

THE ROLE OF THE ATTORNEY GENERAL AS JERSEY'S CHIEF PROSECUTOR

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The Attorney General's function as Chief Prosecutor is the aspect of the role which has greatest public prominence. This article examines the origin and extent of the Attorney General's role and considers whether it should continue in its current form.

Introduction

1 This article is a sequel to articles on the Attorney General's roles in relation to charities,¹ as *Partie Publique* in civil cases² and as titular head of the Honorary Police.³ This article examines the Attorney General's role as Chief Prosecutor.

2 The first part of this article concentrates on the nature and source of the Attorney General's role. The second part of the article describes the Attorney's role at different stages of the prosecution process, focusing on points which may be of interest to the reader.

The nature and source of the Attorney General's role

3 As recognised by art 12 of the Criminal Procedure (Jersey) Law 2018, subject to the powers reserved to a Centenier under art 3(2) of the Honorary Police (Jersey) Law 1974 (of which more later), the prosecution of criminal proceedings may only be conducted by or on behalf of the Attorney General. There can be no private prosecutions in Jersey.

4 The Attorney General's power to bring criminal proceedings against an alleged offender is an ancient one, and probably dates back to the institution of the office in Norman times after the annexation by

¹ MacRae, "The Attorney General's role in relation to charities" (2018) 22 *Jersey & Guernsey Law Review* 34.

² MacRae "The role of the Attorney General as *partie publique* in civil cases" (2019) 23 *Jersey & Guernsey Law Review* 246.

³ MacRae "The role of the Attorney General as titular head of Jersey's Honorary Police" (2020) 24 *Jersey & Guernsey Law Review* 196.

William Longsword, Duke of Normandy, in 933.⁴ An Order of the Privy Council of 23 November 1749 declared that: “the *Procureur* is the superior officer and the proper person to commence and carry on all criminal prosecutions . . .”⁵

5 The Royal Commissioners appointed to inquire into the criminal law of the Channel Islands were critical of occasional lapses into partiality by the Law Officers of the time and were equivocal as to whether or not a decision to bring a prosecution was left exclusively to the *Procureur Général*. They stated “It is not indeed quite clear that the Court cannot compel a prosecution where the *Procureur Général* refuses to prosecute; but this, in practice, is not done”.⁶

6 It is not clear why the Commissioners were equivocal. Question 8 of Series 1 of the questions posed by the Commissioners asked: “By whom are the proceedings against the accused party instituted?” There was a consensus among those asked, all of whom indicated that the Attorney General was the sole prosecutor. Sir John de Veulle, Bailiff, stated:

“In all criminal cases, or such as partake with that character, without exception, the Attorney General is, *ex officio*, public and only prosecutor, by whom all proceedings against a party accused are instituted and conducted.”⁷

7 The same view was expressed by the distinguished historian, Charles Le Quesne, in his *A Constitutional of Jersey*⁸:

“He is, from his office, public prosecutor. No individual is allowed to prosecute for crime, except the attorney-general, on behalf of the Crown. All reports of the police to the Royal Court are to be presented to him, and the accusations against prisoners, in consequence of those written reports, are brought forward by him . . . He is the upholder of public order, and can prosecute for all crimes and misdemeanours.”

⁴ See the answers of Robert Pipon Maret, later Bailiff, to written question from the Commissioners, *First Report of the Commissioners appointed to inquire into the state of the criminal law in the Channel Islands* (1847, London HMSO) at 55 *et seq.*

⁵ The text of the Order-in-Council is set out at page 249 of the *First Report of the Commissioners* (see fn 4 above) at para 3105.

⁶ *First Report of the Commissioners appointed to inquire into the state of the criminal law in the Channel Islands* (London, HMSO, 1847) page xliii

⁷ *Ibid.* at page 10.

⁸ (London, pub. Longman, Brown, Green and Longmans, 1856) at page 23.

8 Legislative recognition of the position is found in art 6 of the *Loi* (1864) *réglant le Procédure Criminelle*: “*Les poursuites auront lieu au nom du Procureur-Général . . .*” “The Criminal Procedure (Jersey) Law 2018, which repealed the 1864 *Loi*, now states at art 12—

“Without prejudice to the powers reserved to a Centenier under art 3(2) of the Honorary Police (Jersey) Law 1974, the prosecution of criminal proceedings may only be conducted by or on behalf of the Attorney General.”

9 The Attorney General’s exclusive power in respect of prosecutions has been discussed in various cases including *Att Gen v Devonshire Hotel Ltd*.⁹ Tomes, Deputy Bailiff, said:

“The principle that the Attorney General alone has the power and the right to prosecute is deep seated in the common law of this Island . . .

There have been examples where the power of the Attorney General alone to prosecute has been eroded by clear, definite and positive enactments. These are to be found in the *Loi* (1853) *Établissant la Cour pour la Répression des Moindres Délits* and the *Loi* (1864) *réglant la Procédure Criminelle* in relation to ‘*préventions*.’ Likewise in art. 46 of the Road Traffic (Jersey) Law, 1956, which vests in the Constable or Centenier of the parish in which an offence was committed the power to inflict and levy fines summarily. But none of these overturn (sic) the common or customary law power of the Attorney General in the matter of prosecutions generally.”

10 These authorities exclude the possibility of private prosecution. In an exchange before the States in 2009 the Attorney General confirmed that private prosecutions cannot take place in Jersey.¹⁰

11 Whether or not a decision of the Attorney General is amenable to judicial review is a matter which has received some attention. Decisions made by the Attorney General under the Investigation of Fraud (Jersey) Law 1991 or the Criminal Justice (International Co-operation) (Jersey) Law 2001 have been held to be subject to review on normal grounds of illegality, irrationality and procedural impropriety.¹¹ However, the decision whether or not to prosecute has been treated differently by the courts.

⁹ 1987–88 JLR 577, at 595–596.

¹⁰ States Minutes, Oral questions, 24 February 2009.

¹¹ See *Acturus Properties Ltd v Att Gen* 2001 JLR 43 and *Hilsenrath v Att Gen* (RC) 2005 JLR N [27] respectively.

12 The Attorney General has the constitutional responsibility to make the decision whether or not to prosecute on behalf of the Crown. The fact that the decision is a prerogative power, as opposed to a statutory one, does not by itself mean that it is immune from judicial review. However, it clearly places the Attorney General in a very different position from that of the States, a committee thereof, Minister, or some other statutory body.

