

**The Court of Appeal (Criminal Division) (Guernsey)
(Amendment) Rules, 2022 No. 34**

THE COURT OF APPEAL, in exercise of the powers conferred upon it by sections 39 and 44 of the Court of Appeal (Guernsey) Law, 1961^a, and all other powers enabling it in that behalf, hereby orders: -

Amendments to principal Rules.

1. The Court of Appeal (Criminal Division) (Guernsey) Rules, 1964^b ("the principal Rules") are hereby amended as follows.

2. In rule 1(1) of the principal Rules –

- (a) at the end of the definition of "**appellant**", add "and includes a person appealing under Part III of the Law by virtue of section 24A of the Law",
- (b) the definition of "**Attorney General**" is revoked,
- (c) in the definition of "**the Governor of the Prison**" for "person for the time being appointed to be the Governor of the Prison under the Prison Administration (Guernsey) Law, 1949" substitute "Governor within the meaning of the Prison (Enabling

^a Ordres en Conseil Vol. XVIII, p. 315. This enactment has been amended.

^b G.S.I. No. 16 of 1964. This enactment has been amended.

Provisions) (Guernsey) Law, 2010", and

(d) after the definition of "**the Law**" insert –

""**the Lieutenant-Governor**" means His Excellency the Lieutenant-Governor and Commander-in-Chief of Guernsey,".

3. In rule 7 of the principal Rules –

(a) in the heading, for "Notes and report" substitute "Report",

(b) for "Secretary of State" substitute "Lieutenant-Governor", and

(c) for "such judge shall, as soon as may be, furnish to the Registrar a copy of his notes of the trial and" substitute "such judge may, and shall if so required by the Court, as soon as may be, furnish to the Registrar".

4. In paragraphs (4), (5), (6), (8) and (9) of rule 8 of the principal Rules, for "ten days" in each place where it occurs substitute "28 days".

5. In rule 9 of the principal Rules –

(a) in paragraph (1), after "conviction" insert "or otherwise", and

(b) in paragraph (5), for "ten days" substitute "28 days".

6. In rule 10 of the principal Rules –

(a) in paragraph (1), delete "convicted and"; and after "notice of appeal" insert "against conviction or sentence", and

(b) in paragraphs (2), (4), (8) and (10), for "the Attorney General" in each place where it occurs substitute "Her Majesty's Procureur".

7. In rule 11 of the principal Rules, for "Clerk of the Court of Alderney" in each place where it occurs substitute "Alderney Greffier"; and for "the Attorney General" substitute "Her Majesty's Procureur".

8. In rules 12, 14 and 16 of the principal Rules, for "the Attorney General" in each place where it occurs substitute "Her Majesty's Procureur".

9. Rule 15(2) of the principal Rules is revoked.

10. In rule 18 of the principal Rules –

(a) in the heading, for "Secretary of State" substitute "the Lieutenant-Governor", and

(b) for "the Secretary of State" substitute "the Lieutenant-Governor".

11. After rule 18 insert –

"References and appeals by Her Majesty's Procureur.

18A. (1) This Rule shall apply where Her Majesty's Procureur wishes to –

- (a) refer a point of law to the Court under section 43A of the Law, or
- (b) refer the sentencing of a person to the Court under section 43B of the Law.

(2) Her Majesty's Procureur must serve any notice of reference and any application for leave to refer a sentencing case on the Registrar and on the defendant.

(3) Where Her Majesty's Procureur refers a point of law, Her Majesty's Procureur must –

- (a) give the Registrar details of the acquitted person affected, the date of the Royal Court decision and the relevant verdict and sentencing,
- (b) give the acquitted person notice that the outcome of the reference will not make any difference to the outcome of the trial, and that the acquitted person may serve a respondent's notice.

(4) Where Her Majesty's Procureur applies for leave to refer a sentencing case, Her Majesty's Procureur must give the defendant notice that –

- (a) the outcome of the reference may make a difference to the sentencing, and in particular may result in a more severe sentence, and
- (b) the defendant may serve a respondent's notice.

