Protection of Children \(Jersey\) Law 1994](#).
- (6) Article 16(2) applies for the purpose of paragraph (4) as it applies for the purpose of that Article.
- (7) It is a defence for D to show that –
  - (a) C was aged 16 or older; and
  - (b) D reasonably believed that C was an adult.

## PART 6

### ABUSE OF TRUST OFFENCES AGAINST PERSONS AGED 16 OR 17

#### 18 Abuse of trust by a sexual act against a person aged 16 or 17

- (1) An adult commits an offence, and is liable to imprisonment for a term of 5 years and to a fine, if in relation to another person (“C”) –
  - (a) the adult intentionally –
    - (i) engages in an act with or directed towards C, or
    - (ii) causes or incites C to engage in an act;
  - (b) the act is sexual;
  - (c) C is a child aged 16 or 17; and
  - (d) the adult is in a position of trust in relation to C.
- (2) It is a defence for the defendant to show –
  - (a) that the defendant reasonably believed that C was an adult;
  - (b) that the defendant did not know or suspect, and could not reasonably be expected to know or suspect, that the defendant was in a position of trust in relation to C;
  - (c) that the defendant was C’s spouse or civil partner; or
  - (d) that, immediately before the position of trust came into being, a lawful sexual relationship existed between the defendant and C.

#### 19 Positions of trust

- (1) For the purposes of Article 18, an adult is in a position of trust in relation to a child if any one or more of the 5 conditions in the following paragraphs is fulfilled.
- (2) The first condition is that –
  - (a) the adult looks after any children (whether or not including the child in question) in premises; and
  - (b) those premises are –
    - (i) a children’s home, if the child is accommodated in that home or in any other children’s home in Jersey,
    - (ii) a school, if the child is receiving education at that school or at any other school in Jersey,
    - (iii) a nursing home or a hospital, if the child is accommodated in that nursing home or a hospital, or in any other nursing home or a hospital in Jersey, to receive services provided there,
    - (iv) any other institution in which a child may be detained under a court order or an enactment, if the child is so detained in that institution or in any other such institution in Jersey,
    - (v) where a child contact centre service, within the meaning of paragraph 11 of Schedule 1 to the Regulation of Care Law, is being provided,

- (vi) where a residential family centre service, within the meaning of paragraph 12 of Schedule 1 to the Regulation of Care Law, is being provided, or
  - (vii) where a children and young people's mental health service, within the meaning of paragraph 13 of Schedule 1 to the Regulation of Care Law, is being provided.<sup>2</sup>
- (3) The second condition is that the adult looks after the child on an individual basis, and does so –
  - (a) as a person engaged in the provision of services provided by the Minister for Education and Lifelong Learning to enable or assist participation by other persons in education or training;
  - (b) as a person engaged, on a professional or voluntary basis and not as a family member, in coaching, motivating, guiding or training the child for a sport, hobby, career, or competitive event;
  - (c) in pursuance of requirements to which the child is subject, being requirements that are imposed –
    - (i) by or under an enactment on the child's release from detention for a criminal offence, or
    - (ii) by a court order made in criminal proceedings; or
  - (d) in the exercise of functions conferred –
    - (i) by or under an order to which the child is subject, being a care order, a supervision order or an education supervision order, and
    - (ii) on an authorized person or on the authority designated by that order.<sup>3</sup>
- (4) The third condition is that the adult regularly has unsupervised contact with the child (whether face to face or by any other means), and does so –
  - (a) in the exercise of functions of the Minister for Children and Families under Article 17 or 18 of the Children Law;
  - (b) in the exercise of functions for the provision of secure accommodation for the purposes of Article 36 of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#);
  - (c) as a person who is to report to the court under Article 9 of the Children Law on matters relating to the welfare of the child;
  - (d) as a person specified by a court under Article 75(1)(b) of the Children Law to assist and befriend the child; or
  - (e) as a guardian ad litem of the child, appointed under Article 75(2)(b) of the Children Law, Article 18(6) of the [Adoption \(Jersey\) Law 1961](#), or rule 51 of the [Matrimonial Causes Rules 2005](#).<sup>4</sup>
- (5) The fourth condition is that the adult is an officer in an administration of the States for which the Minister for Children and Families is assigned responsibility, and that Minister delegates to the adult –
  - (a) that Minister's functions under Article 21 of the Children Law, being functions in the discharge of which the adult advises and assists the child and looks after the child on an individual basis; or
  - (b) the functions imposed on that Minister in relation to the child by an order made under Article 12 of the [Adoption \(Jersey\) Law 1961](#).<sup>5</sup>



- (6) The fifth condition is that the adult is appointed as the guardian of the child, under Article 7 of the Children Law, or as the child's *tuteur*.