13 The court in *Acturus Properties Ltd v Att Gen* reviewed the Attorney General's decision to issue a notice under the Investigation of Fraud (Jersey) Law 1991, and stated:¹²

“Having particular regard to developments since 1993, we have come to the clear conclusion that *McMahon* should be departed from. In *Lesquende*¹³ . . . the Court of Appeal stated authoritatively that judicial review was available under Jersey law to control the legality of decisions made in Jersey in the same way as it was available in the United Kingdom.”

14 The court held that the decision whether or not to issue a notice under the Investigation of Fraud (Jersey) Law 1991 was amenable to judicial review on the usual grounds. However, the court expressly restricted the effect of its decision.¹⁴

“We agree that, for historical and policy reasons, the Attorney General of Jersey is in a special position in relation to many of his functions in the same way as his counterpart in the United Kingdom. Nothing we say in this judgment is intended to be wider than is necessary for this particular decision. For example, nothing we say is intended to cast any doubt on the observations of the Royal Court in *McMahon* concerning decisions of the Attorney General in relation to prosecutions.”

15 With regard to the decision to prosecute, the courts have shown a particular reluctance to become involved with the institution of criminal proceedings. To do so would infringe the principle of the separation of powers. There is also a public interest in ensuring that criminal investigations are not hindered by unmeritorious claims for judicial review which might be brought simply to achieve delay.

16 If the Attorney General has decided to bring a prosecution, the matter is within the power and control of the criminal courts. Deficiencies in the prosecution case can usually be dealt with by

¹² 2001 JLR 43, at para 31.

¹³ *Planning & Environment Cttee v Lesquende* 1998 JLR 1.

¹⁴ 2001 JLR 43, at para 31.

appropriate directions at or before trial. If not, the court can stay proceedings for abuse of process, or dismiss the case for lack of evidence. These measures should provide sufficient safeguards against the possibility of a prosecution that should never have been brought.

17 There are also good arguments that the approach of the Royal Court in *McMahon*¹⁵ in relation to a decision not to prosecute still stands and therefore is not amenable to judicial review. As Bailhache, Bailiff said in *Att Gen v Rouillé*¹⁶ (an application to stay criminal proceedings on the grounds of delay):

“Furthermore, in this jurisdiction, the responsibility for instituting criminal proceedings in this court rests not with an amorphous government department but with Her Majesty’s Attorney General . . . It would be a serious matter to overturn the decision of the Bailiwick’s senior Law Officer of the Crown on a matter which constitutionally lies within his province. That is not to say that it would never be done, nor that the court does not have a duty to examine the matter on an application properly made . . . But the court must not forget that the discretion whether or not to institute criminal proceedings is vested in the Attorney General. In our judgment, only limited assistance can be drawn from the decisions in particular English cases.”

18 That case did not involve judicial review. Accordingly, the current position in Jersey is that decisions of the Attorney General to prosecute or not to prosecute (as the case may be) are not amenable to judicial review. In 2019 the Attorney General published guidance¹⁷ which provides victims of crime (a widely drawn category) with a three-month period in which to seek a review of a decision not to charge/prosecute.

19 In England and Wales it has been held that a decision not to prosecute may be judicially reviewed.¹⁸ The relevant test was set out by the Court of Appeal in *R (Dennis) v DPP*.¹⁹ However, more recently, in *R (L) v DPP*,²⁰ Sir John Thomas, President, stated “It is highly likely that where a review [by the CPS] has taken place, and the review can be seen to be careful and thorough, proceedings for judicial review to challenge the decision will be the more difficult to advance.”

¹⁵ *McMahon v Att Gen* 1993 JLR 35.

¹⁶ 1995 JLR 315, at 321.

¹⁷ “Victim’s right to review a decision not to prosecute.”

¹⁸ See *R v DPP ex p Manning* [2001] QB 330.

¹⁹ [2006] EWHC 3211.

²⁰ [2013] EWHC 1752 (Admin) at para 10.

The role of the Attorney General in criminal cases today

Charging decisions

20 Article 3 of the Honorary Police (Jersey) Law 1974 provides that any Centenier may, *inter alia*, charge a person.

21 Article 3(2) of the Law makes it clear that such a charging decision is “without prejudice to the customary powers of the Attorney General in the prosecution of offences.”

22 Article 3(2) deals with decisions to charge. Article 3(4) deals with decisions not to charge and provides:

“Where a Centenier declines to charge any person, the Attorney General may give such directions to such persons as the Attorney General thinks appropriate.”

23 Accordingly, the Attorney General in his capacity as chief prosecutor (as opposed to his capacity as titular Head of the Honorary Police) may overturn a decision of a Centenier to charge or not to charge as the case may be.

24 The statute gives no guidance as to the principles that the Attorney General should operate when deciding whether or not to overturn a decision of a Centenier to charge or not to charge. However the approach that is currently taken is that the Attorney General will only interfere with a decision of a Centenier if satisfied that the decision is wrong, not merely that he might have come to a different opinion on the same facts. This ensures that the Centenier’s general discretion to charge or not to charge is preserved. A similar approach is adopted under the “Victims’ right to review” scheme.

25 There was a recent challenge to the Attorney General’s decision to overrule a charging decision of a Centenier in *Att Gen v Norberto Tome Francisco Teixeira*.²¹ This was an appeal by the Attorney General against the decision of the Assistant Magistrate to stay proceedings as an abuse of process following the Attorney General’s decision to overrule a Centenier’s decision to deal with an allegation at a Parish Hall Inquiry.

26 The offender was subject to a written caution for the offence of causing serious injury by careless driving. This was overturned by direction of the Attorney General. The Magistrate had stayed the resulting proceedings as an abuse of process. The Attorney General appealed this decision to the Royal Court. The court reviewed the

²¹ [2018] JRC072.

relevant authorities, noting that in *Att Gen v Bacon*²² the Royal Court considered a decision by a former Attorney General in 1995 to direct that a complaint of common assault be dealt with by way of written caution. Proceedings for these and other allegations were brought by a successor Attorney General some 31 years later in 2016.

27 On the facts in *Att Gen v Bacon*, the later prosecution did not account to an abuse of process, although the court observed that, generally, there was an important public interest in people being entitled to rely upon a decision made by or on behalf of the Attorney General as head of the prosecution service. When overturning the decision of the Magistrate in *Att Gen v Teixeira*, the Royal Court held that the Magistrate's findings that there was no executive misconduct in the prosecution of the offender should have been sufficient for the Magistrate to conclude that he had no grounds to stay the proceedings. There had been nothing abusive about the conduct of the Centenier either—she had simply made a mistake. The focus of the Magistrate's reasoning should have been the conduct of the Attorney General and there was no suggestion that the decision to caution the offender had been made on behalf of the Attorney General; it was a decision was made by the Centenier alone.

