Jersey's Legal System

Policy Centre Jersey
Knowledge Centre

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Introduction

Jersey has its own legal system, embracing aspects of Norman law and structures, a fairly standard approach to drafting laws and a court system which has some similarities with that of England but also its own characteristics, in particular a Royal Court and the use of jurats rather than juries.

Historical background

Jersey was part of the Duchy of Normandy until the 13th century and had adopted Norman legal processes and structures. In England and other countries, the concept of common law is well established, under which legal precedent plays an important part. By contrast, in Normandy the customary law system prevailed, under which what has been generally accepted was deemed to be the law.

Over time the importance of legislation has increased although to some extent this has simply codified what was common law or customary law as well as supplanting it.

The structure of the legal profession also reflects the historic position. Jersey has advocates rather than barristers. The position of the Bailiff as civic head of the Island and the role of jurats date back to the 14th century. One of the roles of the Bailiff, continued to this day, is head of the judiciary, and jurats remain as an essential part of the legal system. Until 1948 they sat as members of the States Assembly. The parishes have also had their own legal structures and for many centuries were in effect the law enforcement agencies.

This historic background is essential in understanding the current legal structure in Jersey.

How laws are made

In respect of new legislation Jersey is little different from most other jurisdictions. The legal provisions on legislation are set out in the Legislation (Jersey) Law 2021. The States Assembly, the parliament of the Island, has responsibility for enacting legislation. Most legislation is introduced by the Government and prior to the formal legislative process there would typically be a period of analysis and consultation. When this has been concluded a draft law, known as a Projet de Loi, is tabled in the States Assembly. However, it is open to any member of the States Assembly to table a Projet de Loi.

The process then is similar to that in other parliaments with the legislation being debated at least twice, amendments being proposed, considered and voted on, and ultimately the States Assembly approving what is

known in Jersey as a “Law”, as opposed to the term “Act” which is used in the UK.

The law is then submitted to the Ministry of Justice in the United Kingdom which has a responsibility to ensure that legislation by the Crown Dependencies does not conflict with any of the UK’s treaty and other obligations. In practice, the Law Officers in the Crown Dependencies ensure that there will not be any such problems. When the Ministry of Justice is content the law is approved by a committee of the Privy Council and returned to Jersey when it is formally registered by the Royal Court. It is only at this stage that the law comes into effect.

The legal profession

There is a large legal profession in Jersey, most of which helps to service the financial services industry. Most newly qualified lawyers start by studying at an English university, then taking bar exams in England and then qualifying for the Jersey bar by passing examinations run by the Institute of Law Jersey. Jersey has solicitors and advocates although only advocates can appear before the Royal Court. In practice, most lawyers in Jersey are advocates. There are also a number of notaries public, their role being similar to that of the UK equivalent.

Most of the advocates who work on financial services business are part of one of six law firms which also have operations in Guernsey and other financial centres. They are Appleby, Bedell Cristin, Carey Olsen, Mourants, Ozannes and Ogier.

There are many other legal practices, most of which concentrate on domestic issues such as conveyancing, matrimonial law, property law and criminal law, although the big firms also offer these services.

The Institute of Law Jersey provides a range of important legal services in the Island. In addition to being the body responsible for examinations, it is also a centre of research on offshore law, and it publishes a regular journal as well as specific studies.

The Bailiff and the Law Officers

Jersey has a Bailiff, Deputy Bailiff and two Law Officers - an Attorney General and a Solicitor General.

The head of the legal profession is the Bailiff, who is also the civic head of the Island, the President of the States Assembly, in practice performing the role of speaker, and Deputy Governor in the absence of the Lieutenant Governor. The responsibilities of the Bailiff include -

- Head of the judiciary of Jersey.

- President of the Royal Court.
- President of the Court of Appeal. In practice the Bailiff rarely sits in this Court as most appeals are against his judgments.
- Member of the Court of Appeal of Guernsey.
- President of the Assembly of Bailiff, Governor and Jurats, responsible for regulating the sale of alcohol among other duties.
- Making various judiciary-related appointments -
    - Lieutenant bailiffs (usually jurats) and commissioners, any of whom may preside over the Royal Court and exercise other judicial functions of the Bailiff as required.
    - The magistrate, assistant magistrate and relief magistrates.
    - Approves the appointment by the Attorney General of Crown Advocates.
    - The Viscount.