## 20 Interpretation and amendment of Article 19

- (1) For the purpose of Article 19, an adult –
- (a) looks after children if the adult is regularly involved in caring for, teaching, training, supervising or being in sole charge of children; and
  - (b) looks after a child on an individual basis if –
    - (i) the adult regularly looks after that child, and
    - (ii) in the course of doing so, the adult regularly has unsupervised contact with that child (whether face to face or by any other means).
- (2) In Article 19 –
- “care order” has the meaning given by the Children Law;
- “Children Law” means the [Children \(Jersey\) Law 2002](#);
- “children’s home” means –
- (a) a home or other place in which accommodation and maintenance are provided by the Minister for Children and Families under Article 20(1) of the Children Law; or
  - (b) a home consisting of a care home service, within the meaning of paragraph 4 of Schedule 1 to the Regulation of Care Law, which provides services to children as well as adults; or
  - (c) a home consisting of a children’s home service within the meaning of paragraph 7 of Schedule 1 to the Regulation of Care Law;
- “Education Law” means the [Education \(Jersey\) Law 1999](#);
- “education supervision order” has the meaning given by the Education Law;
- “hospital” has the same meaning as in the Children Law;
- “nursing home” means a nursing home within the meaning of Article 1A of the [Nursing Homes \(Jersey\) Law 1994](#);
- “Regulation of Care Law” means the [Regulation of Care \(Jersey\) Law 2014](#);
- “school” has the meaning given by the Education Law;
- “supervision order” has the meaning given by the Children Law.<sup>6</sup>
- (3) The States may by Regulations amend Article 19, and paragraphs (1) and (2) of this Article, to add, remove or amend conditions under which an adult is in a position of trust in relation to a child.

## PART 7

### PROSTITUTION OFFENCES

## 21 Meaning of prostitution service, payment and gain in Part 7

- (1) In this Part “prostitution service” means a sexual act that is performed by a person for another person in return for payment, or for a promise of payment, by or on behalf of that other person.

- (2) For the purpose of paragraph (1) it is irrelevant –
  - (a) whether the act is performed on one occasion or more;
  - (b) whether or not a person is compelled to perform the act; and
  - (c) whether the payment is to the person who performs the act or to any other person.
- (3) In this Law “payment” means the giving of a financial advantage, including the discharge of an obligation to pay or the provision of any goods or of a service (including a sexual service) gratuitously or at a discount.
- (4) In this Law “gain” means the obtaining of –
  - (a) a payment; or
  - (b) the goodwill of another person, if that goodwill is or appears likely (whether immediately or in time) to lead to a payment.

## **22 Paying for a prostitution service by an exploited person**

- (1) A person (“A”) commits an offence, and is liable to a fine of level 3 on the standard scale, if –
  - (a) A makes or promises payment for the performance by another person (“B”) of a prostitution service; and
  - (b) a third person (“C”) has engaged in any exploitative conduct that –
    - (i) was of a kind likely to induce or encourage B to perform, or offer to perform, the prostitution service, and
    - (ii) was engaged in by C for gain for, or in the expectation of gain for, C or another person (apart from A or B).
- (2) For the purpose of paragraph (1) it is irrelevant –
  - (a) where in the world B is to perform the prostitution service; and
  - (b) whether B performs the prostitution service or not.
- (3) It is a defence for A to show that A reasonably believed that no third person (whether C or any other person) had engaged in any exploitative conduct falling within paragraph (1)(b)(i) or (ii).
- (4) For the purpose of paragraphs (1)(b) and (3) exploitative conduct is –
  - (a) the use of force, threats (whether or not relating to violence) or any other form of coercion; or
  - (b) the practice of any form of deception.

## **23 Offering or seeking prostitution service in road or public place**

- (1) A person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person, while on or in a road or other public place –
  - (a) contacts, or loiters with a view to so contacting, any other person; and
  - (b) does so for the purpose of offering a prostitution service to that other person or seeking a prostitution service from that other person.
- (2) For the purpose of paragraph (1) –
  - (a) “road or other public place” has the same meaning as in the [Road Traffic \(Jersey\) Law 1956](#); and

- (b) the reference to being on or in a road or public place includes being in a vehicle that is on or in a road or public place.
- (3) Paragraph (1) does not apply if the contacting of the other person, and the offering or seeking of the service, are conducted solely by means of electronic communication, within the meaning of the [Electronic Communications \(Jersey\) Law 2000](#), in a manner that does not rely on the persons being on or in the same road or public place.

## **24 Advertising services of prostitute on public structure**

- (1) A person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person –
  - (a) places on, or in the immediate vicinity of, a public structure an advertisement relating to prostitution; and
  - (b) intends the advertisement to come to the attention of any other person.
- (2) In paragraph (1) “public structure” means any structure that –
  - (a) is provided as an amenity for the use of the public or a section of the public; and
  - (b) is located in a public place, being a place to which the public have or are permitted to have access (whether on payment or otherwise), other than –
    - (i) a place to which children aged 15 or younger are not permitted to have access (whether by law or otherwise), or
    - (ii) premises wholly or mainly used for residential purposes.
- (3) For the purpose of this Article, an advertisement relates to prostitution if it –
  - (a) is for a prostitution service; or
  - (b) indicates that a prostitution service is offered or performed at premises to which the advertisement refers.
- (4) In proceedings for an offence under this Article, if a reasonable person would consider an advertisement to fall within paragraph (3), the advertisement is to be presumed to be an advertisement relating to prostitution unless it is shown not to be.