28 The Royal Court held that under customary law of the Island, as well as under art 4(3) of the 1974 Law, the Attorney General has the power to override a decision of the Centenier. The Royal Court held,²³ that—

“the decision to stay the prosecution of the respondent, if left in place, would prejudice the ability of the Attorney General in the future to exercise his powers in relation to prosecutions.”

29 Clyde-Smith, Commissioner, added—

“I can see no distinction between a decision by a Centenier not to prosecute at all or to issue a caution, in that either way the case is disposed of without a prosecution and it is over decisions to prosecute that the Attorney General has ultimate jurisdiction.”²⁴

30 Finally, the Royal Court noted that there was no explanation in the written caution that the offender signed that the decision of the Centenier could be overturned by the Attorney General.²⁵ This has now been rectified and all persons dealt with at a Parish Hall are

¹³ [2016] JRC181; 2016 (2) JLR N [14].

²³ See para 38.

²⁴ See para 40.

²⁵ See para 42.

provided with a document in writing notifying them that the decision of the Centenier may be overturned by the Attorney General.

Consent to prosecute

31 There are a surprising number of enactments which provide that no prosecution for an offence thereunder may be instituted without the consent of the Attorney General. The list of enactments, produced as a result of a non-exhaustive search, along with the relevant wording is set out in the schedule to this article.

32 There has plainly been a proliferation of instances where the consent of the Attorney General is required. Accordingly, art 13 of the Criminal Procedure (Jersey) Law 2018 (which came into force in October 2019) provides, *inter alia*, that the Attorney General may delegate the giving of consent to such prosecutor as the Attorney General may from time to time designate in writing for the purposes of giving consent to prosecute under any enactment or rule of customary law, and that the States may, by regulation, amend any statutory provision so as to remove the need for the Attorney General's consent.

Prosecution in the Magistrate's Court

33 Historically, all cases were presented by Centeniers in the Magistrate's Court (formerly known as the Police Court). Now all contested cases are prosecuted by lawyers working for the Attorney General's Department. Centeniers prosecute most guilty pleas and frequently deal with bail applications and submissions on jurisdiction *i.e.* whether or not the case should be heard by the Royal Court or the Magistrate's Court. In order to ensure that cases suitable for the Magistrate's Court are determined by that court and not by the Royal Court (which might cause additional delay and costs), a new policy has been introduced whereby the legal adviser needs to obtain the written consent of the Attorney General, Solicitor General or the Director of the Criminal Division prior to making submissions that the matter is suitable for Royal Court trial. This internal procedure has resulted in fewer cases being committed for trial for the Royal Court and a greater number of trials in the Magistrate's Court. There were 28 trials in the Magistrate's Court in 2018.

34 Procedure in the Magistrate's Court is to be significantly reformed and streamlined by the provisions contained in the Criminal Procedure (Jersey) Law 2018 ("the 2018 Law"). Part 6 "Proceedings in the Magistrate's Court", the majority of which was not, however, in force as this issue went to print.

35 One of the changes introduced by these provisions is a power on first appearance for the Centenier to permit a prosecutor to read the

particular offence with which the defendant is charged.²⁶ Currently, this task can only be performed by the Centenier but in complex cases it is envisaged that the Centenier will give consent to the legal adviser reading out the charges.

36 At subsequent hearings “the prosecution” may amend the particulars of the offence, substitute the offence, or add a new or alternative offence.²⁷ The definition of “prosecution” under the 2018 Law is sufficiently wide to include the Attorney General, a prosecutor employed by the Law Officers’ Department and a Centenier. The current practice of Centeniers sometimes having to wait lengthy periods for the second or third listing of the case will cease, as Centeniers will, if they wish, be able to avoid attending such hearings.

37 As to the division of labour between the lawyers employed by the Law Officers’ Department and the Centeniers in the Magistrate’s Court, that is governed by an agreement made in June 2017 (currently being updated) distinguishing offences which are so serious that they should only be dealt with by a legal adviser; offences which are intermediate in that a legal adviser may or may not elect to take them over, with consent of a Centenier; cases where the Centenier may wish to consult a legal adviser before presenting the case; and cases where Centeniers are expected to conduct the case without the need for consultation (although of course they are always entitled to consult with a legal adviser if they think appropriate).

Committal proceedings and direct indictment

38 The implementation of Part 6 of the 2018 Law will result in the abolition of committal proceedings and the ending of the possibility of “old style committals” *i.e.* committals involving consideration of evidence. For some time the Attorney General has, in the exercise of his discretion, been avoiding the possibility of old style committals in cases involving serious or complex fraud or vulnerable/child victims by directly indicting cases to the Royal Court. Unusually, a decision of the author to indict directly was challenged by the defendant in the Royal Court (*Att Gen v Arthur*)²⁸ and this challenge was renewed before the Court of Appeal.²⁹ The Court of Appeal noted that the power to indict directly before the Royal Court is “a customary law power unique, as far as the Court is aware, to Jersey.” The case involved allegations of fraud (the defendant was subsequently

²⁶ Article 23, which is now in force.

²⁷ Article 24, not in force.

²⁸ 2017 (2) JLR 248.

²⁹ [2016]JCA098A; 2016 (1) JLR N [23].

convicted and sentenced to a significant term of imprisonment). After the defendant was charged, his advocate requested an “old-style committal”, *i.e.* a committal before the Magistrate’s Court with the hearing of the evidence. Prior to the Assistant Magistrate determining whether or not to order an old-style committal, the Solicitor General wrote on behalf of the Attorney General indicating that it had been decided to indict the defendant directly to the Royal Court. After requests, the Solicitor General provided reasons for the proceedings being directly indicted. Those reasons also explained why it was thought necessary to commence proceedings in the Magistrate’s Court in the first instance.

39 As to the reasons for indicting the defendant before the Royal Court, the Crown relied principally on the age and vulnerability of two witnesses (aged 93 and 84 respectively); and the number of witnesses. The Royal Court, in accordance with pre-existing authority, held that it had the power to review a decision by the Attorney General to directly indict.

