

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**PROJET DE LOI**

Entitled

**THE INTERNATIONAL CRIMINAL COURT (BAILIWICK OF GUERNSEY) LAW, 2019**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The International Criminal Court (Bailiwick of Guernsey) Law, 2019", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

The International Criminal Court ("ICC") is a supranational court based in The Hague which tries individuals for genocide, crimes against humanity and war crimes. It was established by the United Nations by the "Rome Statute". In addition to the investigation of crimes within its jurisdiction, the ICC's work increasingly involves the tracing and repatriation of assets and is reliant upon the co-operation of ratifying States who are obliged to gather evidence and arrest suspects as and when required.

The International Criminal Court Act 2001 ("the 2001 Act") implemented the provisions of the Rome Statute into the domestic law of the United Kingdom. Corresponding legislation was enacted in the Isle of Man in 2003 and in Jersey in 2014. While Guernsey has procedures in place to collect evidence and freeze assets for the assistance of foreign jurisdictions, these do not apply to supranational bodies and so could not be relied upon to provide assistance in the event of a request from the ICC.

The Law is based closely on the 2001 Act with necessary modifications. In some cases the terminology is derived from the wording of the Rome Statute and may appear to be at variance with the more familiar local terminology – however, consultation with the judiciary and other interested parties has been undertaken to ensure that the procedures are consistent with local practices as well as conforming to the obligations of the Rome Statute.



# PROJET DE LOI

ENTITLED

## **The International Criminal Court (Bailiwick of Guernsey) Law, 2019**

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## PROJET DE LOI

### ENTITLED

# **The International Criminal Court (Bailiwick of Guernsey) Law, 2019**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> September, 2013<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

## PART I

### THE INTERNATIONAL CRIMINAL COURT

#### **The ICC and the ICC Statute.**

1. (1) In this Law -

"**the ICC**" means the International Criminal Court established by the Statute of the International Criminal Court, done at Rome on 17<sup>th</sup> July 1998,

"**the ICC Statute**" means that Statute, and

"**ICC crime**" means a crime (other than the crime of aggression) over which the ICC has jurisdiction in accordance with the ICC Statute.

(2) References in this Law to articles are, unless otherwise

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<sup>a</sup> Article XII of Billet d'État No. XV of 2013.

specified, to articles of the ICC Statute.

(3) Schedule 1 to this Law contains supplementary provisions relating to the ICC.

## PART II

### ARREST AND DELIVERY OF PERSONS

#### *Proceedings on request*

#### **Request for arrest and surrender.**

2. (1) Where Her Majesty's Procureur receives a request from the ICC for the arrest and surrender of a person alleged to have committed an ICC crime, or to have been convicted by the ICC, Her Majesty's Procureur shall transmit the request and the documents accompanying it to a Judge of the Magistrate's Court ("**the Judge**").

(2) If the request is accompanied by a warrant of arrest and the Judge is satisfied that the warrant appears to have been issued by the ICC, the Judge shall endorse the warrant for execution in the Bailiwick.

(3) If, in the case of a person convicted by the ICC, the request is not accompanied by a warrant of arrest but is accompanied by-

- (a) a copy of the judgment of conviction,
- (b) information to demonstrate that the person sought is the one referred to in the judgment of conviction, and

- (c) where the person sought has been sentenced, a copy of the sentence imposed and a statement of any time already served and the time remaining to be served,

the Judge shall issue a warrant for the arrest of that person in the Bailiwick.

- (4) In this Part a warrant endorsed or issued under this section is referred to as a "**section 2 warrant**".

**Request for provisional arrest.**

3. (1) This section applies where Her Majesty's Procureur receives from the ICC a request for the provisional arrest of a person who is alleged to have committed an ICC crime or to have been convicted by the ICC.

(2) If it appears to Her Majesty's Procureur that application for a warrant should be made in the Bailiwick, Her Majesty's Procureur shall make an application to a Judge of the Magistrate's Court for a warrant for the arrest of that person, accompanied by a statement on oath that the person making the statement has reason to believe –

- (a) that a request has been made on grounds of urgency by the ICC for the arrest of the person, and
- (ii) that the person is in, or on his or her way to, the Bailiwick,

and thereupon the said Judge shall issue a warrant for the arrest of that person in the Bailiwick.

(3) In this Part, a warrant issued under this section is referred to as a "**provisional warrant**".

**Transfer from Alderney or Sark to Guernsey.**

4. (1) Where a person is arrested in Alderney or Sark in accordance with this Part, the appropriate judicial officer shall authorise the transfer of the person to Guernsey as soon as is practicable.

(2) Where a person is so transferred the person shall thereafter be dealt with by the Court in accordance with section 5 or section 6, as the case may be, as if the person had been arrested in Guernsey.

(3) The "**appropriate judicial officer**" for the purposes of subsection (1) shall be –

(a) in Alderney, the Chairman of the Court of Alderney or, if he or she is absent or unable to act, a Jurat of the Court of Alderney authorised by the Chairman to act in that capacity, and

(b) in Sark, the Seneschal.

**Dealing with a person arrested under a provisional warrant.**

5. (1) A person arrested under a provisional warrant shall be brought before the Court as soon as is practicable.

(2) If there is produced to the Court a section 2 warrant in respect of that person, the Court shall proceed as if that person had been arrested under that warrant.

(3) If no section 2 warrant is produced, the Court shall remand the person pending the production of such a warrant.

(4) Provision shall be made by Ordinance under paragraph 2 of Schedule 1 (Power to give effect to Rules of Procedure and Evidence etc.) specifying –

(a) the period for which a person may be so remanded at any time, and

(b) the total period for which a person may be so remanded,

having regard to the time limits specified in Rules of Procedure and Evidence for the purpose of article 92.3.

(5) If at any time when the person is so remanded there is produced to the Court a section 2 warrant in respect of him or her –

(a) the Court shall terminate the period of remand, and

(b) the person shall be treated as if arrested under that warrant –

(i) if the person was remanded in custody, at the time the warrant was produced to the Court, or

- (ii) if the person was remanded on bail, when the person surrenders to the bail.

(6) If no such warrant is produced before the end of the period of the remand (including any extension of that period), the Court shall discharge the person.

(7) The fact that a person has been discharged under this section does not prevent the person's subsequent arrest under a section 2 warrant.

**Proceedings for delivery order.**

6. (1) A person arrested under a section 2 warrant shall be brought before the Court as soon as is practicable.

(2) If the Court is satisfied –

(a) that the warrant –

(i) is a warrant of the ICC and has been duly endorsed under section 2(2), or

(ii) has been duly issued under section 2(3), and

(b) that the person brought before the Court is the person named or described in the warrant,

the Court shall make an order ("a **delivery order**") that the person be delivered up–

(i) into the custody of the ICC, or

- (ii) if the ICC so directs in the case of a person convicted by the ICC, into the custody of the state of enforcement,

in accordance with arrangements made by the Committee.

(3) In the case of a person alleged to have committed an ICC crime, the Court may adjourn the proceedings pending the outcome of any challenge before the ICC to the admissibility of the case or to the jurisdiction of the ICC.

(4) In deciding whether to make a delivery order the Court is not concerned to enquire –

- (a) whether any warrant issued by the ICC was duly issued, or
- (b) in the case of a person alleged to have committed an ICC crime, whether there is evidence to justify that person's trial for the offence he or she is alleged to have committed.

(5) Whether or not the Court makes a delivery order, the Court may of its own motion, and shall on the application of the person arrested, determine –

- (a) whether the person was lawfully arrested in pursuance of the warrant, and

(b) whether the person's rights have been respected.

(6) In making a determination under subsection (5) the Court shall apply the principles which would be applied by the Royal Court on an application for judicial review.

(7) If the Court determines –

(a) that the person has not been lawfully arrested in pursuance of the warrant, or

(b) that the person's rights have not been respected,

the Court shall make a declaration to that effect, but may not grant any other relief.

(8) The Court shall notify Her Majesty's Procureur of any declaration under subsection (7).

(9) In proceedings under this section, the Court has the like powers, as nearly as may be, including power to adjourn the case and meanwhile to remand the person whose surrender is sought, as if the proceedings were proceedings in respect of an offence in respect of which the Court had jurisdiction, and, if the Court adjourns the proceedings, it shall on doing so remand the person whose surrender is sought.

(10) The person whose surrender is sought is entitled to legal aid in the same manner as in proceedings in respect of an offence within the jurisdiction of the Court.

**Consent to surrender.**

7. (1) A person arrested under this Part may, by a "**consent to surrender**", consent to being delivered up into the custody of the ICC or, in the case of a person convicted by the ICC, of the state of enforcement.

(2) Consent to surrender may be given –

(a) by the person, or

(b) in circumstances in which it is inappropriate for the person to act for himself or herself, by reason of the person's physical or mental condition or the person's youth, by an appropriate person acting on the person's behalf.

(3) Consent to surrender must –

(a) be given in writing in a form prescribed by rules of court, and

(b) be signed in the presence of a Jurat or, in Sark, of the Seneschal.

(4) Where consent to surrender has been given –

(a) the person shall be brought before the Court which shall forthwith make a delivery order, and

(b) the person shall be taken to have waived the right under section 11 to review of a delivery order.

(5) Where consent to surrender has been given, notice of that fact shall be given –

(a) if the person is in custody, to the person in whose custody the person is, or

(b) if the person is on bail, to the Chief Officer of Police.

*Proceedings where Court refuses delivery order*

**Procedure where Court refuses order.**

8. (1) If the Court refuses to make a delivery order, the Court shall–

(a) make an order remanding the person arrested, and

(b) notify Her Majesty's Procureur of that decision and of the grounds for it.

(2) If the Court is informed without delay that an appeal is to be brought under section 9, the order remanding the person arrested shall continue to have effect.

(3) If the Court is not so informed, it shall discharge the person arrested.

**Appeal against refusal of delivery order.**

9. (1) If the Court refuses to make a delivery order, Her Majesty's Procureur may appeal against the decision to the Royal Court.

(2) No leave is required for such an appeal, which shall be by way of re-hearing.

(3) If the Royal Court allows the appeal it may –

(a) make a delivery order, or

(b) remit the case to the Court to make a delivery order in accordance with the decision of the Royal Court.

(4) If the Royal Court dismisses the appeal, Her Majesty's Procureur may, with the leave of the Royal Court or Her Majesty in Council, appeal to Her Majesty in Council.

(5) Her Majesty in Council may exercise any of the powers conferred on the Royal Court by subsection (3).

(6) Where a delivery order is made by the Royal Court or Her Majesty in Council, the provisions of section 10(1)(a) and (c) and 10(2) (procedure where Court makes delivery order) apply in relation to that court as they apply to the Court.