(5) A notice of reference of a point of law must –

- (a) specify the point of law in issue and indicate the opinion that Her Majesty's Procureur invites the Court to give,
- (b) identify each ground for that invitation and concisely outline each argument in support, and
- (c) summarise the relevant facts and identify any relevant authorities.

(6) An application for permission to refer a sentencing case must give details of the defendant affected, the date of the Royal Court decision and the relevant verdict and sentencing and explain why that sentencing appears to Her Majesty's Procureur to be unduly lenient, concisely outlining each argument in support.

(7) A notice of reference of a sentencing case must, in addition to the details and explanation in paragraph (6), summarise the relevant facts and identify any relevant authorities.

Respondent's notice.

18B. (1) Where a defendant on whom Her Majesty's Procureur serves a notice of reference or an application for permission to refer a sentencing case wishes to make representations to the Court, or where the defendant is directed by the Court to serve a respondent's notice, the defendant must serve a respondent's notice on Her Majesty's Procureur and on the Registrar –

- (a) where Her Majesty's Procureur refers a point of law, not more than 28 days after service of the notice of reference or of a direction by the Court, or
- (b) where Her Majesty's Procureur applies for permission to refer a sentencing case, not more than 14 days after service of the application or of a direction by the Court.

(2) Where Her Majesty's Procureur refers a point of law, the respondent's notice must –

- (a) identify the grounds of opposition on which the respondent relies, concisely outlining each argument in support,

(b) summarise any relevant facts, and

(c) identify any relevant authorities.

(3) Where Her Majesty's Procureur applies for leave to refer a sentencing case, the respondent's notice must indicate whether the respondent wishes to make representations at the hearing of the application or reference.

Appeals by Her Majesty's Procureur in respect of confiscation order or forfeiture order.

18C. (1) Where Her Majesty's Procureur wishes to apply to the Court for leave to appeal under section 43E of the Law, Her Majesty's Procureur must serve a notice of appeal on the Registrar and on the defendant.

(2) A notice under paragraph (1) served on a defendant must be accompanied by a respondent's notice for the defendant to complete and a notice –

(a) informing the defendant that the result of an appeal could be that the Court might increase the confiscation order or forfeiture order already imposed, might make a confiscation order or forfeiture order or might direct another hearing,

(b) informing the defendant of the defendant's right to present any argument on the hearing of the application and on the appeal, if leave is

granted.

(3) Where a defendant who is served with a notice of appeal under this Rule wishes to oppose the application for leave to appeal, the defendant must, not more than 14 days after service of the notice of appeal, serve on Her Majesty's Procureur and on the Registrar a respondent's notice summarising the defendant's response to the arguments of Her Majesty's Procureur and specifying the authorities which the defendant wishes to cite."

12. In rule 19 of the principal Rules –

- (a) in paragraph (5), for the words from "is for the time being certified" to "under those Laws" substitute "lacks capacity within the meaning of the Capacity (Bailiwick of Guernsey) Law, 2020",
- (b) in paragraph (7), for "Clerk of the Court of Alderney", in both places where it occurs, substitute "Alderney Greffier", and
- (c) in paragraph (8), for "the Attorney General" substitute "Her Majesty's Procureur".

13. In the Schedule to the principal Rules –

- (a) in Form 1, after "Offence(s)" insert "(if any)"; and after "Date when convicted" insert "(and sentenced, if different)",

- (b) in footnote (4) to Form 1, for "ten days" substitute "28 days",
- (c) in Form 7, for "ten days" substitute "28 days",
- (d) in Form 17, for "the Attorney General" in both places where it occurs substitute "Her Majesty's Procureur".

Interpretation.

14. In these rules "**the principal Rules**" means the Court of Appeal (Criminal Division) (Guernsey) Rules, 1964.

Citation.

15. These rules may be cited as the Court of Appeal (Criminal Division) (Guernsey) (Amendment) Rules, 2022.

Commencement.

16. These rules shall come into force on the 7th February, 2022.