40 The defendant did not ask that the Attorney General’s decision to indict be set aside but that the proceedings be stayed so as to allow the committal proceedings in the Magistrate’s Court to continue. Accordingly the court did not interpret the challenge as a request for judicial review of the Attorney General’s decision to indict the defendant on the traditional grounds of illegality, irrationality and impropriety, but to treat it as an application for the court to intervene in order to prevent an abuse of process. The court held that the proper procedure was for the defendant to raise the issue and for the Attorney General to show some reason why it was necessary and appropriate in the interest of justice for the indictment to be brought before the Royal Court directly, and to make proper disclosure of unused material that is relevant to the issue.³⁰

41 The Royal Court was satisfied that the reason for indicting directly to the Royal Court was the vulnerability of the two main witnesses and not to deprive the defendant of the advantages of an old-style committal. The Royal Court was prepared to accept, without evidence, that witnesses aged 84 and 93 were vulnerable. The court accepted that it was potentially oppressive to subject two witnesses of this age to two hearings and to being cross-examined twice in a complex case concerning offences alleged to have taken place over many years. The defendant would still receive a fair trial for the purposes of art 6 of the European Convention on Human Rights on the indictment laid against him. The court concluded that it was not in the public interest nor fair

³⁰ Paragraph 30 of the Royal Court judgment.

that the two elderly witnesses should be required to give evidence and be cross-examined twice. Accordingly, there was no abuse of process.

42 The Court of Appeal held that it had no jurisdiction to entertain the appeal on its interpretation of its jurisdiction under the Court of Appeal (Jersey) Law 1961. The matter could be considered in the event of an ordinary appeal following a conviction. The only remedy available to the appellant in order to contest a decision of the Royal Court in this case was, the Crown argued and the court accepted, a petition of *doléance* which lies to the Superior Number of the Royal Court and not the Court of Appeal. Such remedy is only available where an appellant can demonstrate he has suffered a “grave injustice”.³¹

43 The Attorney General’s power to indict cases directly to the Royal Court is expressly preserved by art 14 of the 2018 Law. Prior to the implementation of art 14, there was some uncertainty as to the consequence of an offender failing to answer a summons to appear in the Royal Court if directly indicted. Now art 14(5) provides that a failure to comply with the summons may result in the Bailiff issuing an order for the arrest of the defendant.

44 The abolition of committal proceedings is complemented by a new procedure under arts 25–30 of the 2018 Law. In summary, a guilty plea in the Magistrate’s Court will now, for the first time, be binding and the defendant will be convicted of the offence from that moment. The procedure whereby defendants committed for trial may change their plea from guilty to not guilty in the Royal Court is therefore to end.

45 Cases where a defendant is convicted on his or her plea are now transmitted to the Royal Court for sentence and the Magistrate is empowered, for the first time, to direct a date for the first hearing of the case before the Royal Court.³²

46 Notwithstanding that a defendant has been convicted and sent to the Royal Court for sentence, the Attorney General is nonetheless required to prepare and lodge an indictment under art 43 of the Law. It is not necessary that the defendant sent to the Royal Court for sentence is sentenced on his or her first appearance, as the Royal Court has a discretion to postpone.

47 Where defendants sent by the Magistrate’s Court to the Royal Court for sentence appear before the Royal Court they should be

³¹ [2016] JCA098A, para 8.

³² Article 28.

identified and the indictment should be read out.³³ Defendants should enter their own plea, not counsel on their behalf.

48 It is possible that owing to the speed of the new process there will be errors in the charges to which the defendant has pleaded guilty in the Magistrate's Court. Those errors can be remedied by the indictment; although care should be taken to ensure that there is not a significant difference between the charge to which the defendant has pleaded guilty and the indicted offence.

49 As to cases sent to the Royal Court for trial, the Magistrate is entitled to send the case to the Royal Court to a fixed date and, for the first time, to give case management directions which will be effective in the Royal Court.³⁴ The Royal Court is entitled to vary those directions, but what is significant is that there is now no longer a vacuum during which no case management directions apply between the sending a case to the Royal Court for trial and a defendant's first appearance in that court.

50 The Magistrate's Court now has a much wider statutory power to rectify mistakes than hitherto existed.³⁵ Significantly (there is no similar equivalent power in England and Wales in the Crown Court), the Royal Court has a power to remit a case to the Magistrate's Court when it becomes clear, as not infrequently is the case, that the case ought to continue in the Magistrate's Court. This could be, for example, because a more serious charge has been discontinued or the circumstances of the offence are in fact much less serious than was thought when the case was sent to the Royal Court.³⁶

51 A case involving a child or a young person may now be sent back to the Magistrate's Court where the adult co-defendant has pleaded guilty—thus avoiding the child or young person being tried or sentenced in the Royal Court.

The signing of the indictment

52 Article 43 provides that the Attorney General must prepare an indictment in the prescribed form, sign it and lodge it at least 48 hours before the date directed for the defendant's first appearance before the Royal Court, unless the Attorney General advises the Royal Court before the date directed for the defendants first appearance the indictment is not ready for lodging.

³³ Article 45.

³⁴ Article 28.

³⁵ Article 31.

³⁶ Article 47.

53 There is a new statutory power to amend an indictment at any stage³⁷ on application by the prosecution.

54 New indictment rules, replacing the 1972 Indictment Rules, are in the course of preparation. The new rules will make it easier to list offences involving the same defendant together on the same indictment subject, if appropriate, to the court's power to sever the same. There will, in effect, be a presumption in favour of all offences relating to a particular defendant being contained on a single indictment.

Disclosure of unused material

55 The 2018 Law provides, for the first time, a statutory duty on the Crown to disclose unused material.³⁸ The statutory duty is not significantly different from the customary law duty. The customary law duty was subject to guidelines issued by the Attorney General in 2006. They have now been replaced with extensive guidelines issued by the Attorney General in October 2019 to accompany the new Law.

56 The Attorney General's published guidance is directed towards police, prosecutors and the defence and describes the process by which the prosecution material will be disclosed and the context in which a defence case statement³⁹ must be provided. Unlike the position in England and Wales, the 2018 Law does not provide for a system of "secondary disclosure" by the prosecution after service of a defence case statement, but provides for the prosecution to be under a "continuing duty" to make disclosure of unused material under art 82(5). The process by which the prosecution may apply to the court for an order to withhold material which would otherwise fall to be disclosed (permitted by art 82(3) of the 2018 Law) is described in the Attorney General's guidance. Annexed to the guidance is specific guidance in relation to communication evidence and the examination of communication devices. It is to be noted that the Attorney General's guidance is over 100 pages shorter (at 9 or 10 pages) than the equivalent guidance issued by the Crown Prosecution Service in England and Wales.

The Royal Court conclusions—sentencing in the Royal Court

57 The offering of "*conclusions*" by the Attorney General is a striking aspect of the Jersey criminal justice system, when compared to other jurisdictions in the British Islands.

³⁷ Article 46.

³⁸ Article 82.

³⁹ Article 83.

58 Beyond the fact that the Attorney General's offering of *conclusions* is of French origin, its precise source is uncertain.