(7) An order for the remand of a person which continues in force under section 8(2) shall cease to have effect if the Royal Court dismisses the appeal and Her Majesty's Procureur does not without delay –

- (a) apply for leave to appeal to Her Majesty in Council, or
- (b) inform the Royal Court that Her Majesty's Procureur's intention is to apply for such permission,

and, subject to that, any such order shall have effect so long as the case is pending.

(8) For the purpose of subsection (7), unless proceedings are discontinued, a case is pending until there is no step that Her Majesty's Procureur can take (disregarding any power of a court to allow a step to be taken out of time).

*Proceedings where Court makes delivery order*

**Procedure where Court makes order.**

10. (1) Where the Court makes a delivery order in respect of a person, the Court shall –

- (a) remand the person in custody or on bail to await the directions of the Committee as to the execution of the order,
- (b) inform the person of the person's rights under section 11 (right to review of delivery order) in ordinary terms and in a language which appears to the Court to be one which the person fully understands and speaks, and

- (c) notify Her Majesty's Procureur of the decision to make the delivery order.

(2) If the Court remands the person in custody under subsection (1)(a), the Court may subsequently remand the person on bail.

**Right to review of delivery order.**

11. (1) This section applies where a delivery order is made, unless the person in respect of whom the order is made –

- (a) waives his or her rights under this section pursuant to section 12 (waiver of right to review), or
- (b) is taken to have done so under section 7(4)(b).

(2) The person may, before the end of the period of 15 days beginning with the date on which the order is made, apply to the Royal Court for a review of the order.

(3) Directions of the Committee for the execution of a delivery order shall not have effect –

- (a) until after the end of the period mentioned in subsection (2), or
- (b) if, before the end of that period, an application under subsection (2) is made, while proceedings on the application are still pending.

(4) Proceedings on an application under subsection (2) shall be treated as pending until they are discontinued or there is no further possibility of an appeal, and for this purpose any power of a court to allow an appeal out of time shall be disregarded.

(5) On an application under subsection (2) –

- (a) the Royal Court shall set aside the delivery order and order the person's discharge if it is not satisfied of the matters mentioned in section 6(2)(a) and (b), and
- (b) the provisions of section 6(3) to (10) apply in relation to the Royal Court as they apply to the Court in proceedings under section 6 (but with the substitution in section 6(5) for "makes a delivery order" of "sets aside the delivery order").

**Waiver of right to review.**

12. (1) A person in respect of whom a delivery order has been made may waive his or her right to review of the order.

(2) Waiver of the right to review may be made –

- (a) by the person, or
- (b) in circumstances in which it is inappropriate for the person to act for himself or herself, by reason of the person's physical or mental condition or the person's

youth, by an appropriate person acting on the person's behalf.

(3) Waiver of the right to review must -

- (a) be given in writing in a form prescribed by rules of court, and
- (b) be signed in the presence of a Jurat.

(4) Where the person has waived the right to review of the delivery order –

- (a) no application under section 11(2) may be made, and
- (b) the order shall be taken for all purposes to be validly made.

(5) Where the person has waived the right to review, notice of that fact shall be given to Her Majesty's Procureur and –

- (a) if the person is in custody, to the person in whose custody the person is,
- (b) if the person is on bail, to the Chief Officer of Police.

*Warrants, custody, bail and related matters*

**Effect of warrant of arrest.**

13. (1) For the purposes of any enactment or rule of law relating to warrants of arrest a section 2 warrant or a provisional warrant shall be treated as if it were a warrant for the arrest of a person for an offence committed in the Bailiwick.

(2) Any such warrant may be executed by any person to whom it is directed or by a police officer.

(3) A person arrested under any such warrant shall be treated as continuing in legal custody until, in accordance with this Part, he or she is brought before the Court.

**Effect of delivery order.**

14. (1) A delivery order is sufficient authority for any person acting in accordance with the directions of the Committee to receive the person to whom the order relates, keep the person in custody and convey the person to the place where the person is to be delivered up into the custody of the ICC (or, as the case may be, of the state of enforcement) in accordance with arrangements made by the Committee.

(2) Where a delivery order is in force the person is deemed to be in legal custody at any time when, being –

(a) in the Bailiwick,

(b) on board a Guernsey ship, or

(c) on board a Bailiwick-controlled aircraft,

the person is being taken under the order to or from any place or is being kept in custody pending the person's delivery up under the order.

(3) A person authorised for the purposes of a delivery order to take the person to or from any place, or to keep the person in custody, has all the powers, authority, protection and privileges of a police officer.

(4) Where a delivery order is in force and the person escapes or is unlawfully at large, the person may be arrested without warrant by a police officer and taken to any place where or to which, by virtue of this Part, he or she is required to be or to be taken.

**Bail and custody: general.**

15. (1) Where under this Part a court has power to remand a person, that court may remand the person in custody or, if an application for bail is made to the court, remand him or her on bail.

(2) Subject to section 16, the provisions of the Bail (Bailiwick of Guernsey) Law, 2003<sup>b</sup> apply to proceedings under this Part as to proceedings against a person whose extradition is sought in respect of an offence and who is alleged to be unlawfully at large after conviction of the offence.

(3) Nothing in this Part shall be taken as authorising a court to

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<sup>b</sup> Order in Council No. XVII of 2003; No. VI of 2009; Ordinance No. XXXIII of 2003; No. IX of 2016.

grant bail to a person who is serving a sentence of custody to which he or she has been sentenced by a court in the Bailiwick, or who is in custody awaiting trial or sentence by a court in the Bailiwick.

**Bail and custody: supplementary.**

16. (1) Where a court –

- (a) grants bail but is unable to release the person because no surety or suitable surety is available, and
- (b) fixes the amount in which the surety is to be bound with a view to the recognizance of the surety being entered into subsequently,

that court shall in the meantime remand the person in custody.

(2) Where an application for bail is made to a court in proceedings under this Part –

- (a) that court shall notify Her Majesty's Procureur of the application,
- (b) Her Majesty's Procureur shall consult the ICC, and
- (c) the court to which application is made shall not grant bail without considering –
  - (i) any recommendations made by the ICC,

- (ii) whether, given the gravity of the offence or offences the person is alleged to have committed or, as the case may be, of which the person has been convicted by the ICC, there are urgent and exceptional circumstances justifying release on bail, and
- (iii) whether any necessary measures have been or will be taken to secure that the person will surrender to custody in accordance with the terms of that person's bail.

**Discharge of person not delivered up.**

17. (1) If the person in respect of whom a delivery order has been made is not delivered up under the order within 40 days after it was made, the person may make an application to the Royal Court to be discharged.

(2) On an application under this section, the Royal Court shall order the person's discharge unless reasonable cause is shown for the delay.

**Discharge of person no longer required to be surrendered.**

18. Where the ICC informs Her Majesty's Procureur that a person arrested under this Part is no longer required to be surrendered, Her Majesty's Procureur shall notify the Court of that fact, and the Court shall thereupon make an order for the person's discharge.

*Request for transit and unscheduled landing*

**Request for transit.**

19. (1) Where Her Majesty's Procureur receives a request from the ICC for transit of a person being surrendered by a state other than the United Kingdom –

- (a) Her Majesty's Procureur shall send a copy of the request to the Committee, and
- (b) the Committee shall notify Her Majesty's Procureur whether it accedes to the request.

(2) Where the Committee accedes to the request –

- (a) the request shall be treated for the purposes of this Part as if it were a request for the person's arrest and surrender,
- (b) the warrant accompanying the request shall be deemed to have been endorsed under section 2(2),
- (c) the person shall be treated on arrival in the Bailiwick as if the person had been arrested under that warrant,
- (d) the reference in section 6(2)(a)(i) to the warrant having been duly endorsed under section 2(2) shall be read as a reference to the Committee having acceded to the request for transit, and

(e) section 11(2) applies with the substitution for "15 days" of "2 days".

(3) A person in transit under this section shall not be granted bail.

**Unscheduled landing.**

20. (1) If a person being surrendered by another state makes an unscheduled landing in the Bailiwick, the person may be arrested by a police officer and shall be brought before the Court as soon as is practicable.

(2) The Court shall remand the person in custody pending –

(a) receipt by Her Majesty's Procureur of a request from the ICC for the person's transit,

(b) the decision of the Committee whether to accede to the request, and

(c) the notification of the decision to Her Majesty's Procureur.

(3) If no such request is received by Her Majesty's Procureur before the end of the period of 96 hours beginning with the time of the arrested person's unscheduled landing or the Committee informs Her Majesty's Procureur that it has decided not to accede to such a request –

(a) Her Majesty's Procureur shall forthwith notify the Court of that fact, and

- (b) the Court shall, on receipt of the notification, discharge the arrested person.

(4) If such a request is received by Her Majesty's Procureur before the end of the period specified in subsection (3) –

- (a) Her Majesty's Procureur shall notify the Court of the request,
- (b) the Court shall thereupon terminate the period of remand, and
- (c) section 19 applies with the substitution in subsection (2)(c) for "on arrival in the Bailiwick" of "on notification to the Court of the request for transit".

*Supplementary provisions*

**Provisions as to state or diplomatic immunity.**

21. (1) Any state or diplomatic immunity attaching to a person by reason of a connection with a state party to the ICC Statute does not prevent proceedings under this Part in relation to that person.

(2) Where –

- (a) state or diplomatic immunity attaches to a person by reason of a connection with a state other than a state party to the ICC Statute, and

- (b) waiver of that immunity is obtained by the ICC in relation to a request for that person's surrender,

the waiver shall be treated as extending to proceedings under this Part in connection with that request.

- (3) A certificate by the Secretary of State –

- (a) that a state is or is not a party to the ICC Statute, or
- (b) that there has been such a waiver as is mentioned in subsection (2),

is conclusive evidence of that fact for the purposes of this Part.

(4) The Secretary of State may in any particular case, after consultation with the ICC and the state concerned, direct that proceedings (or further proceedings) under this Part which, but for subsection (1) or (2), would be prevented by state or diplomatic immunity attaching to a person shall not be taken against that person.

(5) In this section "state or diplomatic immunity" means any privilege or immunity attaching to a person by reason of the status of that person or another as head of state or as representative, official or agent of a state under –

- (a) the State Immunity Act 1978<sup>c</sup> as it has effect in the Bailiwick under the State Immunity (Guernsey) Order, 1980<sup>d</sup>,
- (b) any enactment made for the purpose of implementing an international obligation, or
- (c) any rule of law derived from customary international law,

or which would attach to that person under the Diplomatic Privileges Act 1964<sup>e</sup>, the Consular Relations Act 1968<sup>f</sup> or the International Organisations Act 1968<sup>g</sup> if the Bailiwick were a part of the United Kingdom.