## **25 Causing, inciting or controlling prostitution for gain**

- (1) A person commits an offence, and is liable to imprisonment for 7 years and to a fine, if the person –
  - (a) intentionally –
    - (i) causes or incites another person to perform, or offer to perform, a prostitution service, or
    - (ii) controls an act of another person, that relates to that other person performing, or offering to perform, a prostitution service; and
  - (b) does so for or in the expectation of gain for himself or herself or a third person.
- (2) It is irrelevant where in the world the prostitution service is to be offered or provided.

**26 Controlling or facilitating entry to premises used for prostitution**

- (1) A person commits an offence, and is liable to imprisonment for 7 years and to a fine, if the person –
  - (a) controls or facilitates entry to premises;
  - (b) knows or intends that a person entering, or attempting or requesting to enter, the premises does so in order –
    - (i) to perform a prostitution service on the premises, or
    - (ii) to have a prostitution service performed on the premises for his or her sexual gratification; and
  - (c) does not fall within one of paragraphs (2) and (3).
- (2) A person falls within this paragraph if –
  - (a) that person performs a prostitution service on the premises; and
  - (b) no other person performs a prostitution service on the premises.
- (3) A person falls within this paragraph if –
  - (a) that person is one of 2 persons who perform a prostitution service on the premises;
  - (b) no person, other than those 2 persons, performs a prostitution service on the premises; and
  - (c) the other of those 2 persons –
    - (i) is not a child, and
    - (ii) is not induced or encouraged, by a person who engages in exploitative conduct within the meaning of Article 22, to perform a prostitution service.
- (4) For the purpose of paragraph (1)(a), controlling entry to premises does not include preventing entry to the premises with a view to preventing or ending all use of the premises for the performance of prostitution services.

**27 Letting premises for use for prostitution or failing to prevent that use**

- (1) A person commits an offence if the person –
  - (a) is the owner of premises, or the agent of the owner, or any other person entitled to let the premises; and
  - (b) enters into an agreement to let those premises, knowing or having reasonable grounds to suspect that the lessee, or another person with the permission or connivance of the lessee, intends to use the premises –
    - (i) to commit an offence under Article 16, 22, 25 or 26, or
    - (ii) to enable another person to commit such an offence.
- (2) A person commits an offence if the person –
  - (a) is the owner, lessee or occupier of premises, or otherwise controls the occupation or use of premises;
  - (b) knows that another person has used, is using or intends to use the premises –
    - (i) to commit an offence under Article 16, 22, 25 or 26, or
    - (ii) to enable another person to commit such an offence; and

- (c) fails, without reasonable excuse, to take reasonable steps to prevent that use of the premises continuing or being repeated.
- (3) A person guilty of an offence under paragraph (1) or (2) is liable to imprisonment for 6 months and to a fine of level 3 on the standard scale.

## PART 8

### FEMALE GENITAL MUTILATION OFFENCES AND ORDERS

#### 28 Carrying out female genital mutilation

- (1) A person commits an offence, and is liable to imprisonment for 14 years and to a fine, if the person carries out female genital mutilation on another person.
- (2) In this Law, “female genital mutilation” means, subject to paragraph (3), the excision, infibulation or other mutilation of the whole or any part of the labia majora, labia minora or clitoris.
- (3) A surgical operation, performed by a relevant practitioner on a person (the “patient”), is not female genital mutilation if –
  - (a) the patient is in any stage of labour, or has just given birth, and the operation is for a medical purpose connected with the labour or birth;
  - (b) the operation is necessary for the patient’s physical or mental health; or
  - (c) by virtue of the operation, or of a process of which the operation forms a part, the patient is a transgender person for the purpose of paragraph 5 of Schedule 1 to the [Discrimination \(Jersey\) Law 2013](#).
- (4) For the purpose of paragraph (3) a relevant practitioner is –
  - (a) in relation to an operation meeting the condition in sub-paragraph (3)(a) –
    - (i) a doctor,
    - (ii) a person undergoing a course of training with a view to becoming a doctor,
    - (iii) a person registered under the [Health Care \(Registration\) \(Jersey\) Law 1995](#) as a midwife or as a midwife prescribing practitioner, or
    - (iv) a person undergoing a course of training with a view to becoming so registered;
  - (b) in relation to an operation meeting the condition in sub-paragraph (3)(b) or (c), a doctor.
- (5) For the purpose of paragraph (3)(b), in determining whether an operation is necessary for a person’s mental health it is immaterial whether that person or any other person believes that the operation is required as a matter of custom or ritual.

#### 29 Assisting female genital mutilation

- (1) A person commits an offence, and is liable to imprisonment for 14 years and to a fine, if the person aids, abets, counsels or procures another person to carry out female genital mutilation on that other person’s own body.