59 When Robert Pipon Marett gave evidence before the Commissioners appointed to enquire into the state of the Criminal Law in the Channel Islands, as recorded in their Jersey report of 1847, he said:⁴⁰

“Should the prisoner, immediately on his arraignment, or at the expiration of the delay granted him for preparing his plea, confess his guilt, the court, after hearing his advocate in mitigation and the *Procureur's 'conclusions,'* that is, his observations on the facts of the case and the application of the law, generally proceeds to pass sentence at once; and its decision is final. At other times, when the offence is so serious as to require a severe punishment, the culprit is remanded until the next meeting of the full court, when he receives his doom.”

60 *Conclusions* are offered in the Royal Court but not in the Magistrate's Court. The recommendations as to sentence are not always accepted by the Jurats of the Royal Court, but, as a matter of practice, the court will notify the defence advocate in the course of mitigation if the court is considering imposing a sentence which is greater than has been proposed by or on behalf of the Attorney General in the *conclusions*.

61 There was a time⁴¹ when all prosecutions in the Royal Court were conducted by the Attorney or Solicitor General. Now, owing to pressure of work, this is the exception and not the norm. The author instituted a practice in the Law Officers' Department whereby once a month on a Friday (when all Inferior Number sentencings take place) the Attorney or Solicitor General appears to prosecute the list in the Samedi Division. Accordingly, between 20% and 25% Royal Court sentencings before the Inferior Number are prosecuted by a Law Officer in person.

62 However, it is the practice that all *conclusions* are seen in draft and approved by a Law Officer before being filed on the court and served on the defence.

63 The “summary of facts” and “*conclusions*” are separate documents. The summary of facts is the prosecution's summary of the circumstances of the offence. As a matter of courtesy this is generally

⁴⁰ Page 58.

⁴¹ The enactment of the Crown Advocates (Jersey) Law 1987 allowed the Attorney General, for the first time, to delegate to a Crown Advocate.

provided to the defence in advance for comment prior to being filed on the court. However, it is not meant to be an agreed document and remains the Attorney General's summary of the facts. Nonetheless, if there is, for example, an agreed basis of plea, then that will feature in the Attorney General's summary of facts.

64 The *conclusions* are not provided to the defence in draft for comment or otherwise until they are supplied to the court and the defence at the same time. The conclusions are normally approximately the same length as the summary of facts and sometimes longer. They will set out the statutory maximum for the offence if there is one; any guideline authorities (if there are any) and any relevant authorities that the Attorney General thinks it appropriate to put before the court. Occasionally there will be reference to sentencing guidelines in other jurisdictions, particularly in England and Wales. Those are supplied to the court not on the footing that they are binding in Jersey (as they are not) but simply as a useful cross-check either in circumstances where there is little existing Jersey authority or if (see further below) the Attorney General is of the view that the Royal Court needs to consider whether it is appropriate to have regard to the different sentencing practice in England and Wales.

65 There are certain circumstances when to refer to sentencing principles elsewhere is not appropriate, particularly for offences where the Jersey courts have adopted their own sentencing guidelines. Examples of this are drug trafficking offences involving class A and class B drugs and offences involving the possession and distribution of indecent images of children. In both these circumstances, the Royal Court operates a sentencing regime which is quite different and more severe than that which is applicable in England and Wales.

66 Having referred to the relevant Jersey (and occasionally other) authorities, if any, the Attorney General will apply them to the facts of the instant case and thereafter move for a sentence, which will include any necessary applications for confiscation, compensation, disqualification, or destruction orders and costs, unless it is appropriate for any of these matters to be adjourned to another date.

67 Accordingly the role of the Attorney General in offering *conclusions* is to:

- (a) ensure consistency in approach amongst cases of similar nature;
- (b) to draw to the court's attention relevant sentencing principles in relation to the case before it so as to ensure consistency;
- (c) to ensure that in exceptional cases features are drawn to the court's attention (of which the court might not otherwise be aware) warranting a lenient sentence;

(d) to give the Attorney General a platform, if appropriate, to argue that the Royal Court needs to revisit its sentencing policy.

68 As to the general duties of a Crown Advocate, particularly before the Samedi Division of the Royal Court on Friday mornings, reference is made to the comprehensive article “*Aide-memoire* to a Crown Advocate” by Sir Philip Bailhache.⁴² The only alteration of significance to procedure since the article was written is that the Bailiff’s consent is no longer sought to the appointment of a Crown Advocate by the Attorney General. Further, the author introduced a procedure whereby any vacancies in the office of Crown Advocate are advertised and subject to interview by the Attorney General.

Assisting in setting sentencing policy

69 In Jersey it is the Jurats of the Royal Court who are principally responsible for determining sentencing policy, at the invitation of the Attorney General. In this respect Jersey differs from England and Wales where the principal vehicle for imposing sentencing policy on other courts is the Court of Appeal.

70 The key roles of the Jurats and the Attorney General have been recognised both by the Royal Court and the Court of Appeal. In *Att Gen v U*,⁴³ the Royal Court observed:

“The important differences in sentencing process to which reference was made in *Campbell* include the fact that the Attorney General, who occupies a crucial role at the heart of the Island’s administration, moves conclusions as to the appropriate sentence; and particularly that the sentence is assessed by two or more Jurats who are rooted in our community, people whose status reflects the trust reposed in them by an electoral college of States’ members and practising lawyers.”

“16 All these factors go to support the established policy that the Royal Court exercises its own jurisdiction and sets its own sentencing levels.”

71 In *Styles v Att Gen*,⁴⁴ the Court of Appeal held that “the unwritten constitution of Jersey vests the determination of sentences in serious criminal cases in the Jurats.”

72 The Court of Appeal in *Styles* went on to observe at paragraph 81—

⁴² (2001) 5 *Jersey Law Review* 278.

⁴³ 2011 JLR 812.

⁴⁴ 2006 JLR 210, at para 80.

“81 We accept that this court has power to embark on a revision of guidelines off its own bat. However, we consider that, in the absence of a supporting signal from either the Attorney General or the Royal Court, this is something that this court should be slow to do. The reason is that both the Attorney General and the Jurats are far better placed than is this court to judge whether consideration should be given to revision. With the exception of the Bailiff and the Deputy Bailiff, the judges making up the Court of Appeal do not reside in Jersey and are not as familiar with the social and penological issues here that bear on sentencing policy.”

73 In 2016, in the case of *Att Gen v K*⁴⁵ the Attorney General invited the Royal Court to impose a longer sentence in respect of two serious offences of indecent assault on a child than was consistent with previous Jersey cases.

74 The Attorney General had become aware of a significant disparity between sentencing levels in England and Wales (following guidelines issued in that jurisdiction) and in Jersey in respect of certain sexual offences.