**Delivery up of persons subject to criminal proceedings, etc.**

22. Schedule 2 makes provision for cases where Her Majesty's Procureur receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person –

- (a) against whom criminal proceedings are pending or in progress before a court in the Bailiwick, or who has been dealt with in such proceedings,

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<sup>c</sup> An Act of Parliament (1978 c. 33).

<sup>d</sup> U.K. S.I. No. 871 of 1980.

<sup>e</sup> An Act of Parliament (1964 c. 81).

<sup>f</sup> An Act of Parliament (1968 c. 18).

<sup>g</sup> An Act of Parliament (1968 c. 48).

- (b) against whom extradition proceedings are pending or in progress in the Bailiwick, or in respect of whom a warrant or order has been made in such proceedings, or
- (c) against whom proceedings are pending or in progress in the Bailiwick for a delivery under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order, 1997<sup>h</sup>, or against whom a delivery order has been made in such proceedings.

**Documents having effect as warrants, etc.**

23. (1) For the purposes of this Part –

- (a) a copy of a warrant issued by the ICC which is transmitted to Her Majesty's Procureur, and
- (b) a copy of that copy, certified by or on behalf of Her Majesty's Procureur as a true copy,

shall be treated as if it were the original warrant.

(2) Where facsimile transmission or transmission by other electronic means is used –

- (a) for the making of a request by the ICC or the transmission of any supporting documents, or
- (b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted, and any such document shall be admissible in evidence accordingly.

(3) Where the ICC amends a warrant of arrest, the provisions of this Part apply to the amended warrant as if it were a new warrant.

(4) Subsection (3) does not affect the validity of anything done in reliance on the original warrant.

### PART III

#### OTHER FORMS OF ASSISTANCE

##### *Introduction*

##### **Provision of assistance.**

24. (1) This Part applies where –

- (a) an investigation has been initiated by the ICC, and

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<sup>h</sup> U.K. S.I. No. 281 of 1997.

- (b) the investigation and any proceedings arising out of it have not been concluded.

(2) Where facsimile transmission or transmission by other electronic means is used –

- (a) for the making of a request by the ICC or the transmission of any supporting documents, or
- (b) for the transmission of any documents in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted, and any such documents shall be admissible in evidence accordingly.

(3) Nothing in this Part shall be read as preventing the provision of assistance to the ICC otherwise than under this Part.

(4) In this Part, unless the context otherwise requires, "**appropriate court**" shall mean –

- (a) in Guernsey, the Magistrate's Court,
- (b) in Alderney, the Court of Alderney, or
- (b) in Sark, the Court of the Seneschal.

*Forms of assistance*

**Questioning.**

25. (1) This section applies where Her Majesty's Procureur receives a request from the ICC for assistance in questioning a person being investigated or prosecuted.

(2) The person concerned shall not be questioned in pursuance of the request unless the person –

(a) has been informed of his or her rights under article 55,  
and

(b) consents to be interviewed.

(3) The provisions of article 55 are set out in Schedule 3.

(4) Consent for the purposes of subsection (2)(b) may be given –

(a) by the person, or

(b) in circumstances in which it is inappropriate for the person to act for himself or herself, by reason of the person's physical or mental condition or the person's youth, by an appropriate person acting on the person's behalf.

(5) Such consent may be given orally or in writing, but if given orally it shall be recorded in writing as soon as reasonably practicable.

**Taking or production of evidence.**

26. (1) This section applies where Her Majesty's Procureur receives a request from the ICC for assistance in the taking or production of evidence, and for this purpose "evidence" includes documents and other articles.

(2) Her Majesty's Procureur shall request the appropriate court to receive the evidence to which the request relates.

(3) For this purpose, the appropriate court –

(a) has the same powers with respect to securing the attendance of witnesses and the production of documents or other articles as it has for the purpose of other proceedings before it; and

(b) may take evidence on oath.

(4) A person shall not be compelled to give evidence or produce anything in proceedings under this section that that person could not be compelled to give or produce in criminal proceedings before the appropriate court.

(5) If, in order to comply with the request, it is necessary for the evidence received by the appropriate court to be verified in any manner, the notice nominating the appropriate court shall specify the nature of the verification required.

(6) No order for costs shall be made in proceedings under this section.

**Taking or production of evidence: further provisions.**

27. (1) The following provisions apply in relation to proceedings before the appropriate court under section 26 and the evidence received in the proceedings.

(2) The appropriate court may, if it thinks necessary in order to protect –

- (a) victims and witnesses, or a person alleged to have committed an ICC crime, or
- (b) confidential or sensitive information,

direct that the public be excluded from the proceedings.

(3) The appropriate court shall ensure that a record is kept of the proceedings that indicates, in particular –

- (a) which persons with an interest in the proceedings were present,
- (b) which of those persons were represented and by whom, and

(c) whether any of those persons was denied the opportunity of cross-examining a witness as to any part of the testimony of that witness.

(4) The record shall not be open to inspection except as authorised by Her Majesty's Procureur or with the leave of the appropriate court.

(5) A copy of the record shall be sent to Her Majesty's Procureur for transmission to the ICC.

**Service of process.**

28. (1) This section applies where Her Majesty's Procureur receives from the ICC a summons or other document together with a request for it to be served on a person in the Bailiwick.

(2) Her Majesty's Procureur may direct Her Majesty's Sergeant to cause the document to be personally served on that person.

(3) If the document is so served, Her Majesty's Sergeant shall forthwith inform Her Majesty's Procureur when and how it was served.

(4) If it does not prove possible to serve the document, Her Majesty's Sergeant shall forthwith inform Her Majesty's Procureur of that fact and of the reason.

**Transfer of prisoner to give evidence or assist in investigation.**

29. (1) This section applies where Her Majesty's Procureur receives a request from the ICC for the temporary transfer of a prisoner to the ICC for purposes of identification or for obtaining testimony or other assistance.

(2) Her Majesty's Procureur shall transmit the request to the Committee, which shall issue an order (a "transfer order") requiring the prisoner to be delivered up, in accordance with arrangements made by the Committee with the ICC, into the custody of the ICC.

(3) A transfer order shall not be issued unless the prisoner consents to the transfer, but consent may not be withdrawn after the issue of the order.

(4) Section 14 (effect of delivery order) and section 22 and Schedule 2 (delivery up of persons subject to criminal proceedings, etc.) apply in relation to a transfer order under this section as they apply in relation to a delivery order under Part II.

(5) In this section "**prisoner**" means –

- (a) a person serving a sentence in a prison within the meaning of section 9 of the Prison (Enabling Provisions) (Guernsey) Law, 2010<sup>i</sup>,
- (b) a person detained in custody in the Bailiwick in pursuance of a sentence imposed by the Court of Alderney, or by the Court of the Seneschal, as the case may be,

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<sup>i</sup> Order in Council No. XIII of 2012; amended by Ordinance No. IX of 2016.

- (c) a person detained in custody in the Bailiwick otherwise than in pursuance of a sentence, including in particular –
  - (i) a person in custody awaiting trial or sentence,
  - (ii) a person committed to prison for contempt or for default in paying a fine,
  - (iii) a person in custody in connection with proceedings to which Part II or III of Schedule 2 applies (extradition or other delivery proceedings),
  - (iv) a person detained under any provision of the Immigration Act 1971<sup>j</sup> as it has effect in the Bailiwick.

(6) For the purposes of the Immigration Acts a person detained under any provision of the Immigration Act 1971, as it has effect in the Bailiwick, is not to be regarded as having left the Bailiwick at any time when a transfer order is in force in respect of that person (including any time when that person is in the custody of the ICC).

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<sup>j</sup> An Act of Parliament (1971 c.77)

(7) In subsection (6) "the Immigration Acts" means the Immigration Act 1971, the Immigration Act 1988<sup>k</sup> and the Asylum and Immigration Appeals Act 1993<sup>l</sup>, as they have effect in the Bailiwick.

**Entry, search and seizure.**

30. (1) Where Her Majesty's Procureur receives from the ICC a request for assistance which appears to Her Majesty's Procureur to require the exercise of any of the powers conferred by Part II of the 2003 Law, Her Majesty's Procureur shall direct a police officer to apply for a warrant or order under the said Part II.

(2) Part II of the 2003 Law shall apply in relation to an ICC crime as it applies to a serious arrestable offence (within the meaning of section 90 of that Law).

**Taking of fingerprints or non-intimate samples.**

31. The provisions of Schedule 4 have effect with respect to the taking of fingerprints or a non-intimate sample in response to a request from the ICC for assistance in obtaining evidence as to the identity of a person.

**Orders for exhumation.**

32. The appropriate court may order the exhumation of the body of a person ("**the deceased**") where it appears to that court that it is necessary for the body to be exhumed for the purposes of any proceedings before the ICC which have been instituted or are contemplated in respect of an ICC crime involving the death

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<sup>k</sup> An Act of Parliament (1988 c. 14)

<sup>l</sup> An Act of Parliament (1993 c. 23)

of the deceased or of some other person who died in circumstances connected with the death of the deceased.

**Provision of records and documents.**

33. (1) This section applies where Her Majesty's Procureur receives a request from the ICC for the provision of records and documents relating to –

- (a) the evidence given in any proceedings in the Bailiwick in respect of conduct that would constitute an ICC crime, or
- (b) the results of any investigation of such conduct with a view to such proceedings.

(2) Her Majesty's Procureur shall take such steps as appear to be appropriate to obtain the records and documents requested and shall transmit any such records and documents so obtained to the ICC.

**Investigation of proceeds of ICC crime.**

34. Where Her Majesty's Procureur receives a request from the ICC for assistance –

- (a) in ascertaining whether a person has benefitted from an ICC crime, or
- (b) in identifying the extent or whereabouts of property derived directly or indirectly from an ICC crime,

Her Majesty's Procureur may apply for an order or warrant under Schedule 5.

**Freezing orders in respect of property liable to forfeiture.**

35. Where Her Majesty's Procureur receives a request from the ICC for assistance in the freezing or seizure of proceeds, property and assets or instrumentalities of crime for the purpose of eventual forfeiture, Her Majesty's Procureur may apply on behalf of the ICC for a freezing order under Schedule 6.

*National security*

**Production or disclosure prejudicial to national security.**

36. (1) Nothing in any of the provisions of this Part requires or authorises the production of documents, or the disclosure of information, which would be prejudicial to the security of the United Kingdom or the Bailiwick.

(2) For the purposes of any such provision a certificate signed by or on behalf of the Secretary of State or by the President of the Committee to the effect that it would be prejudicial to the security of the United Kingdom or the Bailiwick for specified documents to be produced, or for specified information to be disclosed, is conclusive evidence of that fact.

*Supplementary provisions*

**Verification of material.**

37. If, in order to comply with a request of the ICC, it is necessary for any evidence or other material obtained under this Part to be verified in any manner, Her Majesty's Procureur may give directions as to the nature of the verification required.