- (2) A person is guilty of an offence, and is liable to imprisonment for 14 years and to a fine, if the person aids, abets, counsels or procures a person who is not habitually resident in Jersey to do a relevant act of female genital mutilation outside Jersey.
- (3) For the purpose of paragraph (2) an act is a relevant act of female genital mutilation if –
  - (a) it is done in relation to a person who is habitually resident in Jersey; and
  - (b) it would, if done by such a person, constitute an offence under Article 28.
- (4) Paragraphs (3) to (5) of Article 28 apply for the purpose of the offence under paragraph (2) of this Article as they do to the offence under Article 28(1), but the reference to a relevant practitioner is to be read as including a reference to a person who exercises functions corresponding, in the jurisdiction in which the operation is performed, to those of a relevant practitioner.

### **30 Failing to protect a child aged 15 or younger from risk of genital mutilation**

- (1) In this Article –
  - “female genital mutilation offence” means an offence under Article 28 or 29;
  - “person responsible”, in relation to a child, means a person who –
    - (a) has parental responsibility, within the meaning of the [Children \(Jersey\) Law 2002](#), for the child; or
    - (b) is an adult and has assumed (and not relinquished) responsibility for caring for the child in the manner of a parent;
  - “relevant time” means the time at which female genital mutilation takes place.
- (2) If a female genital mutilation offence is committed against a child aged 15 or younger, each person responsible for the child at the relevant time commits an offence and is liable to imprisonment for 7 years and to a fine.
- (3) It is a defence for the defendant to show that –
  - (a) at the relevant time, the defendant did not think that there was a significant risk of a female genital mutilation offence being committed against the child, and could not reasonably have been expected to be aware that there was any such risk; or
  - (b) the defendant took such steps as he or she could reasonably have been expected to take to protect the child from being the victim of a female genital mutilation offence.
- (4) Nothing in the definition “female genital mutilation offence” in paragraph (1) is to be construed, for purpose of the offence under paragraph (2), as requiring the prosecutor to prove which of Articles 28 and 29 the female genital mutilation offence falls under.

### **31 Duty to notify police of apparent female genital mutilation of child**

- (1) A regulated professional must notify the police in accordance with paragraph (4) if, in the course of working as a regulated professional, he or she –
  - (a) is informed by a child that female genital mutilation (however described) has been carried out on the child; or
  - (b) observes physical signs on a child that appear to show that female genital mutilation has been carried out on the child.

- (2) A regulated professional is –
- (a) a teacher, being a person employed to teach in –
    - (i) a provided school, within the meaning of the [Education \(Jersey\) Law 1999](#), or
    - (ii) a non-provided school that is a primary or secondary school, within the meaning of those terms in that Law;
  - (b) a social worker, being a person registered to engage in the registrable occupation of social worker, within the meaning of the [Health Care \(Registration\) \(Jersey\) Law 1995](#);
  - (c) a doctor;
  - (d) a midwife or nurse, being a person registered to engage in any of the following registrable occupations, within the meaning of the [Health Care \(Registration\) \(Jersey\) Law 1995](#) –
    - (i) midwife,
    - (ii) midwife prescribing practitioner,
    - (iii) nurse,
    - (iv) nurse prescribing practitioner,
    - (v) registered nurse: first level,
    - (vi) registered nurse: second level,
    - (vii) specialist community public health nurse,
    - (viii) specialist community public health nurse prescribing practitioner;
  - (e) a person working lawfully as a trainee in any of those occupations; or
  - (f) a person who is registered under the [Piercing and Tattooing \(Jersey\) Law 2002](#) to administer body piercing or tattooing.
- (3) Paragraph (1) does not apply –
- (a) if the regulated professional has already complied with that paragraph in respect of previous information, or a previous observation, relating to the same child and the same apparent occurrence of female genital mutilation; or
  - (b) if, and for so long as, the regulated professional reasonably believes –
    - (i) that another regulated professional has already notified the police under paragraph (1) in respect of the same child and the same apparent occurrence of female genital mutilation, or
    - (ii) that the apparent female genital mutilation occurred in a surgical operation that, by virtue of Article 28(3), would not constitute an offence under Article 28(1).
- (4) Notification under paragraph (1) –
- (a) must identify the child;
  - (b) must explain why the notification is made;
  - (c) must be given before the end of one month from the time when paragraph (1) first applied to the regulated professional in respect of the particular child's apparent female genital mutilation;
  - (d) must be given to the Chief Officer of the States Police Force, within the meaning of the [States of Jersey Police Force Law 2012](#), or to a person

nominated by that Chief Officer for this purpose (whether by reference to a particular person or to a description of persons); and

- (e) may be given orally or in writing.
- (5) A regulated professional who contravenes paragraph (1) commits an offence and is liable to a fine of level 3 on the standard scale.
- (6) A disclosure made in a notification under paragraph (1) does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure; or
  - (b) any other restriction on the disclosure of information.
- (7) Nothing in this Article is to be construed as limiting any other power or duty of a regulated professional to disclose information about female genital mutilation.
- (8) The Minister may by Order amend this Article to add, remove or otherwise alter the descriptions of persons regarded as regulated professionals for the purpose of this Article.
- (9) The Minister must, before making an Order under paragraph (8), consult such representative body of professionals as appears appropriate to the Minister.