75 Those guidelines were, as indicated above, not binding in Jersey but the Attorney General thought it right to invite the Royal Court to take those guidelines into account when sentencing the defendant in that case. The court accepted the Attorney General’s submission that sentencing levels for an offence of the nature before it had increased in England and Wales as compared with the levels established by previous English authority which had been generally followed in its discretion, by the Royal Court and imposed, on a guilty plea, imposed a sentence totalling 10 years’ imprisonment.

76 The Royal Court determined that—

“it is often helpful to look at sentencing practice in another jurisdiction, particularly a larger one where more cases are likely to arise. Having looked at the sentencing levels in an appropriate other jurisdiction, it is then for the courts of this Island to decide whether they find such sentencing levels helpful or not.”⁴⁶

77 In *K v Attorney General*⁴⁷ the Court of Appeal observed:

“(i) The Island’s different sentencing jurisdiction is a part of its constitutional history, marked by the structural differences

⁴⁵ [2016] JRC158.

⁴⁶ [2016] JRC158, at para 60.

⁴⁷ 2016 (2) JLR 487, at para 28.

between the application of the criminal law in Jersey and that in England and Wales. The length of sentence is determined by Jurats elected to that office by an electoral college comprising States members and practising lawyers. The Jurats are drawn from a wide range of skill sets within the Island and can be expected to represent a reasonable cross-section of the Island community. Secondly, the sentencing approach of the Royal Court is influenced by the conclusions of H.M. Attorney General which are presented not as part of the prosecution calling for the most severe sentence, but as a preliminary quasi-judicial opinion designed to ensure that the Royal Court has the key guideline cases referred to it and is consistent in its approach.”

78 The Court of Appeal held that in *K* the Jurats were entitled to consider the English guidelines. The court said⁴⁸—“They may wish to have regard to sentencing levels in England and Wales but there is no presumption that these should be followed in Jersey . . .” As a consequence of the conclusions offered by the Attorney General since 2016, there has been a significant upward trend in Royal Court sentences in all sexual offences involving child victims.

Should the Attorney General be director of public prosecutions?

79 This issue was considered by the Carswell Review of the roles of the Crown Officers in their report published in December 2010.

80 The description of the Attorney General’s current role in relation to prosecutions was accurately set out in the report—

“The prosecution of offenders is one of the major functions of the Attorney General. His is essentially a supervisory role in modern conditions, for the width of his responsibilities means that only on infrequent occasions is he able to conduct prosecutions in person. He is, however, in daily contact with the staff of the Law Officers’ Department in charge of prosecutions. Matters are constantly referred to and discussed with him, and he is kept informed of all prosecutions, retaining ultimate responsibility for all prosecuting decisions.”⁴⁹

⁴⁸ *Ibid*, at para 32.

⁴⁹ “The Review of the Roles of the Crown Officers”, December 2010, at para 6.2. <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Crown%20Offices%20Review%20Report%20101202%20WM.pdf> (accessed 2 August 2020)

81 Carswell went on to observe that the Attorney's membership of the States Assembly, is another advantage of the Attorney continuing to act as Chief Prosecutor—

“The Attorney General is answerable to the States for the performance of his duties, which is regarded as a fundamental part of a democratic society. Members may ask questions about criminal justice policy and the handling of prosecutions in general, though he will not (with rare exceptions such as the historic child abuse cases) answer questions about specific prosecuting decisions.”⁵⁰

82 Carswell continued—

“It may be seen from the foregoing that the Attorney General as the person with ultimate responsibility for prosecuting decisions requires to have considerable familiarity with and experience of Jersey affairs, as well as comprehensive knowledge of the Island's criminal law. He has on occasion to make fine judgments on the public interest when determining whether prosecutions should be brought and the offences to be charged. He must be and be seen to be independent of influence from outside, political or otherwise, and present and past Law Officers laid stress upon the importance of their Crown appointment as a guarantee of independence.”⁵¹

83 The report considered the possible drawbacks of the Attorney acting as DPP. The principal one identified was the potential conflict arising from the Attorney General advising a department of Government about its conduct and then considering a prosecution against that same department. Carswell said “prosecutions of Government departments or agencies have been rare in Jersey, but have taken place.”

84 In fact such cases have not been infrequent⁵² and recent examples include:

⁵⁰ *Ibid*, at para 6.4.

⁵¹ *Ibid*, at para 6.5.

⁵² In 1987 the Resources Recovery Board of the States of Jersey was prosecuted for breach of the Electricity at Work (Jersey) Regulations 1983; (see 1987–88 JLR N–10); *Att Gen v Environment and Public Services Committee* 2005 JLR N [6] (a breach of the Water Pollution (Jersey) Law 2000).

(a) *Att Gen v States Employment Bd*: health and safety at work prosecution in the Royal Court relating to the hospital laundry.⁵³ Fine of £60,000 and costs of £5,000 awarded.

(b) *Att Gen v States Employment Bd*: Royal Court prosecution of Health and Social Services Department relating to care of a resident of Rosewood House.⁵⁴ Fine of £50,000 awarded along with costs of £10,000.

85 Carswell recognised that the problems that had arisen in England and Wales which had led to the Attorney General no longer taking any part in prosecution decisions, which are the responsibility of the DPP, had to be understood in the context that in England and Wales the Attorney General is aligned to the governing political party and is appointed by, and may be dismissed by, the Prime Minister of the day.

86 It was noted that if the Attorney General were removed from the prosecution process altogether, as in England, it would be necessary to secure the services of a very good lawyer with a Jersey qualification possessed of expertise and experienced in criminal law and judgment in the deciding of prosecutions. Carswell said—

“that would require a person of high calibre who has been resident in Jersey, if not for his whole life, at least for a significant time. It is probable that it would require quite a high ranking and salary scale.”⁵⁵

87 Such a person would not, as Carswell observed, be a member of the States Assembly and accountable in the same way as the Attorney General is now.⁵⁶

88 Accordingly Carswell concluded—

“If the DPP and not the Attorney General were to be in charge of final prosecuting decisions, the DPP could not be accountable to the States in the same way as the Attorney General is now. It appears that in some European jurisdictions the public prosecutor is not answerable to the legislature, but we cannot suppose that this would be acceptable to the States. A mechanism would have to be devised, such as a select committee of the States, whereby

⁵³ Unreported. The case was heard before the Royal Court on 18 January 2019 and recorded in the *Poursuites Criminelles*.

⁵⁴ [2017] JRC132.

⁵⁵ “The Review of the Roles of the Crown Officers”, December 2010, at para 6.8.