**Transmission of material to the ICC.**

38. (1) Any evidence or other material obtained under this Part, together with any requisite verification, must be sent to Her Majesty's Procureur for transmission to the ICC.

(2) Where any evidence or other material is to be transmitted to the ICC, there shall be transmitted –

- (a) where the material consists of a document, the original or a copy, and
- (b) where the material consists of any other article, the article itself or a photograph or other description of it,

as may be necessary to comply with the request of the ICC.

PART IV

ENFORCEMENT OF SENTENCES AND ORDERS

*Sentences of imprisonment*

**Detention in the Bailiwick in pursuance of ICC sentence.**

39. (1) This section applies where –

- (a) the United Kingdom is designated by the ICC as the state in which a prisoner is to serve a sentence of imprisonment imposed by the ICC,

(b) the Secretary of State informs the ICC that the designation is accepted, and

(c) the Secretary of State is minded that the prisoner should be detained in the Bailiwick.

(2) If the Committee agrees that the prisoner should be detained in the Bailiwick, it shall issue an order authorising –

(a) the bringing of the prisoner to the Bailiwick,

(b) the detention of the prisoner in the Bailiwick in accordance with the sentence of the ICC, and

(c) the taking of the prisoner to a specified place where he or she is to be detained.

(3) The provisions of an order under subsection (2) may be varied by the Committee, and shall be so varied to give effect to any variation of the ICC's sentence.

(4) A prisoner subject to an order authorising the prisoner's detention in the Bailiwick shall be treated for all purposes, subject to paragraph (5), as if the prisoner were subject to a sentence of imprisonment imposed by the Royal Court.

(5) The following enactments do not apply in relation to a person detained in the Bailiwick in pursuance of a sentence of the ICC –

- (a) Schedule 1 to the Crime (Sentences) Act 1997<sup>m</sup> as it has effect for the time being in the Bailiwick,
- (b) sections 29 and 30 of the Prison (Guernsey) Ordinance, 2013<sup>n</sup>,
- (c) without prejudice to paragraph (b), any Ordinance made under section 6(c) of the Prison (Enabling Provisions) (Guernsey) Law, 2010,
- (d) the Parole Review Committee (Guernsey) Law, 1989<sup>o</sup>,
- (e) the Parole Review Committee Ordinance, 1991<sup>p</sup>.

**Temporary return or transfer of custody to another state.**

40. (1) This section applies where the Committee receives a request from the ICC –

- (a) for the temporary return of the prisoner to the custody of the ICC for the purposes of any proceedings, or

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<sup>m</sup> An Act of Parliament (1997 c. 43)

<sup>n</sup> Ordinance No. XXIX of 2013; amended by No. XXVII of 2015; No. XXXVI of 2016.

<sup>o</sup> Ordres en Conseil, Vol. XXXI, p. 414; amended by Order in Council No. IX of 2005; Ordinance No. XV of 2004.

<sup>p</sup> Recueil d'Ordonnances, Tome XXV, p. 230; amended by Order in Council No. IX of 2005; Recueil d'Ordonnances Tome XXVI, p. 150; Ordinance No. XV of 2004; No. XXIX of 2013; No. IX of 2016.

- (b) for the transfer of the prisoner to the custody of another state in pursuance of a change in designation of state of enforcement.

(2) The Committee shall –

- (a) issue an order authorising the prisoner's temporary return or transfer in accordance with the request,
- (b) make the necessary arrangements with the ICC or, as the case may be, the other state, and
- (c) give such directions as to the custody, surrender and (where appropriate) return of the prisoner as appear to it appropriate to give effect to the arrangements.

(3) Where the prisoner is temporarily returned to the custody of the ICC, the order authorising the prisoner's detention in the Bailiwick shall continue to have effect so as to apply to the prisoner again on the prisoner's return.

**Transfer from the Bailiwick to the United Kingdom.**

41. Where an order is made by the Secretary of State or the Scottish Ministers under section 44 or 45 of the International Criminal Court Act 2001<sup>9</sup>, as it has effect for the time being in the Bailiwick, authorising, with the consent of the Committee, the taking of the prisoner from the Bailiwick to any part of the United Kingdom, the Committee shall –

- (a) issue an order authorising the prisoner's transfer in accordance with the order, and
- (b) give such directions as to the custody, surrender and (where appropriate) return of the prisoner as appear to the Committee appropriate to give effect to the order of the Secretary of State or the Scottish Ministers, as the case may be.

**Custody of prisoner in transit etc.**

42. (1) This section applies in relation to times when the prisoner is subject to an order of the Committee under any provision of this Part but is not in legal custody under section 41 of the Prison (Guernsey) Ordinance, 2013.

(2) The prisoner shall be deemed to be in the legal custody of the Committee at any time when, being –

- (a) in the Bailiwick,
- (b) on board a Guernsey ship, or
- (c) on board a Bailiwick-controlled aircraft,

the prisoner is being taken to or from any place or is being kept in custody.

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<sup>9</sup> An Act of Parliament (2001 c. 17).

(3) The Committee may from time to time designate a person as a person who is for the time being authorised to take the prisoner to or from any place or to keep the prisoner in custody.

(4) A person so authorised has all the powers, authority, protection and privileges of a police officer.

(5) If a prisoner escapes or is unlawfully at large, he or she may be arrested without warrant by a police officer and taken to any place to which the prisoner may be taken under the order referred to in subsection (1).

*Other orders*

**Power to make provision for enforcement of other orders.**

43. (1) The States may by Ordinance make provision for the enforcement in the Bailiwick of –

- (a) fines or forfeitures ordered by the ICC, and
- (b) orders by the ICC against convicted persons specifying reparations to, or in respect of, victims.

(2) An Ordinance made under this section may authorise the Committee –

- (a) to appoint a person to act on behalf of the ICC for the purposes of enforcing the order, and

(b) to give such directions to the appointed person as appear to the Committee to be necessary.

(3) The Ordinance shall provide for the registration of the order by the Royal Court as a precondition of enforcement.

(4) An order shall not be so registered unless the Royal Court is satisfied that the order is in force and not subject to appeal.

(5) If the order has been partly complied with, the Royal Court shall register the order for enforcement only so far as it has not been complied with.

(6) The Ordinance may provide that –

(a) for the purposes of enforcement an order so registered has the same force and effect,

(b) the same powers are exercisable in relation to its enforcement, and

(c) proceedings for its enforcement may be taken in the same way,

as if the order were an order of the Royal Court.

(7) The Ordinance may for that purpose apply any statutory provision relating to the enforcement in the Bailiwick of orders of a court of a country or territory outside the Bailiwick.

(8) The Royal Court shall not exercise its powers of enforcement under the Ordinance in relation to any property unless it is satisfied –

(a) that a reasonable opportunity has been given for persons holding any interest in the property to make representations to that Court, and

(b) that the exercise of the powers will not prejudice the rights of bona fide third parties.

(9) The Ordinance may provide that the reasonable costs of and incidental to the registration and enforcement of an order are recoverable as if they were sums recoverable under the order.

## PART V

### OFFENCES UNDER BAILIWICK LAW

#### *Introduction*

#### Meaning of "genocide", "crime against humanity" and "war crime".

44. (1) In this Part –

"**genocide**" means an act of genocide as defined in article 6,

"**crime against humanity**" means a crime against humanity as defined in article 7,

"**war crime**" means a war crime as defined in article 8.2.

(2) In interpreting and applying the provisions of those articles of the ICC Statute a court shall take into account any relevant Elements of Crimes adopted in accordance with article 9 and set out in regulations pursuant to section 50(3) of the International Criminal Court Act 2001.

(3) The articles referred to in subsection (1) shall for the purposes of this Part be construed subject to and in accordance with any relevant reservation or declaration made by the United Kingdom when ratifying any treaty or agreement relevant to the interpretation of those articles, being a reservation or declaration which extends to the Bailiwick.

(4) The Committee may by regulations –

- (a) certify that such a reservation or declaration has been made and extends to the Bailiwick and the terms in which it was made,
- (b) if any such reservation or declaration is withdrawn or has ceased to extend to the Bailiwick (in whole or in part), certify that fact and revoke or amend any regulations containing the terms of that reservation or declaration.

(5) In interpreting and applying the provisions of the articles referred to in subsection (1) a court shall take into account –

- (a) any relevant judgment or decision of the ICC, and

- (b) any other relevant international jurisprudence.

(6) The relevant provisions of the articles referred to in subsection (1) are set out in Schedule 7, and no account shall be taken for the purposes of this Part of any provision of those articles omitted from the text set out in that Schedule.

**Genocide, crimes against humanity and war crimes.**

45. (1) It is an offence against the law of the Bailiwick for a person to commit genocide, a crime against humanity or a war crime.

(2) This section applies to acts committed –

- (a) in the Bailiwick, or
- (b) outside the Bailiwick by a Bailiwick resident.

**Conduct ancillary to genocide, etc. committed outside jurisdiction.**

46. (1) It is an offence against the law of the Bailiwick for a person to engage in conduct ancillary to an act to which this section applies.

(2) This section applies to an act which, if committed in the Bailiwick, would constitute –

- (a) an offence under section 45, or
- (b) an offence under this section,

but which, being committed (or intended to be committed) outside the Bailiwick, does not constitute such an offence.

(3) The reference in subsection (1) to conduct ancillary to such an act is to conduct that would constitute an ancillary offence in relation to that act if the act were committed in the Bailiwick.

(4) This section applies where the conduct in question consists of or includes an act committed –

- (a) in the Bailiwick, or
- (b) outside the Bailiwick by a Bailiwick resident.

**Trial and punishment of main offences.**

47. (1) This section applies to –

- (a) offences under section 45 (genocide, crimes against humanity and war crimes),
- (b) offences under section 46 (conduct ancillary to genocide, etc. committed outside jurisdiction), and
- (c) offences ancillary to an offence within paragraph (a) or (b).

- (2) The offence is triable only on indictment.
- (3) If the offence is not committed in the Bailiwick –
  - (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed,

in any place in the Bailiwick.

- (4) A person convicted of –
  - (a) an offence involving murder, or
  - (b) an offence ancillary to an offence involving murder,

shall be dealt with as for an offence of murder or, as the case may be, the corresponding ancillary offence in relation to murder.

(5) In subsection (4), "**murder**" means the killing of a person in such circumstances as would, if committed in the Bailiwick, constitute murder.

(6) In any other case a person convicted of an offence is liable to imprisonment for a term not exceeding 30 years.

#### **Offences in relation to the ICC.**

48. (1) A person intentionally committing, in relation to the ICC, an act mentioned in article 70.1(a) (giving false testimony when under an obligation to

tell the truth) is guilty of an offence and liable to imprisonment for a term not exceeding 7 years and a fine.

