

UPDATE

# Changes to Jersey court procedures in response to COVID-19

Update prepared by Stephen Alexander (Partner, Jersey) and Chazha Hick (Trainee, Jersey)

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The Jersey courts have been swift to adapt to the COVID-19 pandemic and the subsequent challenges presented by social distancing requirements, and this action has enabled them to remain open and continue to operate. The courts have put various measures into place to facilitate the continuation of court proceedings during these times.

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Practice Directions have recently been published by the Jersey courts, which outline the ways in which law firms, and parties involved in proceedings, can comply with the newly adapted procedures to limit disruption for the wider legal system. The new operational procedures aim to accommodate remote ways of working, whilst balancing this with the prerequisite of upholding certain established standards of practice.

In respect of hearings for civil cases, where essential hearings must take place physically, strict procedures are in place where attendants must adhere to social distancing guidance. Procedures are also in place for case management hearings, which will be heard on the Court's online video platform, enabling parties to appear remotely.

The Practice Directions have placed an increased emphasis on ensuring efficiency at this time. Parties must endeavour to keep their supporting documentation in their submissions as concise as possible, and also seek to reach agreement on the proposed directions with the other party in advance of the hearing. Parties will also need to turn around submissions with greater speed, as skeleton arguments will now need to be submitted one week before any hearing, rather than (in many cases) two days, as has previously been the case.

As part of the facilitation of proceedings during the COVID-19 pandemic, the Jersey courts have also set out guidance on the remote execution and swearing of affidavits. The Jersey courts have detailed the processes that should be followed to safeguard the integrity of established procedures in these circumstances. For example, the lawyer must positively identify the deponent before the affidavit is sworn; he/ she must administer the oath or affirmation in the usual way; and he/ she must see the deponent sign the affidavit. Lawyers have been instructed to ensure that they mitigate against the risk of breaching fundamental principles of court and witness practice by taking all reasonable steps to ensure that the deponent is making the affidavit of their free will. Similar guidance has been issued in relation to the remote execution of powers of attorney.

Jersey's Employment and Discrimination Tribunal has also had to adapt to the pressures imposed by the COVID-19 pandemic, which it has done so by prioritising the cases it will hear in this period. Case management and interim hearings will proceed but the Tribunal has adjourned all final hearings due to be heard before the end of May 2020. All the parties are required to attend by video or telephone conference.

In respect of criminal cases, the Magistrate Court is continuing to operate, albeit it is currently dealing on a priority basis with cases where the defendant is in custody. The public gallery of the Court is currently

closed, and extensive measures have been effected to ensure that personal interaction is minimised as far as possible for the essential parties that must be in physical attendance. The Jersey Petty Debts Court will only be dealing with urgent matters in this period.

Emergency regulatory provisions have also been recently enacted by the States Assembly, which set out certain alterations to the conduct of court proceedings which are aimed at ensuring the continued efficient operation of the courts during the COVID-19 pandemic. These provisions include enabling the Bailiff to determine matters without jurors<sup>1</sup> and, on matters where jurors are required, enabling those jurors to be present by way of video or telephone link.

The procedural changes put into effect by the Jersey courts as a result of COVID-19 have allowed for the local judicial system to continue to function in these unprecedented times. The courts have successfully achieved an appropriate balance between the need to maintain certain fundamental principles and standards, whilst complying with the Government of Jersey's measures to deal with the COVID-19 pandemic, and also taking into account the challenges faced by all parties interacting with the court system.

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<sup>1</sup> Jurats are lay member of the court who act as judges of fact rather than law.

## Contacts

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**Stephen Alexander**

Partner, Mourant Ozannes

Jersey

+44 1534 676 172

[stephen.alexander@mourant.com](mailto:stephen.alexander@mourant.com)

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