### **32 Female genital mutilation protection orders**

- (1) The Royal Court may, on the application of the Attorney General, make an order (an “FGM protection order”) for the purpose of –
  - (a) protecting a person against the commission of a female genital mutilation offence; or
  - (b) protecting a person against whom such an offence has been committed.
- (2) The Attorney General may make the application in proceedings brought for that purpose or in any other proceedings, including criminal proceedings, proceedings under the [Children \(Jersey\) Law 2002](#) or proceedings between the parents of a child.
- (3) In deciding whether to exercise its powers under this Article and, if so, in what manner, the Royal Court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the person to be protected.
- (4) An FGM protection order may contain –
  - (a) such prohibitions, restrictions or requirements; and
  - (b) such other terms,as the Royal Court considers appropriate for the purposes of the order.
- (5) The terms of an FGM protection order may, in particular, relate to –
  - (a) conduct outside Jersey as well as (or instead of) conduct within Jersey;
  - (b) a respondent who is, or may become, involved in any other respect as well as (or instead of) a respondent who commits or attempts to commit, or may commit or attempt to commit, a genital mutilation offence against a person;
  - (c) any other person who is, or may become, involved in any other respect as well as a respondent of any kind, such as –
    - (i) a person aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a third person, or



- (ii) a person conspiring to commit, or to attempt to commit, such an offence.
- (6) The Royal Court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (7) In deciding whether to exercise its powers under paragraph (6), the Royal Court must have regard to all the circumstances including –
  - (a) the risk to any person of becoming a victim of a female genital mutilation offence if the order is not made immediately;
  - (b) whether it is likely that an actual or potential victim of a female genital mutilation offence will be deterred or prevented from giving evidence in connection with the offence or the order if the order is not made immediately; and
  - (c) whether there is reason to believe that –
    - (i) the respondent is aware of the proceedings but is deliberately evading service, and
    - (ii) the delay involved in effecting service will cause serious prejudice to the girl to be protected or (if different) an applicant.
- (8) The Royal Court must give the respondent an opportunity to make representations about an order that has been made under paragraph (6) –
  - (a) as soon as is just and convenient; and
  - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.
- (9) An FGM protection order may be made for a specified period or until varied or discharged.
- (10) The Royal Court may vary or discharge an FGM protection order of its own motion or on an application by –
  - (a) the Attorney General;
  - (b) the person being protected by the order;
  - (c) the respondent; or
  - (d) any other person affected by the order.
- (11) Paragraphs (6) to (8) apply to a variation of an FGM protection order as they apply to the making of such an order (and references in those paragraphs to the making of an FGM protection order are to be read accordingly).
- (12) The power to make rules of court under the [Royal Court \(Jersey\) Law 1948](#) includes the power to make rules of court for the purposes of this Article.

### **33 Breaching FGM protection order**

- (1) A person commits an offence, and is liable to imprisonment for 12 months and to a fine, if the person without reasonable excuse does anything that the person is prohibited from doing by an order made under Article 32.
- (2) If an order is made under Article 32(6), a person does not commit an offence under this Article by conduct engaged in at a time before the person is made aware of the existence of the order.

## PART 9

### MISCELLANEOUS SEXUAL OFFENCES

#### 34 Penetrative sex with a blood relative by persons aged 16 or older

- (1) A person aged 16 or older (“A”) commits an offence, and is liable to imprisonment for 5 years and to a fine, if –
  - (a) in relation to another person who is aged 16 or older (“B”) –
    - (i) A intentionally penetrates B’s vagina or anus with a part of A’s body, or
    - (ii) A intentionally causes or allows a part of B’s body to penetrate A’s vagina or anus;
  - (b) the penetration is sexual; and
  - (c) A is a blood relative of B.
- (2) For the purpose of paragraph (1)(c), a blood relative is a person who –
  - (a) is a grandparent, aunt, uncle, parent, sister, brother, half-sister, half-brother, child, niece, nephew or grandchild; and
  - (b) has that relationship without reliance on –
    - (i) marriage or civil partnership,
    - (ii) adoption,
    - (iii) Schedule A1 (fertility treatment and artificial insemination) to the [Children \(Jersey\) Law 2002](#),
    - (iv) a parental order as defined in Article 1(1) of that Law, or
    - (v) a recognition order as defined in that Article.<sup>7</sup>
- (3) It is a defence for A to show that A did not know, and could not reasonably have been expected to know, that A was a blood relative of B.

#### 35 Exposure

A person commits an offence, and is liable to imprisonment for 2 years and to a fine, if he or she exposes his or her penis, scrotum or vagina –

- (a) intending it to be seen; and
- (b) intending –
  - (i) to humiliate, alarm or distress any of the persons who may see it, or
  - (ii) to obtain sexual gratification, without a reasonable belief that all of the persons who may see it have consented to seeing it.