(2) A person intentionally committing, in relation to the ICC, any of the acts mentioned in article 70.1(b) to (f) is guilty of an offence and liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding twice level 5 on the uniform scale, or to both.

(3) In interpreting and applying the provisions of article 70.1 a court shall take into account –

- (a) any relevant judgment or decision of the ICC, and
- (b) any other relevant international jurisprudence.

(4) This section applies to acts committed –

- (a) in the Bailiwick, or
- (b) outside the Bailiwick by a Bailiwick resident.

(5) The relevant provisions of article 70.1 are set out in Schedule

8.

**Protection of victims and witnesses.**

49. (1) The enactments specified in subsection (2) (which make provision for the protection of victims and witnesses of certain offences) have effect–

- (a) as if any reference in those provisions to a specific substantive offence included an offence under section 45 involving conduct constituting that offence, and
- (b) as if any reference in those provisions to a specific ancillary offence included –
  - (i) that ancillary offence in relation to an offence under section 45 involving conduct constituting the substantive offence in question, and
  - (ii) an offence under section 46 involving conduct constituting that ancillary offence in relation to an act to which that section applies involving conduct constituting the substantive offence in question.

(2) The enactments are –

- (a) Part V of the Children and Young Persons (Guernsey) Law, 1967<sup>r</sup>,

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<sup>r</sup> Ordres en Conseil, Vol. XXI, p. 34; this Part was repealed in its application to Guernsey, Alderney, Herm and Jethou by Ordinance No. VII of 2010.

- (b) the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008<sup>s</sup>,
  - (c) Part VIII of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013<sup>t</sup>.
- (3) In subsection (1) –
- (a) "**substantive offence**" means an offence other than an ancillary offence, and
  - (b) the reference to conduct constituting an offence is to conduct that would constitute that offence if committed in the Bailiwick.

*Supplementary provisions*

**Responsibility of commanders and other superiors.**

50. (1) This section applies in relation to –
- (a) offences under this Part, and
  - (b) offences ancillary to such offences.

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<sup>s</sup> Order in Council No. VI of 2009; amended by Ordinance No. IX of 2016.

(2) A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under that person's effective command and control, or (as the case may be) effective authority and control, as a result of the failure to exercise control properly over such forces where that person –

- (a) either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences, and
- (b) failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) With respect to superior and subordinate relationships not described in subsection (2), a superior is responsible for offences committed by subordinates under the superior's effective authority and control, as a result of his or her failure to exercise control properly over such subordinates where –

- (a) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences,

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<sup>t</sup> Order in Council No. IX of 2014; amended by Ordinance Nos. XI, XX and XXXIV of 2015; No. IX of 2016; No. XXV I of 2018.

- (b) the offences concerned activities that were within the superior's effective responsibility and control, and
- (c) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(4) A person responsible under this section for an offence is regarded as aiding, abetting, counselling or procuring the commission of the offence.

(5) In interpreting and applying the provisions of this section (which corresponds to article 28) a court shall take into account any relevant judgment or decision of the ICC and may take account of any other relevant international jurisprudence.

(6) Nothing in this section shall be read as restricting or excluding –

- (a) any liability of the commander or superior apart from this section, or
- (b) the liability of persons other than the commander or superior.

**Saving for general principle of liability etc.**

51. (1) In determining whether an offence under this Part has been committed a court shall apply the principles of the laws of the Bailiwick.

(2) Nothing in this Part shall be read as restricting the operation of any enactment or rule of law relating to –

- (a) the extra-territorial application of offences (including offences under this Part), or
- (b) offences ancillary to offences under this Part (wherever committed).

**Mental element etc.**

52. (1) References in this Part to a person committing –

- (a) genocide,
- (b) a crime against humanity,
- (c) a war crime, or
- (d) any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC),

shall be construed in accordance with this section.

(2) Unless otherwise provided by –

- (a) the articles mentioned in the definition in section 44(1) of the crimes specified in subsection (1)(a) to (c), or any relevant Elements of Crimes referred to in section 44(2),
- (b) section 48(1) or (2) or article 70.1, or
- (c) section 50,

a person is regarded as committing such an act or crime only if the material elements are committed with intent and knowledge.

(3) For this purpose –

- (a) a person has intent –
  - (i) in relation to conduct, if that person means to engage in the conduct, and
  - (ii) in relation to a consequence, if that person means to cause the consequence or is aware that it will occur in the ordinary course of events, and
- (b) "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

(4) In interpreting and applying subsections (2) and (3) (which correspond to article 30) a court shall take into account any relevant judgment or decision of the ICC, and may take account of any other relevant international jurisprudence.

**Proceedings against persons becoming resident within the jurisdiction.**

53. (1) This section applies in relation to a person who commits acts outside the Bailiwick at a time when that person is not a Bailiwick resident and who subsequently becomes resident in the Bailiwick.

(2) Proceedings may be brought against such a person in the Bailiwick for a substantive offence under this Part if –

- (a) the person is resident in the Bailiwick at the time the proceedings are brought, and
- (b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in the Bailiwick.

(3) Proceedings may be brought against such a person in the Bailiwick for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in the Bailiwick) if –

- (a) the person is resident in the Bailiwick at the time the proceedings are brought, and

- (b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in the Bailiwick.

(4) In this section a "substantive offence" means an offence other than an ancillary offence.

(5) Nothing in this section shall be read as restricting the operation of any other provision of this Part.

**Interpretation of Part V: general.**

54. (1) In this Part, unless the context otherwise requires –

"act" includes an omission, and references to "**conduct**" have a corresponding meaning,

"**Bailiwick resident**" means an individual who is resident in the Bailiwick.

(2) References in this Part to an ancillary offence are to –

- (a) aiding, abetting, counselling or procuring the commission of an offence,
- (b) inciting a person to commit an offence,
- (c) attempting or conspiring to commit an offence, or

- (d) assisting an offender or concealing the commission of an offence.

## PART VI

### GENERAL PROVISIONS

#### **Application of provisions in relation to other International Tribunals.**

55. (1) Section 21 applies to proceedings under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order, 1997, as it applies in relation to proceedings under Part II, with the following adaptations–

- (a) in subsection (1), omit the words "by reason of a connection with a state party to the ICC Statute",
- (b) omit subsections (2) and (3),
- (c) in subsection (4) –
  - (i) for the reference to the ICC, substitute a reference to the relevant International Tribunal, and
  - (ii) omit the words "or (2)".

(2) Sections 39 to 42 (enforcement of sentences of imprisonment) apply, with any necessary modifications, in relation to a sentence of imprisonment imposed by either of the International Tribunals to which that Order applies as they apply in relation to a sentence of the ICC.

**Application to the Crown.**

56. This Law binds the Crown and applies to persons in the public service of the Crown, and property held for the purposes of the public service of the Crown, as it applies to other persons and property.

**References to United Kingdom Ministers.**

57. The States may by Ordinance provide that any reference in this Law to the Secretary of State shall be read as, or as including, a reference to the holder of any other office in Her Majesty's Government in the United Kingdom.

**Power to amend, modify or disapply any enactment.**

58. The States may by Ordinance amend, modify or disapply any enactment to give effect to any provision of this Law.

**Regulations to be laid before States.**

59. Any regulations made under this Law must be laid as soon as is practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**Interpretation.**

60. In this Law, unless the context otherwise requires –

"2003 Law" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>u</sup>,

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<sup>u</sup> Order in Council No. XXIII of 2003; No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2011; No. XXXIX of 2015; No. IX of 2016.

"act" and "conduct" – see section 54(1),

**"Bailiwick-controlled aircraft"** means an aircraft –

- (a) which is for the time being registered in Guernsey, or
- (b) which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it satisfies the following requirements, namely –
  - (i) that he or she is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Guernsey, and
  - (ii) that he or she resides or has his or her principal place of business in the Bailiwick, or
- (c) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the requirements aforesaid,

**"Bailiwick resident"** – see section 54(1),

**"Chief Officer of Police"** means the Chief Officer of the salaried police force of the island of Guernsey,

**"Committee"** means the States of Guernsey Committee for Home Affairs,

**"the Court"**, except in Schedule 3, means the Magistrate's Court,

**"crime against humanity"** – see section 44(1),

**"delivery order"** means an order under section 6(2),

**"enactment"** includes a Law, an Ordinance and any subordinate legislation and includes (except for the purposes of section 58) an enactment of the Parliament of the United Kingdom, of the Scottish Parliament and of the Northern Ireland Assembly, and a Measure of the National Assembly for Wales, and includes any provision or portion of an enactment,

**"fingerprints"** has the meaning given in section 91 of the 2003 Law,

**"freezing order"** – see Schedule 6, paragraph 3(1),

**"genocide"** – see section 44(1),

**"Guernsey ship"** has the same meaning as in the Merchant Shipping (Bailiwick of Guernsey) Law, 2002<sup>v</sup>,

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<sup>v</sup> Order in Council No. VIII of 2004; there are amendments not relevant to this enactment.

**"the ICC", "ICC crime" and "the ICC Statute"** – see section 1(1),

**"non-intimate sample"** has the meaning given in section 91 of the 2003 Law,

**"prisoner"** –

- (a) for the purposes of section 29, has the meaning given in section 29(5),
- (b) for the purposes of Part IV, means a person subject to a sentence of imprisonment imposed by the ICC, and
- (c) for the purpose of paragraph 3 of Schedule 2, has the meaning given in paragraph 3(5) of that Schedule,

**"provisional warrant"** – see section 3(3),

**"remand"** means to remand in custody or on bail,

**"Rules of Procedure and Evidence"** means the Rules of Procedure and Evidence referred to in article 51,

**"Secretary of State"** means one of Her Majesty's Principal Secretaries of State,

**"section 2 warrant"** – see section 2(4),

**"state of enforcement"**, in relation to any particular person, means the state of enforcement for the purposes of applying the ICC Statute to that person,

**"States"** means the States of Guernsey,

**"transfer order"** – see section 29(2), and

**"war crime"** – see section 44(1).

**Citation.**

61. This Law may be cited as the International Criminal Court (Bailiwick of Guernsey) Law, 2019.

**Commencement.**

62. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

## SCHEDULE 1

### Section 1(3)

#### SUPPLEMENTARY PROVISIONS RELATING TO THE ICC

##### **Legal capacity, privileges and immunities.**

1. (1) The States may by Ordinance confer on the ICC the legal capacities of a body corporate.

(2) The States may by Ordinance provide that –

- (a) the ICC,
- (b) the judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families who form part of their households,
- (c) the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry,
- (d) counsel, experts, witnesses and other persons involved in proceedings of the ICC, and
- (e) persons attending meetings of the Assembly (including persons attending such meetings as observers and persons invited to such meetings),

shall have such privileges and immunities as, in the opinion of the States, are or will be required for giving effect to the ICC Statute or any related agreement to which

the United Kingdom or Her Majesty's Government in the United Kingdom, is or will be a party and which extends or will extend to the Bailiwick.