⁵⁶ *Ibid*, at para 6.9.

the DPP could be required to attend to answer appropriate questions about his work.”⁵⁷

89 It was recommended that the Attorney General continued to act as Chief Prosecutor but that—

“It would be desirable to organise the administration of the Law Officers’ Department in such a way that those persons considering positions on prosecuting emanations of government should have no access to materials concerned with advice to the potential defendants. If such arrangements are put in place, allied to the integrity of the Law Officers and their staff, we considered that it would be proper and satisfactory that the Attorney General should continue to be responsible for prosecutions.”⁵⁸

90 Such arrangements have been introduced. The Law Officers’ Department now is structured so as to manage any potential conflicts of interest, with the Criminal and Civil Divisions of the Department being managed and operated quite separately from each other. The work of both are segregated from each other by an electronic case management system, which enables files to be locked electronically with only certain lawyers and staff having access to such files.

91 This issue was also considered at the meeting of the Law Ministers/Attorneys-General of Small Commonwealth Jurisdictions meeting at Marlborough House, London, in October 2016.

92 Prosecution independence and accountability was a matter which was discussed at the conference and the outcome statement recorded in relation to this issue that there should be “legal institutionalised practical safeguards to ensure the independence of the prosecution agencies”. It was recognised that frequently this would lead to legislation creating an office of Director of Public Prosecutions.

93 However, at para 17 of the outcome statement it was said—

“Ministers and Attorneys General noted that in a number of jurisdictions the constitutional independence of the Attorney General meant that the establishment of an office of Director of Public Prosecutions was unnecessary.”

94 In Jersey, where the Attorney General is constitutionally independent of Government, as well as being answerable to the Assembly for prosecution policy, there is no conceptual or practical

⁵⁷ *Ibid*, at para 6.9.

⁵⁸ *Ibid*, at para. 6.12.

difficulty in the continuance of the Attorney General's role as Chief Prosecutor.

Schedule

Legislation requiring consent of the Attorney General for proceedings/prosecution

Law	Wording used
Alternative Investment Funds (Jersey) Regulations 2012	Proceedings for an offence under these regulations shall not be instituted except by or with the consent of the Attorney General.
Antarctic Act 1994 (Jersey) Order 1995 See also Antarctic Act 1994 (Jersey) (Amendment) Order 2016 L-16-2017. In force 14.7.17	Proceedings for an offence under this Act shall not be instituted in Jersey except by or with the consent of the Attorney General for Jersey.
Aviation Security (Jersey) Order 1993	Proceedings for an offence under this Act shall not be instituted in Jersey except by or with the consent of the Attorney General for Jersey.
Banking Business (Jersey) Law 1991. Amended by L-02-2017 Not in force. Amended by L-10-2017. Not in force	No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.
Biological Weapons Act 1974 (Jersey) Order 1974	Proceedings for an offence under this Act shall not be instituted without the consent of the Attorney General of Jersey.
Broadcasting Act 1990 (Jersey) (No 2) Order 1991	No proceedings in respect of an offence under this section shall be instituted [except by or with the consent of Her Majesty's Attorney General for Jersey].
Chemical Weapons Act 1996 (Jersey) Order 1998	Proceedings for an offence under this Act shall not be instituted except by the Attorney General.
Collective Investment Funds (Jersey) Law 1988. Amended by L-02-2017. Not in force	No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.
Companies (Takeovers and Mergers Panel) (Jersey) Law 2009	No proceedings for an offence under this Article shall be instituted except by or with the consent of the Attorney General.
Computer Misuse (Jersey) Law 1995	Proceedings under this Article shall not be instituted without the consent of the Attorney General.
Corruption (Jersey) Law 2006. Amended by L-02-2017. Not in force	A prosecution for an offence under this Law shall not be instituted except by or with the consent of the Attorney General.

Crime and Security (Jersey) Law 2003. Amended by L-02-2017. Not in force	Proceedings for an offence under this Law or included in a freezing order shall not be instituted except by or with the consent of the Attorney General.
Crime (Transnational Organized Crime) (Jersey) Law 2008. Amended by L-02-2017. Not in force	A prosecution in Jersey for an offence against this Law may only be brought by, or with the consent of, the Attorney General.
Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002	Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.
Criminal Law (Child Abduction) (Jersey) Law 2005	No prosecution for an offence under Article 2 shall be instituted except by or with the consent of the Attorney General.
Currency Offences (Jersey) Law 1952	Provided that no proceedings shall be instituted under this paragraph without the consent of the Attorney General.
Democratic Republic of the Congo (United Nations Sanctions) (Channel Islands) Order 2003	No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General: Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.
EU Legislation (Sanctions) (General Provisions) (Jersey) Order 2014. Amended by R&O-052-2017. In Force 4.5.17	A prosecution for an offence under the relevant special Order must not be instituted without the consent of the Attorney General.
Community Provisions (Restrictive Measures—Guinea-Bissau) (Jersey) Order 2012	A prosecution for an offence under this Order must not be instituted without the consent of the Attorney General.
Community Provisions (Restrictive Measures—Guinea) (Jersey) Order 2010	A prosecution for an offence under this Order must not be instituted without the consent of the Attorney General.
Community Provisions (Restrictive Measures—Lebanon) (Jersey) Order 2007	A prosecution for an offence under this Order must not be instituted without the consent of the Attorney General.
Criminal Procedure (Jersey) Law 2018	No proceedings for any offence in connection with publication restrictions may be instituted without the consent of the Attorney General

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Financial Services (Jersey) Law 1998. Amended by L-07-2019. In force 26.5.19 Amended by R&O-003-2019. In force 22.1.19 Amended by R&O-021-2019 Not in force Amended by R&O-026-2019 Not in force Amended by R&O-040-2019 In force 31.5.19	No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.
Financial Services Ombudsman (Jersey) Law 2014	No proceedings for an offence under this Article may be instituted except by or with the consent of the Attorney General.
Freedom of Information (Jersey) Law 2011	Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.
Homicide (Jersey) Law 1986	No prosecution to which this Article applies shall be instituted without the consent of the Attorney General.
Honorary Police (Jersey) Law 1974	No proceedings shall be instituted for an offence under this Article except by or with the consent of the Attorney General.
Insurance Business (Jersey) Law 1996. Amended by L-02-2017. Not in force	No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.
International Criminal Court (Jersey) Law 2014. Amended by L-20-2017. Not in force	Proceedings for an offence to which this Article applies shall not be begun except by, or with the consent of, the Attorney General.
Internationally Protected Persons Act 1978 (Jersey) Order 1979	Proceedings for an offence which (disregarding the provisions of the Suppression of Terrorism Act 1978) would not be an offence apart from the preceding section shall not be begun in Jersey except by or with the consent of the Attorney General.
Iraq (United Nations Sanctions) (Channel Islands) Order 2003	No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General: Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of