#### 36 Voyeurism

- (1) For the purposes of paragraphs (2) and (3) a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and –
  - (a) the person’s penis, scrotum, vagina, buttocks or breasts are exposed or covered only with underwear;

- (b) the person is using a lavatory; or
  - (c) the person is doing a sexual act that is not of a kind ordinarily done in public.
- (2) A person commits an offence if the person –
  - (a) for the purpose of obtaining sexual gratification, observes another person doing a private act; and
  - (b) does not reasonably believe that the other person consents to being observed for that purpose.
- (3) A person (“A”) commits an offence if –
  - (a) A operates equipment or records an image;
  - (b) A intends by doing so to enable A, or any other person other than B, for the purpose of obtaining sexual gratification, to observe, or to look at an image of, another person (“B”) doing a private act; and
  - (c) A does not reasonably believe that B consents to the operation or recording with that intention.
- (4) A person (“A”) commits an offence if –
  - (a) A operates equipment, or records an image, under the clothing of another person (“B”);
  - (b) A intends by doing so to enable A, or any other person other than B, for the purpose of obtaining sexual gratification, to observe or to look at an image of –
    - (i) B’s penis, scrotum, vagina, buttocks or breasts (whether exposed or covered with underwear), or
    - (ii) the underwear covering any of those body parts;
  - (c) those body parts or the underwear would not otherwise be visible; and
  - (d) A does not reasonably believe that B consents to the operation or recording with that intention.
- (5) A person commits an offence if the person installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling that person or another person to commit an offence under any of paragraphs (2) to (4).
- (6) In paragraph (5) “structure” includes a tent, vehicle or vessel or other temporary or movable structure.
- (7) A person guilty of an offence under this Article is liable to imprisonment for 2 years and to a fine.

### **37 Penetration of or by an animal**

A person commits an offence, and is liable to imprisonment for 5 years and to a fine, if the person intentionally –

- (a) penetrates, with the person’s penis, the vagina or anus of a living animal, or a similar part of a living animal that lacks a vagina or anus; or
- (b) causes or allows the person’s vagina or anus to be penetrated by the penis of a living animal.

### **38 Administering a substance to stupefy or overpower a person for sexual purposes**

A person commits an offence, and is liable to imprisonment for 10 years and to a fine, if the person –

- (a) intentionally administers a substance to, or causes a substance to be taken by, another person (“B”);
- (b) does not reasonably believe that B consents; and
- (c) intends to stupefy or overpower B, so as to –
  - (i) enable himself or herself, or any other person, to engage in a sexual act that involves B, or
  - (ii) cause B to engage in a sexual act.

### **39 Committing an offence with intent to commit a sexual offence**

A person commits an offence, and is liable to imprisonment for 10 years and to a fine, if the person commits any offence with the intention of committing a further offence under any of Parts 2, 3 or 4.

### **40 Sexual offences outside Jersey**

- (1) In this Article –

“British national” means an individual who is, within the meaning of the British Nationality Act 1981 of the United Kingdom, a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person;

“relevant offence” means –

- (a) an offence under this Law; and
- (b) any other offence that is a sexual offence to which the [Sex Offenders \(Jersey\) Law 2010](#) applies by virtue of Article 2 of that Law.

- (2) If –

- (a) a person is a British national and is habitually resident in Jersey;
- (b) the person does an act in a jurisdiction outside Jersey; and
- (c) the act, if done in Jersey, would constitute a relevant offence,

the person is guilty in Jersey of that relevant offence, and accordingly the person may be proceeded against in Jersey in respect of the relevant offence.

- (3) If –

- (a) a person is not a British national but is habitually resident in Jersey;
- (b) the person does an act in a jurisdiction outside Jersey;
- (c) the act constitutes an offence under the law of that jurisdiction; and
- (d) the act, if done in Jersey, would constitute a relevant offence,

the person is guilty in Jersey of that relevant offence, and accordingly the person may be proceeded against in Jersey in respect of the relevant offence.

- (4) The condition in paragraph (3)(c) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecutor a notice –

- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met;
  - (b) showing the grounds for that opinion; and
  - (c) requiring the prosecutor to prove that the condition is met.
- (5) But the court, if it thinks fit, may permit the defendant to require the prosecutor to prove that the condition in paragraph (3)(c) is met without service of a notice under paragraph (4).
- (6) On a trial before the Royal Court, the question whether the condition in paragraph (3)(c) is met is to be treated as a question of law.
- (7) If the relevant offence is the offence under Article 28(1), then the reference in Article 28(3) to a "relevant practitioner" is to be read as to a person who, under the law of the other jurisdiction, exercises functions corresponding to those of a relevant practitioner within the meaning of Article 28(4).
- (8) A reference in this Article to an offence includes a reference –
  - (a) to an attempt, conspiracy or incitement to commit the offence; and
  - (b) to aiding and abetting, counselling or procuring the commission of the offence,whether under customary law or under Article 1 of the [Criminal Offences \(Jersey\) Law 2009](#).
- (9) An act punishable under the law of a jurisdiction outside Jersey constitutes an offence under that law for the purpose of this Article however it is described by the law of that jurisdiction.
- (10) The Minister may, by Order, amend the definition "relevant offence" in paragraph (1) to make different provision as to offences appearing to the Minister to be sexual.