(3) In sub-paragraph (2)(e), "**the Assembly**" means the Assembly of States Parties to the ICC statute (and includes subsidiary organs of that Assembly).

**Power to give effect to Rules of Procedure and Evidence etc.**

2. The States may by Ordinance make such provision as appears to be necessary or expedient for giving effect to –

- (a) any Rules of Procedure and Evidence having effect under article 51, and
- (b) any related agreement to which the United Kingdom, or Her Majesty's Government in the United Kingdom, is a party and which extends to the Bailiwick.

**Proof of orders etc. of the ICC.**

3. (1) An order, judgment, warrant or request of the ICC which purports –

- (a) to bear the seal of the ICC, or
- (b) to be signed by a person in that person's capacity as a judge or officer of the ICC,

shall, for the purposes of this Law, be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person.

(2) A document, duly authenticated, which purports to be a copy of an order, judgment, warrant or request of the ICC shall, for the purposes of this Law, be deemed without further proof to be a true copy.

(3) For the purposes of subparagraph (2), a document is duly authenticated if it purports to be signed by any person in that person's capacity as a judge or officer of the ICC.

**Evidence about ICC proceedings and orders.**

4. (1) For the purposes of this Law, a certificate purporting to be issued by or on behalf of the ICC stating –

- (a) that an investigation has been initiated by the ICC, or that proceedings before the ICC have been instituted and have not been concluded,
- (b) that an order of the ICC is in force and is not subject to appeal,
- (c) that property recoverable under a forfeiture order made by the ICC remains unrecovered, or
- (d) that any person has been notified of any proceedings in accordance with the ICC statute,

is admissible in proceedings under this Law as evidence of the facts stated.

(2) In proceedings under Part II, III or IV of this Law, a statement

contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given, in proceedings before the ICC is admissible as evidence of any fact stated in it.

(3) For the purposes of subparagraph (2), a document is duly authenticated if it purports to be certified by any person in his or her capacity as a judge or officer of the ICC, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document setting out or summarising the evidence or a true copy of that document.

(4) Nothing in this paragraph affects the admission of any evidence, whether contained in a document or otherwise, which is admissible apart from this paragraph.

**Certified copies of documents.**

5. For the purposes of this Schedule, a copy of an order, judgment, warrant, request, certificate or other document referred to in paragraph 3 or 4 which is certified by or on behalf of the Secretary of State as a true copy shall be treated as if it were the original document.

## SCHEDULE 2

Section 22

### DELIVERY UP OF PERSONS SUBJECT TO CRIMINAL PROCEEDINGS, ETC.

#### PART I CRIMINAL PROCEEDINGS

##### **Meaning of "criminal proceedings".**

1. In this Part of this Schedule "**criminal proceedings**" means proceedings before a court in the Bailiwick –

- (a) for dealing with an individual accused of an offence,
- (b) for dealing with an individual convicted of an offence,  
or
- (c) on an appeal from any proceedings within (a) or (b).

##### **Criminal proceedings.**

2. (1) This paragraph applies where –

- (a) Her Majesty's Procureur receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
- (b) criminal proceedings against that person are pending

or in progress before a court in the Bailiwick.

(2) Her Majesty's Procureur shall inform that court of the request, and the court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, to enable proceedings to be taken to determine whether a delivery order should be made.

(3) Where a delivery order is made and the criminal proceedings are still pending or in progress, Her Majesty's Procureur –

- (a) shall consult the ICC before giving directions for the execution of the order, and
- (b) may direct that the criminal proceedings shall be discontinued.

(4) Where Her Majesty's Procureur directs that the criminal proceedings shall be discontinued, the court before which the proceedings are pending or in progress shall –

- (a) order their discontinuance, and
- (b) make any order necessary to enable the delivery order to be executed (including any necessary order as to the custody of the person concerned).

(5) The discontinuance under this paragraph of criminal proceedings in respect of an offence does not prevent the institution of fresh proceedings in respect of the offence.

**Effect on custodial sentences.**

3. (1) Where in pursuance of Part II of this Law a person who is a prisoner is delivered up –

(a) into the custody of the ICC, or

(b) into the custody of a state (including the United Kingdom) where the person is to undergo imprisonment under a sentence of the ICC,

that person shall continue to be liable to complete any term of custody to which he or she had been sentenced by a court in the Bailiwick, but there shall be counted towards the completion of that term any time during which that person is in the custody of the ICC or of any state.

(2) Where in pursuance of Part II of this Law a court orders the discharge of a person who is a prisoner, the discharge is without prejudice to the liability of the prisoner to complete any term of custody to which he or she has been sentenced by a court in the Bailiwick.

(3) A prisoner to whom an order referred to in subparagraph (2) relates, and whose sentence has not expired, shall be transferred in custody to the place where he or she is liable to be detained under the sentence to which he or she is subject.

(4) Where in pursuance of Part II of this Law a delivery order is made in respect of a person who is a prisoner, the order may include provision authorising the return of the prisoner into the custody of the Committee –

- (a) in accordance with arrangements made by the Committee with the ICC, or
- (b) in the case of a prisoner taken to a place where he or she is to undergo imprisonment under a sentence of the ICC, in accordance with arrangements made by the Committee with the state where that place is situated,

and for the transfer of the prisoner in custody to the institution where the prisoner is liable to be detained under the sentence of the court in the Bailiwick to which he or she is subject.

(5) In this paragraph, "**prisoner**" means –

- (a) a person serving a sentence in a prison within the meaning of section 9 of the Prison (Enabling Provisions) (Guernsey) Law, 2010, or
- (b) a person detained in custody in the Bailiwick in pursuance of a sentence imposed by the Court of Alderney, or by the Court of the Seneschal, as the case may be.

**Power to suspend or revoke other orders.**

4. (1) This power applies where the Court makes a delivery order in respect of a person in respect of whom an order (other than a sentence of custody) has been made in criminal proceedings before a court in the Bailiwick.

(2) The Court may make any order necessary to enable the delivery order to be executed, and may in particular suspend or revoke any such order as is mentioned in subparagraph (1).

PART II

EXTRADITION PROCEEDINGS

**Meaning of "extradition proceedings".**

5. In this Part "**extradition proceedings**" means proceedings before a court in the Bailiwick under the Extradition (Bailiwick of Guernsey) Law, 2019<sup>w</sup> ("**the Extradition Law**").

**Extradition proceedings.**

6. (1) Where –

- (a) Her Majesty's Procureur receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
- (b) extradition proceedings against that person are pending or in progress before a court in the Bailiwick

("that court"),

Her Majesty's Procureur shall inform that court of the request.

(2) That court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(3) If a delivery order is made and the extradition proceedings are still pending or in progress, Her Majesty's Procureur –

(a) shall consult the ICC before giving directions for the execution of the order, and

(b) may direct that the extradition proceedings shall be discontinued.

(4) Where Her Majesty's Procureur gives a direction under subparagraph (3)(b), the court before which the extradition proceedings are pending or in progress shall –

(a) order their discontinuance, and

(b) make any other order necessary to enable the delivery order to be executed (including any necessary order as to the custody of the person concerned).

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<sup>w</sup> Order in Council No. \* of 2019.

(5) The discontinuance under this section of extradition proceedings in respect of an offence does not prevent the institution of fresh extradition proceedings in respect of the offence.

**Power to suspend or revoke warrant or order.**

7. (1) Where the Court makes a delivery order in respect of a person who has been remanded in custody under sections 8 or 10 of the Extradition Law the Court may make any such order as is necessary to enable the delivery order to be executed.

(2) The Court may, in particular, suspend or revoke any warrant or other order made in respect of the person.

PART III

OTHER DELIVERY PROCEEDINGS

**Meaning of "other delivery proceedings".**

8. In this Part "**other delivery proceedings**" means proceedings before a court in the Bailiwick for a delivery order under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order, 1997, and "**the relevant International Tribunal**", in relation to such proceedings, means such one of the international tribunals to which that Order relates as is relevant to those proceedings.

**Delivery proceedings.**

9. (1) Where –

- (a) Her Majesty's Procureur receives a request from the ICC for the arrest and surrender, or provisional arrest,

of a person, and

- (b) other delivery proceedings against that person are pending or in progress before any court in the Bailiwick,

Her Majesty's Procureur shall consult the ICC and the relevant International Tribunal.

(2) Her Majesty's Procureur shall inform the court of the request and of the outcome of the consultations.

(3) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order shall be made under Part II of this Law.

(4) If a delivery order is made under Part II of this Law and the other delivery proceedings are still pending or in progress, Her Majesty's Procureur—

- (a) shall consult the ICC before giving directions for the execution of the order, and
- (b) may direct that the other delivery proceedings shall be discontinued.

(5) Where Her Majesty's Procureur gives a direction under subparagraph (4)(b), the court before which the other delivery proceedings are pending or in progress shall –

- (a) order their discontinuance, and
- (b) make any other order necessary to enable the delivery order under Part II of this Law to be executed (including any necessary order as to the custody of the person concerned).

(6) The discontinuance under this paragraph of other delivery proceedings in respect of an offence does not prevent the institution of fresh proceedings for a delivery order in respect of the offence.

**Power to suspend or revoke previous delivery order.**

10. (1) Where the Court makes a delivery order under Part II of this Law in respect of a person in respect of whom a delivery order has been made under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order, 1997, the Court may make any order necessary to enable the person to be delivered up under Part II of this Law.

(2) The Court may, in particular, suspend or revoke the other delivery order.

### SCHEDULE 3

Section 25(3)

#### RIGHTS OF PERSONS DURING INVESTIGATION:

##### ARTICLE 55

##### *Article 55*

#### **"Rights of persons during an investigation**

1. In respect of an investigation under this Statute, a person:
  - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
  - (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
  - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
  - (d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such

procedures as are established in this Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

- (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
- (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
- (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel."

## SCHEDULE 4

### Section 31

#### TAKING OF FINGERPRINTS OR NON-INTIMATE SAMPLES

##### **Nomination of court to supervise taking of evidence.**

1. Where Her Majesty's Procureur –
  - (a) receives a request from the ICC for assistance in obtaining evidence as to the identity of a person,
  - (b) is satisfied that other means of identification have been tried and have proved inconclusive, and
  - (c) has notified the ICC of that fact,

and the ICC has signified that it wishes to proceed with the request, Her Majesty's Procureur shall nominate a court in the Bailiwick to supervise the taking of the person's fingerprints or a non-intimate sample (or both).