The Deputy Bailiff deputises for the Bailiff as necessary on all matters and has a specific function of being the President of the Board of Examiners for the Jersey law examinations.

The Attorney General and the Solicitor General head the Law Officers' Department which has six functions –

- Providing legal advice to the Crown, States Assembly Members and others. This work includes preparing reports for the Privy Council on new legislation submitted to it by the States Assembly, liaising with the Ministry of Justice on UK legislation which may be extended to the Island, and examining international agreements to determine their relevance to Jersey.
- Providing a public prosecution service for the Island.
- Protecting the interests of the Crown and the Government in civil proceedings.
- Performing the functions and duties of the Attorney General. This work includes –
    - Duties which arise as a result of the Attorney General being the Head of the Honorary Police.
    - Approving draft and amended constitutions and protecting the interests of charities in the Royal Court.
    - Representing the Island in international and inter-insular tribunals, courts and other meetings such as those with the Ministry of Justice, Guernsey and the Isle of Man.
- Assisting overseas law enforcement agencies.
- Carrying out conveyancing work for the Crown and Government of Jersey.

The court system

Jersey has a magistrate's court which operates in a very similar way to its English counterparts, dealing with most criminal matters and with limited sentencing powers. It refers cases upwards in appropriate circumstances. Magistrates are legally trained unlike JPs in England.

In addition to the magistrate's court a youth court, which has similar powers to the magistrate's court, deals exclusively with defendants under the age of 18. A petty debts court deals with civil matters below £30,000 as well as landlord and tenant issues. It also deals with matters resolved by mediation.

The principal court in Jersey is the Royal Court, which hears appeals from the lower courts and is a court of first instance for many issues. It can be regarded as equivalent to the English crown courts for criminal matters and the High Court for civil matters. There are four divisions of the court –

- Heritage, which deals with real property issues.
- Family, which deals with divorce proceedings and matters relating to children.
- Probate, which handles the administration of estates.
- Samedi, which deals with everything else. Samedi comes from the French word for Saturday, which is when the court used to sit. The name has been retained although the court now sits on Fridays.

The Bailiff presides over most cases in the Royal Court. In his absence the Deputy Bailiff presides. There is also provision for commissioners to be appointed as judges for a specific period or to deal with a specific case. This is to ensure that there is always adequate capacity in the Royal Court to deal with cases.

A distinguishing feature of the current system in Jersey is the use of jurats rather than juries. The jurats are layman and are selected to hold that position generally because of the record they have in public service. Jurats are elected by an electoral college comprising members of the States Assembly and the legal profession. Candidates must be over 40 and once elected can serve until they are 72. There are at any one time 12 jurats. For most cases the Bailiff sits together with the Deputy Bailiff and two jurats. This is known as the "inferior number". Where a criminal case carries a sentence for longer than four years then five jurats sit, this being known as the "superior number".

A Court of Appeal hears appeals from all Royal Court divisions. It meets six times a year. It comprises the Bailiff, the Deputy Bailiff and a number of senior lawyers from the UK. There is also provision for matters of law to be referred to the Judicial Committee of the Privy Council, although this is unusual.

Parish Hall enquiries

Parish Hall enquiries are a distinguishing feature of the Jersey legal system. They date back over 800 years and reflect the historic importance of parishes and customary law. Basically, a parish hall inquiry is the process of preliminary investigation conducted by a centenier (an honorary police officer) to decide whether to refer the case to the court system, or whether more informal action is appropriate. Most cases are initiated by the police but others able to refer cases are certain government officials, headteachers and indeed members of the public. The hearings are in private and do not constitute a court of law.

The powers of the centenier are to –

- Give a written caution, advice or even take no action, and there can be an element of restorative justice, for example a letter of apology or compensation.
- Defer a decision, generally in conjunction with other conditions such as writing a letter of apology.
- Impose a fine of up to £200 for certain statutory offences.
- Place young offenders under voluntary supervision orders.
- Levy a formal charge for a court appearance before the magistrate.

The Jersey Legal Information Board

The Jersey Information Legal Board is an important component of the legal structure in Jersey. It is chaired by the Bailiff, the other members representing parts of Government and the legal profession. Its strategy is -

- To make the Laws of Jersey and Jersey's legal processes more accessible.
- To promote the better co-ordination of Jersey's justice system.
- To support Jersey's position as a leading business centre.

It provides a comprehensive online library of current legislation (most importantly, consolidated versions of laws), court judgments and legal books and texts.