## PART 10

### MISCELLANEOUS PROVISIONS, REPEALS AND AMENDMENTS

#### 41 Jury trials and mixed indictments<sup>8</sup>

- (1) For the purpose of the [Criminal Procedure \(Jersey\) Law 2018](#) –
  - (a) an offence under Part 2, 3 or 4 is to be treated as if that offence were an offence under customary law rather than an offence under statutory law; and
  - (b) on an indictment falling within paragraph (2), the Royal Court is to decide, having regard to the nature and gravity of the offences and after hearing any submissions from the defence and the prosecution, the method by which the defendant is to be tried.
- (2) An indictment falls within this paragraph if it charges 2 or more offences, of which –
  - (a) at least one is –
    - (i) an offence under customary law, or
    - (ii) an offence under statutory law that is to be treated as an offence under customary law under paragraph (1)(a);

- (b) at least one other is an offence under statutory law (whether under this Law or any other enactment) that is not to be treated as an offence under customary law under paragraph (1)(a); and
- (c) at least one, whether falling within sub-paragraph (a)(ii) or (b), is an offence under any Part of this Law.

## 42 Alternative charges

- (1) If an act constitutes an offence under more than one Article of this Law, nothing in this Law is to be read, unless express provision is made otherwise, as preventing the charging of, or a prosecution or conviction for, either of the offences merely by virtue of the fact that the act also constituted the other offence.
- (2) In particular, and without prejudice to the generality of paragraph (1), nothing in Part 2, Part 3, Part 4 or Article 13 is to be read, in relation to an act to which a child does not consent –
  - (a) as preventing the charging of, or a prosecution or conviction for, an offence under Part 2 in relation to that act merely by virtue of the fact that the act also constituted an offence under Part 3, Part 4 or Article 13; or
  - (b) as preventing the charging of, or a prosecution or conviction for, the offence under Part 3, Part 4 or Article 13 in relation to the act merely by virtue of the fact that the act also constituted an offence under Part 2.
- (3) Paragraphs (1) and (2) do not limit the application to this Law of Article 12 of the [Interpretation \(Jersey\) Law 1954](#).

## 43 Evidence as to sexual history

- (1) Except with the leave of the court –
  - (a) no evidence may be adduced; and
  - (b) no question may be asked in cross-examination, by or on behalf of a relevant defendant, about the sexual history of a complainant.
- (2) For the purpose of paragraph (1) –
  - “complainant” means a witness other than a relevant defendant;
  - “relevant defendant” means a defendant prosecuted for an offence under this Law, an offence of indecent assault under customary law, a customary law offence abolished by Article 44 or an offence under a Law repealed by Article 45;
  - “sexual history” means the fact that a complainant has engaged in a sexual act with a person other than a relevant defendant.
- (3) The States may by Regulations –
  - (a) provide that paragraph (1) does or does not apply to evidence adduced, and to a question asked, for a purpose prescribed by the Regulations;
  - (b) prescribe grounds on which the court may or may not give leave;
  - (c) amend paragraph (2).
- (4) The power to make Rules of Court under –
  - (a) Article 112 of the [Criminal Procedure \(Jersey\) Law 2018](#);
  - (b)

- (c) Articles 19 and 40 of the [Court of Appeal \(Jersey\) Law 1961](#), is, in each case, to be taken to include the power to make Rules of Court necessary or convenient for the purpose of this Article.<sup>9</sup>

#### **44 Certain customary law sexual offences abolished and others saved**

- (1) The following customary law offences are abolished –
- (a) rape;
  - (b) *sodomie*;
  - (c) gross indecency;
  - (d) incest;
  - (e) *bestialité*.
- (2) Article 17(2) of the [Interpretation \(Jersey\) Law 1954](#) applies in relation to the abolition of a customary law offence by paragraph (1) as it applies in relation to the repeal or expiry of a provision of an enactment creating an offence.
- (3) Nothing in this Law is to be read as limiting any other customary law offence, including in particular the offences of –
- (a) indecent assault;
  - (b) outraging public decency;
  - (c) conduct likely to result in a breach of the peace;
  - (d) indecent exposure.

#### **45 Amendments of other enactments**

The States may by Regulations amend any other enactment, other than this Law, to make such consequential provision as the States consider necessary or expedient, including in particular in relation to a reference (direct or indirect) in that other enactment to a sexual offence under any enactment or under customary law, being an offence that –

- (a) is an offence under a provision of an enactment or of customary law that is amended or repealed by this Law; or
- (b) is otherwise constituted in whole or in part by a sexual act.