##### **Order to provide evidence.**

2. (1) The nominated court may order the taking by a police officer of the person's fingerprints or a non-intimate sample (or both).
- (2) In the case of a non-intimate sample –
  - (a) the sample must be a sufficient sample within the meaning of section 91 of the 2003 Law, and

- (b) where relevant, section 70(5) of the 2003 Law applies as to the manner of taking the sample.

(3) In the following provisions of this Schedule "the necessary identification evidence" means the fingerprints or sample (or both) required by the order of the nominated court.

**Requirement to attend and provide evidence.**

3. (1) The order of the nominated court may require the person to attend a police station to provide the necessary identification evidence.

(2) Any such requirement –

(a) shall give the person at least 7 days within which he or she must so attend, and

(b) may direct him or her to attend at a specified time of day or between specified times of day.

(3) If the person fails to attend in accordance with the order –

(a) the nominated court may issue a warrant for his or her arrest, and

(b) the person may be detained for such period as is necessary to enable the necessary identification evidence to be taken.

(4) The nominated court shall inform the person concerned of the effect of subparagraph (3).

(5) Where the person concerned is in custody or is otherwise lawfully detained –

(a) subparagraphs (1) to (4) do not apply, and

(b) the necessary identification evidence may be taken at the place where that person is detained or at such other place as the nominated court may direct.

**Consent to taking of evidence.**

4. (1) The necessary identification evidence may be taken –

(a) with the appropriate consent given in writing, or

(b) without that consent, in accordance with paragraph 5.

(2) In subparagraph (1) "**the appropriate consent**" has the meaning given in section 91 of the 2003 Law.

(3) The nominated court shall inform the person concerned of the effect of this paragraph.

**Taking of evidence without consent.**

5. (1) A police officer may, if authorised by an officer of the rank of chief inspector or above, take the necessary identification evidence without consent.

(2) An authorisation under subparagraph (1) may be given orally or in writing, but if it is given orally it must be confirmed in writing as soon as is reasonably practicable.

(3) Before fingerprints or a sample are taken from a person upon an authorisation given under subparagraph (1), the person must be informed that the authorisation has been given.

**Record of certain matters to be made.**

6. (1) After fingerprints or a sample are taken under this Schedule, there shall be recorded as soon as is reasonably practicable any of the following which apply –

- (a) the fact that the appropriate consent has been given,
- (b) any authorisation given under paragraph 5(1), and
- (c) the fact that the person has been informed under paragraph 5(3) of the giving of such authorisation.

(2) A copy of the record, together with the material obtained under this Schedule, shall be sent to Her Majesty's Procureur for transmission to the ICC.

**Checking of fingerprints or samples.**

7. (1) This paragraph applies to –

- (a) fingerprints or samples taken under this Schedule, and
- (b) information derived from such samples.

(2) The fingerprints, samples or information may be used only for the purpose of an investigation into a relevant offence.

(3) In particular, a check may not be made against them under section 70(1) of the 2003 Law (checking of fingerprints and samples) except for the purpose of an investigation into a relevant offence.

(4) The fingerprints, samples or information may be checked, subject to subparagraph (2), against –

- (a) other fingerprints or samples taken under this Schedule or information derived from such samples, and
- (b) any of the fingerprints, samples and information mentioned in section 70(1) of the 2003 Law.

(5) For the purposes of this paragraph a "**relevant offence**" means an ICC crime or an offence under Part V of this Law.

(6) Before fingerprints or a sample are taken from a person under this Schedule, the person must be informed that they may be used as mentioned in this paragraph.

**Destruction of fingerprints and samples.**

8. Section 72 of the 2003 Law applies to fingerprints and samples taken under this Schedule in connection with the investigation of an ICC crime as it applies in relation to fingerprints and samples taken in connection with the investigation of an offence under the law of the Bailiwick.

## SCHEDULE 5

Section 34

### INVESTIGATION OF PROCEEDS OF ICC CRIME

#### PART I PRODUCTION OR ACCESS ORDERS

##### **Application for order.**

1. An order under this Part of this Schedule may be made by the Bailiff on an application made by Her Majesty's Procureur under section 34, which application may be made *ex parte* in chambers.

##### **Grounds for making order.**

2. (1) The Bailiff may make an order under this Part of this Schedule if he or she is satisfied that there are reasonable grounds for suspecting –

- (a) that a specified person has benefitted from an ICC crime, and
- (b) that the material to which the application relates is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made.

(2) No such order shall be made if it appears to the Bailiff that the material to which the application relates consists of or includes items subject to legal professional privilege.

(3) Paragraphs 3 and 4 specify the descriptions of order that may be made.

**Production or access orders: standard orders.**

3. (1) The Bailiff may order a specified person who appears to have in his or her possession, custody or power specified material, or material of a specified description, to which the application relates, either –

- (a) to produce the material to a police officer within a specified period for the police officer to take away (a "production order"), or
- (b) to give a police officer access to the material within a specified period (an "access order").

(2) The specified period shall be 7 days beginning with the date of the order unless it appears to the Bailiff that a longer or shorter period would be appropriate in the particular circumstances of the application.

(3) Where the Bailiff makes an access order in relation to material on any premises the Bailiff may, on the application of a police officer, order any person who appears to the Bailiff to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(4) In this paragraph "specified" means specified in the order.

**Production or access orders: special orders.**

4. (1) A production order or access order may be made in relation to

a person who the Bailiff thinks is likely to have material to which the application relates in his or her possession, custody or power within the period of 28 days beginning with the date of the order.

(2) A production order or access order may also be made in relation to material consisting of or including material which is expected to come into existence within that period.

(3) A production order or access order made under subparagraph (2) must specify a person within subparagraph (1).

(4) Where a production order or access order is made by virtue of this paragraph –

(a) the order shall require the specified person to notify a named police officer as soon as is reasonably practicable after any material to which the application relates comes into that person's possession, custody or power, and

(b) paragraph 3 has effect with the following modifications.

(5) The modifications are that –

(a) the references in paragraph 3(1) to material which the specified person has in his or her possession, custody or power shall be read as references to the material that comes into his or her possession, custody or

power, and

- (b) the reference in paragraph 3(2) to the date of the order shall be read as a reference to the date of the notification required by subparagraph (4)(a).

- (6) In this paragraph "specified" means specified in the order.

**Effect of order: general.**

5. (1) An order under this Part of this Schedule has effect as if it were an order of the Royal Court.

- (2) Provision may be made by rules of court as to –

- (a) the revocation and variation of such orders, and
- (b) proceedings relating to such orders.

**Effect of order: supplementary.**

6. (1) The following provisions have effect with respect to the effect of an order under this Part of this Schedule.

(2) Where the material to which the order relates consists of information contained in a computer –

- (a) a production order has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and

(b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.

(3) An order under this Part of this Schedule does not confer any right to production of, or access to, items subject to legal professional privilege.

(4) Subject to subparagraph (3), the order has effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(5) For the purposes of sections 16 and 17 of the 2003 Law (access to, and copy and retention of, seized material), material produced in pursuance of an order under this Part of this Schedule shall be treated as if it were material seized by a police officer.

**Order in relation to material in possession of States' committee etc.**

7. (1) An order under this Part of this Schedule may be made in relation to material in the possession, custody or power of any committee of the States.

(2) An order so made –

(a) shall be served as if the proceedings were civil proceedings against the committee concerned, and

(b) may require any officer of the committee, whether named in the order or not, who may for the time being have in his or her possession, custody or power the material concerned, to comply with it.

(2) For the purpose of this paragraph, "**committee**" means any committee, board, authority or other body of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, whether established by Resolution or by an enactment.

## PART II

### SEARCH WARRANTS

#### **Application for warrant.**

8. A search warrant may be issued under this Part of this Schedule by the Bailiff on application by Her Majesty's Procureur under section 34.

#### **Effect of warrant.**

9. (1) A search warrant issued under this Part authorises any police officer –

- (a) to enter and search the premises specified in the warrant, and
- (b) to seize and retain any material found on the search that is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.

(2) The warrant does not confer any right to seize material that consists of or includes items subject to legal professional privilege.

**Grounds for issue of warrant.**

10. (1) The Bailiff may issue a search warrant under this Part of this Schedule in the following cases.

(2) The first case is where the Bailiff is satisfied that a production order or access order made in relation to material on the premises has not been complied with.

(3) The second case is where the Bailiff is satisfied –

- (a) that there are reasonable grounds for suspecting that a specified person has benefitted from an ICC crime,
- (b) that there are grounds for making a production or access order under paragraph 2 in relation to material on the premises, and
- (c) that it would not be appropriate to make a production or access order in relation to the material for any of the following reasons.

(4) Those reasons are –

- (a) that it is not practicable to communicate with any person entitled to produce the material,

- (b) that it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
  - (c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.
- (5) The third case is where the Bailiff is satisfied –
  - (a) that there are reasonable grounds for suspecting that a specified person has benefitted from an ICC crime,
  - (b) that there are reasonable grounds for suspecting that there is material on the premises which cannot be particularised at the time of the application but which–
    - (i) relates to the specified person, or to the question whether that person has benefitted from an ICC crime, or to any question as to the extent or whereabouts of the proceeds of an ICC crime, and
    - (ii) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, and

- (c) that any of the following circumstances apply.
- (6) Those circumstances are –
  - (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (b) that entry to the premises will not be granted unless a warrant is produced or
  - (c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

### PART III

#### SUPPLEMENTARY PROVISIONS

#### **Interpretation.**

**11.** In this Schedule –

**"items subject to legal professional privilege"** has the meaning given in section 24 of the 2003 Law,

**"police officer"** includes an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law,

1972<sup>x</sup>, and

"**premises**" has the meaning given in section 91 of the 2003 Law.

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<sup>x</sup> Ordres en Conseil, Vol XXIII, p. 573 (there are amendments not relevant to this provision).

## SCHEDULE 6

Section 35

### FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

#### **Application for freezing order.**

1. (1) A freezing order may be made by the Royal Court on an application by Her Majesty's Procureur under section 35.

(2) Any such application may be made *ex parte* to the Bailiff in chambers.

#### **Grounds for making order.**

2. The Royal Court may make a freezing order if it is satisfied –

- (a) that a forfeiture order has been made in proceedings before the ICC, or
- (b) that there are reasonable grounds for believing that a forfeiture order may be made in such proceedings,

and that the property to which the order relates consists of or includes property that is or may be affected by such a forfeiture order.

**Effect of freezing order.**

3. (1) A "**freezing order**" is an order prohibiting any person from dealing with property specified in the order otherwise than in accordance with such conditions and exceptions as may be specified in the order.

(2) A freezing order shall provide for notice to be given to persons affected by the order.

**Variation or revocation of the order.**

4. (1) A freezing order may be varied or revoked in relation to any property on the application of any person affected by the order.

(2) A freezing order shall be revoked on the conclusion of the ICC proceedings in relation to which the order was made.