	proceedings for the offence has not been obtained.
Landmines Act 1998 (Jersey) Order 2001	Proceedings for a section 2 offence shall not be instituted [except by or with the consent of the Attorney General for Jersey].
Legitimacy (Jersey) Law 1973	No prosecution for an offence under this Article shall be instituted without the consent of the Attorney General.
Marine, &c., Broadcasting (Offences) (Jersey) Order 1967	Proceedings for an offence under this Act shall not * * * * * be instituted otherwise than by or on behalf of the Attorney General * * * * *; but this shall not prevent the issue or execution of a warrant for the arrest of any person in respect of such an offence or the remanding in custody or on bail of any person charged with such an offence.
Nuclear Installations (Jersey) Order 1980	Proceedings in respect of any offence under this Act shall not be instituted in Jersey except by or with the consent of the Attorney General for Jersey.
Nuclear Material (Offences) Act 1983 (Jersey) Order 1991	Proceedings for an offence which (disregarding the provisions of the Internationally Protected Persons Act 1978 and the Suppression of Terrorism Act 1978) would not be an offence apart from the preceding provisions of this Act shall not be begun [in the Bailiwick of Jersey except by or with the consent of Her Majesty's Attorney General for Jersey].
Official Secrets (Jersey) Law 1952	A prosecution for an offence under Article 3, 4 or 5 shall not be instituted except by or with the consent of the Attorney General.
Police Procedures and Criminal Evidence (Jersey) Law 2003. Amended by L-20-2017. Not in force	Proceedings for an offence under this Article shall not be commenced without the consent of the Attorney General.
Printed Papers (Jersey) Law 1954	No prosecution for a contravention of any of the provisions of this Law shall be instituted without the consent of the Attorney General.
Proceeds of Crime (Jersey) Law 1999 Amended by R&O-040-2019. In force 31.5.19 Amended by L-29-2018. In force 18.6.19	No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.
Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008	No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.

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Protection of Children (Jersey) Law 1994	Proceedings for an offence under this Law shall not be instituted except by or with the consent of the Attorney General.
Protection of Trading Interests Act 1980 (Jersey) Order 1983	No proceedings for an offence under subsection (1) above shall be instituted in Jersey except with the consent of the Attorney General for Jersey.
Public Finances (Jersey) Law 2005	A prosecution for an offence under this Law shall not be instituted except by or with the consent of the Attorney General.
Registration of Business Names (Jersey) Law 1956. Amended by R&O-040-2019. In force 31.5.19	Provided that no proceedings shall be instituted under this Article except by or with the consent of the Attorney General
Regulation of Investigatory Powers (Jersey) Law 2005. Amended by L-04-2019. In force 3.5.19	No proceedings for any offence which is an offence by virtue of this Article shall be instituted except by or with the consent of the Attorney General.
Shipping (Jersey) Law 2002	Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.
States of Jersey Law 2005. Amended by L-08-2017. In force 28.4.17	No prosecutions for an offence under this Law or standing orders shall be instituted except by or with the consent of the Attorney General.
States of Jersey Police Force Law 2012	Proceedings must not be instituted for an offence under this Article except by or with the consent of the Attorney General.
Suppression of Terrorism Act 1978 (Jersey) Order 1978	Proceedings for an offence which would not be an offence apart from this section shall not be instituted [in Jersey except by or with the consent of the Attorney General of Jersey].
Taking of Hostages (Jersey) Order 1982	Proceedings for an offence under this Act shall not be instituted [except by or with the consent of the Attorney General for Jersey].
Terrorism (Jersey) Law 2002 Amended by R&O-031-2019 In Force 5 April 2019	No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.
International Criminal Court Act 2001 (Jersey) Order 2014	Proceedings for an offence shall not be instituted [except by or with the consent of Her Majesty's Attorney General for Jersey].
Maritime Security (Jersey) Order 2014	Proceedings for an offence under any provision of this Part of this Act shall not be instituted except by, or with the consent of, Her Majesty's Attorney General for Jersey.
Wireless Telegraphy (Jersey)	Proceedings for an offence under this Part may only

Order 2006	be instituted by or with the consent of the Attorney General of Jersey.
Torture (Jersey) Law 1990	Proceedings for an offence under Article 1 shall not be begun except by, or with the consent of, the Attorney General.
Al-Qa'ida And Taliban (United Nations Measures) (Channel Islands) Order 2002	No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General:
Iraq (United Nations Sanctions) (Channel Islands) Order 2000	No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General:
Lebanon and Syria (United Nations Measures) (Channel Islands) Order 2006	No proceedings for an offence may be instituted except by or with the consent of the Attorney General.
Liberia (United Nations Sanctions) (Channel Islands) Order 2004	No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General.
Libya (United Nations Prohibition of Flights) Order 1992	No proceedings for an offence against this Order shall be instituted in England, Wales, Northern Ireland, the Isle of Man or the Bailiwick of Jersey, except by the Secretary of State or with the consent of the Attorney General or, as the case may be, the Attorney General for Northern Ireland, or the Isle of Man or the Bailiwick of Jersey.
Libya (United Nations Sanctions) (Channel Islands) Order 1992	No proceedings for an offence against this Order, in its application to the Bailiwick of Jersey, shall be instituted except by or with the consent of the Attorney General for Jersey.
Somalia (United Nations Sanctions) (Channel Islands) Order 2002	No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General.
Sudan (United Nations Measures) (Channel Islands) Order 2005	No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General.
Terrorism (United Nations Measures) (Channel Islands) Order 2001	No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General.
United Nations Arms Embargoes (Somalia, Liberia and Rwanda) (Channel Islands) Order 1996	In the Bailiwick of Jersey, no proceedings for an offence under this Order shall be instituted except by, or with the consent of, the Attorney General for Jersey.
United Nations Personnel (Jersey) Order 1998	Proceedings for an offence which (disregarding the provisions of the Internationally Protected Persons Act 1978 [as extended to the Bailiwick of Jersey by the Internationally Protected Persons Act 1978

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(Jersey) Order 1979], the Suppression of Terrorism Act 1978 [as it has effect in the Bailiwick of Jersey under the Suppression of Terrorism Act 1978 (Jersey) Order 1978], and the Nuclear Material (Offences) Act 1983 [as extended to the Bailiwick of Jersey by the Nuclear Material (Offences) Act 1983 (Jersey) Order 1991] would not be an offence apart from section 1, 2 or 3 above shall not be begun [except by or with the consent of the Attorney General for Jersey].

Robert MacRae QC was HM Attorney General for Jersey between 2015 and 2020. He took up office as Deputy Bailiff of Jersey in January 2020.