#### **46 Transitional and related provisions**

- (1) Paragraph (2) applies if, in any proceedings –
- (a) a person (“the defendant”) is charged in respect of the same act both with an offence under this Law (“the new offence”) and with an offence repealed or abolished by this Law (“the old offence”);
  - (b) the only thing preventing the defendant from being found guilty of the new offence is the fact that it has not been proved beyond a reasonable doubt that the time when the act took place was after the coming into force of the provision of this Law creating the new offence; and
  - (c) the only thing preventing the defendant from being found guilty of the old offence is the fact that it has not been proved beyond a reasonable doubt that the time when the act took place was before the coming into force of the provision of this Law repealing the old offence.

- (2) For the purpose of determining the guilt of the defendant it is to be conclusively presumed that the time when the act took place was –
  - (a) if the maximum penalty of imprisonment for the old offence is less than the maximum penalty of imprisonment for the new offence, a time before the coming into force of the provision of this Law repealing of the old offence; and
  - (b) in any other case, a time after the coming into force of the provision of this Law creating the new offence.
- (3) For the purpose of paragraph (2), if the old offence is a customary law offence then the maximum penalty of imprisonment for that offence is to be taken to be less than a maximum penalty of life imprisonment under this Law, but greater than any other maximum penalty of imprisonment under this Law.
- (4) Paragraphs (2) and (3) apply to offences of attempting, inciting or conspiracy, in relation to an old or new offence, as they apply in relation to the old or new offences.
- (5) The States may by Regulations make such other transitional, transitory or saving provision as the States consider necessary or expedient in connection with the coming into force of this Law.

#### **47 Orders and Regulations**

- (1) An Order or Regulations under this Law may contain such transitional, consequential, incidental, supplementary or saving provision, other than an amendment of this Law, as appears to the Minister or the States to be necessary or expedient for the purposes of the Order or Regulations.
- (2) A power under this Law to amend, by Regulations or Order, any provision of this Law includes the power to make such transitional, consequential, incidental or supplementary amendment to any other provision of this Law as appears to the States or the Minister to be necessary or expedient.

#### **48 Citation**

This Law may be cited as the Sexual Offences (Jersey) Law 2018.



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	°Projet No (where applicable)
Sexual Offences (Jersey) Law 2018	<a href="#">L.20/2018</a>	23 November 2018 ( <a href="#">R&amp;O.112/2018</a> )	<a href="#">P.18/2018</a>
Regulation of Care (Regulated Activities) (Jersey) Regulations 2018	<a href="#">R&amp;O.118/2018</a>	1 January 2019	<a href="#">P.126/2018</a>
States of Jersey (Transfer of Responsibilities and Functions) (Health and Social Services to Children and Housing) Order 2019	<a href="#">R&amp;O.100/2019</a>	9 October 2019	
States of Jersey (Minister for Children and Education, Minister for Housing and Communities and Minister for External Relations and Financial Services) (Jersey) Order 2021	<a href="#">R&amp;O.29/2021</a>	2 March 2021	
Criminal Procedure (Consequential and Supplementary Amendments) (Jersey) Regulations 2021	<a href="#">R&amp;O.94/2021</a>	1 October 2021	<a href="#">P.59/2021</a>
Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 2022	<a href="#">R&amp;O.55/2022</a>	1 January 2023 ( <a href="#">R&amp;O.117/2022</a> )	<a href="#">P.45/2022</a>
States of Jersey (Transfer of Justice Functions – Chief Minister to Justice and Home Affairs) Order 2023	<a href="#">R&amp;O.76/2023</a>	21 September 2023	
Changes to Ministerial Offices (Jersey) Amendment Order 2024	<a href="#">R&amp;O.10/2024</a>	9.30 a.m. on 27 February 2024	
Children and Civil Status (Consequential Amendments) (Jersey) Amendment Regulations 2025	<a href="#">R&amp;O.5/2025</a>	24 November 2025	<a href="#">P.89/2024</a>

°Projets available at [statesassembly.gov.je](https://statesassembly.gov.je)

### Table of Renumbered Provisions

Original	Current
45	spent, omitted
46(1)	spent, omitted
46(2)	45
47	46

Original	Current
48	47
49	48
SCHEDULE	spent, omitted

### Table of Endnote References

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- <sup>1</sup> Article 1(1) *amended by R&O.76/2023*
- <sup>2</sup> Article 19(2) *amended by R&O.55/2022, editorial change, in sub-paragraph (b)(iv), “or” deleted from end*
- <sup>3</sup> Article 19(3) *amended by R&O.29/2021, R&O.10/2024*
- <sup>4</sup> Article 19(4) *amended by R&O.100/2019, R&O.29/2021, R&O.10/2024*
- <sup>5</sup> Article 19(5) *amended by R&O.100/2019, R&O.29/2021, R&O.10/2024*
- <sup>6</sup> Article 20(2) *amended by R&O.118/2018, R&O.100/2019, R&O.29/2021, R&O.55/2022, R&O.10/2024*
- <sup>7</sup> Article 34(2) *amended by R&O.5/2025*
- <sup>8</sup> Article 41 *substituted by R&O.94/2021*
- <sup>9</sup> Article 43(4) *amended by R&O.94/2021*