**Power to appoint receiver.**

5. (1) The powers conferred by this paragraph may be exercised if a freezing order is in force.

(2) The Royal Court may at any time appoint a receiver –

(a) to take possession of any property specified in the order, and

(b) in accordance with the Royal Court's directions, to manage or otherwise deal with the property in respect

of which the receiver is appointed,

subject to such exceptions and conditions as may be specified by the Royal Court.

(3) The Royal Court may require any person having possession of property in respect of which a receiver is appointed under this paragraph to give possession of it to the receiver.

(4) The powers conferred on a receiver by this paragraph shall be exercised with a view to securing that the property specified in the order is available for satisfying the forfeiture order or, as the case may be, any forfeiture order that may be made in the ICC proceedings in relation to which the order was made.

(5) A receiver appointed under this paragraph shall not be liable to any person in respect of any loss or damage resulting from any action taken by the receiver which the receiver believed on reasonable grounds that he or she was entitled to take, except in so far as the loss or damage is caused by his or her negligence.

(6) For the avoidance of doubt, Her Majesty's Sheriff may be appointed as receiver under this paragraph.

**Seizure to prevent removal from jurisdiction.**

6. (1) Where a freezing order has been made, a police officer may, for the purpose of preventing any property specified in the order from being removed from the Bailiwick, seize the property.

(2) Property seized under this paragraph shall be dealt with in

accordance with the directions of the Royal Court.

**Real property.**

7. Where it appears to the Royal Court that a freezing order made by it may affect real property situate in the Bailiwick, it shall order the registration of the order –

- (a) if the real property is in Guernsey, in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe in Guernsey,
- (b) if the real property is in Alderney, by noting it against the entry relating to that property in the Alderney Land Register as if an application had been made under section 18(1) of the Alderney Land and Property, etc, Law, 1949m<sup>y</sup> and concurred in by the registered owner of the property as mentioned in section 18(2) of that Law,
- (c) if the real property is in Sark, at the Greffe in Sark as if it were a judgment debt ordered to be registered against that real property by an Act of the Court of the Seneschal.

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<sup>y</sup> Ordres en Conseil Vol. XIV, p. 67; amended by Vol. XIII, p. 416; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; Vol. XXXI, p. 306; Vol. XXXV(1), p. 171; Order in Council No. VI of 2003; Nos. XII and XIII of 2015.

**Bankruptcy.**

8. (1) Where a person becomes bankrupt –
- (a) property for the time being subject to a freezing order made before that person became bankrupt, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph,

is excluded from the property of the person for the purposes of the bankruptcy.

(2) Where a person has become bankrupt, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to property for the time being comprised in that person's property for the purposes of the bankruptcy.

(3) For the purposes of this paragraph "**bankrupt**" means, in respect of a person -

- (a) that a declaration of insolvency has been made in respect of the person by the Royal Court under the Loi ayant rapport aux Débiteurs et à la Renonciation 1929<sup>Z</sup>,
- (b) that a Commissioner or Committee of Creditors has been appointed by the Royal Court under that Law to supervise or secure the person's estate,

- (c) that the person's affairs have been declared to be in a state of "désastre" at a meeting of the person's arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (d) that an interim vesting order has been made against the person in respect of any of the person's real property in the Bailiwick,
- (e) that a composition, compromise or arrangement with creditors has been entered into in respect of him or her whereby his or her creditors will receive less than 100 pence in the pound,
- (f) that possession or control has been taken of any of his or her property or affairs by or on behalf of creditors,
- (g) that an event, measure or procedure has occurred outside Guernsey in relation to him or her which corresponds as nearly as may be to any event described in the above paragraphs,

and "**bankruptcy**" shall be construed accordingly.

- (4) Nothing in the Loi ayant rapport aux Débiteurs et à la

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<sup>z</sup> Ordres en Conseil Vol. VIII, p. 310.

Renonciation 1929 nor any rule of law (whether statutory or otherwise) or custom relating to the matters mentioned in subparagraph (3)(c) and (d) shall be taken as restricting or enabling the restriction of the exercise by the receiver of the powers conferred by paragraph 5.

**Winding up.**

9. (1) Where an order for the winding up of a company has been made under the Companies (Guernsey) Law, 2008<sup>aa</sup> or the Companies (Alderney) Law, 1994<sup>bb</sup>, or a resolution has been passed by a company for voluntary winding up under either of those Laws, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to –

- (a) property for the time being subject to a freezing order made before the relevant time, and
- (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph.

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<sup>aa</sup> Order in Council No. VIII of 2008; amended by No. XIII of 2010; No. I of 2013; No. VI of 2014; No. VI of 2017; Ordinances Nos. XXV and LIV of 2008; Nos. VII and XIV of 2009; No. XI of 2010, No. XXXI of 2012; No. XXXI of 2013; Nos. IV and XXVI of 2015; No. IX of 2016; No. XXIX of 2017; G.S.I. No. 34 of 2009; G.S.I. No. 37 of 2013; No. 84 of 2014; Nos. 29 and 35 of 2016; No. 38 of 2016; Nos. 35, 38 and 103 of 2017; No. 90 of 2018.

<sup>bb</sup> Ordres en Conseil Vol. XXXV(2), p. 777; amended by Order in Council No. I of 2001; No. XV of 2002; No. XIII of 2010; No. XIX of 2012; No. VII of 2017; Alderney Ordinance No. V of 1995; No. I of 1996; No. II of 1997; No. XI of 2007; No. XVII of 2008; No. VI of 2009; No. XIV of 2010; Nos. I and XV of 2011; No. VIII of 2012; No.

(2) Where such an order has been made or such a resolution has been passed, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable –

(a) so as to inhibit him or her from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies (Guernsey) Law, 2008 or the Companies (Alderney) Law, 1994 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) In this paragraph –

**"company"** means any company which may be wound up under the Companies (Guernsey) Law, 2008 or the Companies (Alderney) Law, 1994, and

**"the relevant time"** means –

(a) where no order for the winding up of the company has

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XVI of 2013; No. V of 2017; Ordinance No. XXXIII of 2003; No. VII of 2009; No. IX of

been made, the time of the passing of the resolution for voluntary winding up,

(b) where such an order has been made and, before the presentation of the application for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution, and

(c) in any other case where such an order has been made, the time of the making of the order.

**Protection of liquidator etc.**

10. (1) This paragraph applies where Her Majesty's Sheriff, a liquidator or provisional liquidator, or receiver, as the case may be, seizes or disposes of property which is subject to a freezing order and he or she –

(a) reasonably believes that he or she is entitled to do so in the exercise of his or her functions, and

(b) would be so entitled if the property were not subject to a freezing order.

(2) Her Majesty's Sheriff, the liquidator or provisional liquidator, or receiver, as the case may be, shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his or her negligence.

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2016; No. V of 2017; Nos. XXVII of 2018; G.S.I. No. 90 of 2018.

(3) Her Majesty's Sheriff, the liquidator or provisional liquidator, or receiver, as the case may be, shall have a lien on the property seized or the proceeds of its sale –

(a) for such of his or her expenses as were incurred in connection with the bankruptcy or winding up in relation to which the seizure or disposal purported to take place, and

(b) for so much of his or her remuneration as may be reasonably assigned for having acted in connection with the bankruptcy or winding up.

(4) Subparagraphs (1) to (3) are without prejudice to the generality of any provision contained in the Loi ayant rapport aux Débiteurs et à la Renonciation 1929 or in any rule of law (whether statutory or otherwise) or custom relating to the matters mentioned in paragraph 8(3)(c) to (g).

#### **Interpretation.**

11. (1) For the purposes of this Schedule –

"**freezing order**" has the meaning given in paragraph 3(1),

"**property**" includes money and all other property, real or personal, and including things in action and other intangible or incorporeal property, and

"**dealing with property**" includes (without prejudice to the generality

of that expression) –

- (a) where a debt is owed to a person, making a payment to any person in reduction of the amount of the debt, and
- (b) removing the property from the Bailiwick.

(2) For the purposes of this Schedule ICC proceedings are concluded –

- (a) when there is no further possibility of a forfeiture order being made in the proceedings, or
- (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all the property liable to be recovered, or otherwise).

## SCHEDULE 7

Section 44(6)

### GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES: ARTICLES 6 TO 9

#### *"Article 6*

#### **Genocide**

For the purpose of this Statute, "**genocide**" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

*Article 7*

**Crimes against humanity**

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (a) Murder;
  - (b) Extermination;
  - (c) Enslavement;
  - (d) Deportation or forcible transfer of population;
  - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - (f) Torture;
  - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
  - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic,

cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

- (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group

or collectivity;

(h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

#### *Article 8*

#### **War crimes**

1. [omitted]

2 For the purpose of this Statute, “war crimes” means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

- (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages;
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
  - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the

population of the occupied territory within or outside this territory;

- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international

law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
  - (xxvi) Conscribing or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

- (iii) Taking of hostages;
  - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscription or enlisting children under the age of fifteen years into armed forces or groups

or using them to participate actively in hostilities;

- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (ix) Killing or wounding treacherously a combatant adversary;
  - (x) Declaring that no quarter will be given;
  - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.
- (f) Paragraph 2(e) applies to armed conflicts not of an

international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. [omitted]

#### *Article 9*

#### **Elements of Crimes**

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Elements of Crimes may be proposed by:
  - (a) Any State Party;
  - (b) The judges acting by an absolute majority;
  - (c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.”.

## SCHEDULE 8

Section 48(5)

### OFFENCES AGAINST THE ICC: ARTICLE 70

*"Article 70*

#### **Offences against the administration of justice**

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
  - (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
  - (b) Presenting evidence that the party knows is false or forged;
  - (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
  - (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;

- (e) Retaliating against an official of the Court on account of duties performed by that or another official;
- (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties."

NOTE: Article 69.1, referred to in article 70.1(a), provides as follows:

"1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness."

Requests from the ICC, whether for arrest of a suspect or convict, or for assistance in the taking or production of evidence, or for other related matters, will be made via H.M. Procureur. The Magistrate's Court will have primary jurisdiction for all matters under the Law in the Bailiwick but the Court of Alderney and the Court of the Seneschal will have some duties and obligations in relation to the arrest of persons or taking of evidence in those islands.

Part I of the Law defines the ICC and establishes its status for the purpose of the Law. Part II makes provision for the arrest and delivery of suspects or convicted persons and for their discharge where appropriate. Part III makes provision for other forms of assistance, such as taking and production of evidence, powers of entry, search and seizure and freezing orders. Part IV deals with enforcement including detention of prisoners in the Bailiwick and transfer to other states. Part V incorporates the ICC offences into Bailiwick domestic law and provides definitions and other ancillary provisions. Part VI deals with general provisions including interpretation.